

IN THE MATTER OF the *Architects Act 1991*

AND IN THE MATTER OF an Inquiry into the professional conduct of [NAME],
Registered Architect No. []

AND IN THE MATTER OF an Inquiry into the professional conduct of [NAME],
Registered Architect No. []

NATURE OF INQUIRY

- A. The Tribunal, as constituted by the Architects Registration Board of Victoria ("the Board"), conducted an inquiry on 18 July 2018 ("the Inquiry") into the professional conduct of [NAME], Registered Architect No. [] and into the professional conduct of [NAME], Registered Architect No. [] ("the Architects") pursuant to a Notice of Inquiry dated 8 November 2017 ("the Notice of Inquiry"), which was superseded by an Amended Notice of Inquiry dated 25 July 2018 ("the Amended Notice of Inquiry"). The Amended Notice of Inquiry omitted Allegations 1, 3, 5 and 6 of the Notice of Inquiry so that it only contained the following two allegations (as numbered therein):-

“Allegation Two - Breach of section 32(a) of the *Architects Act 1991*

2. Between November 2014 and February 2015 you were careless or incompetent in your practice as an architect in relation to the architectural services provided by you for [NAME] (**Client**) at [] (**Site**), within the meaning of paragraph 32(a) of the *Architects Act 1991* in that you failed to adequately inform the Client about:

(a) the likely costs to construct a building at the Site based on the Clients’ design requirements; and

(b) your ability to provide a design which would enable the building to be built at the Site within the Clients’ budget.

Allegation Four - Breach of section 32(a) of the *Architects Act 1991*

4. Between November 2014 and February 2015 you were careless or incompetent in your practice as an architect in relation to the architectural services provided by you for [NAME] (**Client**) at [] (**Site**), within the meaning of paragraph 32(a) of the *Architects Act 1991* in that you failed to inform yourself adequately about the likely costs to build a building at the Site that was based on your design so that you could adequately advise the Client regarding their construction budget.”

B. The Tribunal comprised Mr. Leslie Schwarz (Chairperson), Mr. Bruce Allen and Ms. Nicole Feeney.

C. Ms. Krista Weymouth, solicitor, appeared on behalf of the Architects Registration Board of Victoria and Mr. Roman Rosenberg of Counsel, instructed by Ms. Marjorie Daley of Minter Ellison, appeared on behalf of the Architects.

DETERMINATION OF THE TRIBUNAL

Having considered all of the submissions and information placed before it, noting that both of the Architects admitted both of the two allegations contained in the Amended Notice of Inquiry and it being agreed between the parties that no particulars of these two allegations were necessary, the Tribunal finds:-

1. That the Architects were each careless in their practice as an Architect (“the findings”) and, pursuant to section 32(g) of the **Architects Act 1991**, cautions each Architect in respect of each allegation and the findings.

2. The Architects are to pay to the Board its costs of and incidental to the Inquiry, which costs are to be assessed or taxed by the Costs Court on a standard basis pursuant to the County Court scale in default of agreement between the parties.

REASONS OF THE TRIBUNAL

In summary, it was submitted on behalf of the Board that:-

- (a) The contravening conduct was at the lower end of the scale;
- (b) The Architects had made some attempt to manage the costs;
- (c) It was not alleged that the Architects willfully deceived or misled the client;
- (d) The Architects had shown remorse by pleading guilty to the two allegations;
- (e) General deterrence is served by the publication of the Tribunal's findings;
- (f) Specific deterrence is also served by the publication of the Tribunal's findings, which is a significant sanction of itself as the findings will be recorded and noted on "the public record";
- (g) The Board's costs were estimated at \$26,000.00.

In summary, it was submitted on behalf of the Architects that:-

- (a) There were caveats in the letter of engagement regarding the client's budget;
- (b) The Cost Plan which had been obtained for a previous project on a different site gave the Architects a basis for having a genuine belief that the client's budget could be achieved;
- (c) The Architects did not willfully or intentionally mislead the client;
- (d) The contravening conduct only relates to the period between November 2014 [when the letter of engagement was sent] and February 2015 [when the letter of engagement was signed];
- (e) There was no detriment to the client as the letter of engagement was only signed in February 2015 and the client changed his instructions (from container to standard construction) in March 2015. No substantive work had been performed by the Architects during that above period and the first invoice was only rendered in June 2015.
- (f) The Architects have taken the Inquiry seriously by engaging lawyers and had also fully participated in the process;
- (g) The Tribunal's findings would be a mark on the Architects' professional standing, which to date had been unblemished;
- (h) The Inquiry process has caused the Architects to be more educated in dealing with clients and in particular to take a more proactive approach with client communications and what they put in writing. They had also changed their letter of engagement and had declined projects where the budget seemed unable to be achieved;
- (i) The payment of the Board's costs was a relevant consideration;

- (j) The Architects had pled guilty to the two allegations at the earliest opportunity after the Board's evidence was finalised.

Both the Board and the Architects urged the Tribunal that a caution pursuant to section 32(g) of the **Architects Act 1991** in respect of each allegation was the appropriate penalty.

The Tribunal considered all of the above matters, as well as the complexity of the project the subject of the Amended Notice of Inquiry, including the changing nature of the client's instructions and the relationship between the client and each of the Architects. The Tribunal also had regard to the document entitled "Statement of Agreed Matters".

Signed:-


.....
Les Schwarz
(Chair)


.....
Bruce Allen


.....
Nicole Feeney

Dated: 3 August 2018