

IN THE MATTER of the *Architects Act 1991 (Vic)*

AND IN THE MATTER of an inquiry into the professional conduct of
NELSON LEE
Registered Architect No. 16685

BETWEEN

ARCHITECTS TRIBUNAL

Tribunal

and

NELSON LEE

Architect

APPEARANCES

Krista Weymouth, Counsel Assisting the Tribunal.

George Chadwick, Lawyer for the Architect.

INTRODUCTION

On 29 October 2019, the following allegations were made against the Architect in a notice of inquiry:

Allegation 1

*In or around September 2016, you were careless in your practice within the meaning of s 32(a) of the Architects Act 1991 in that you agreed to commence providing architectural services in relation to the development of three townhouses at 23 Catalina Street, Heidelberg West, (**the project**) for Tony To (**Client**) with no real belief that the project could be achieved within the client's budget.*

Particulars

- 1.1 In or around September 2016, you reached a verbal agreement with the Client in relation to the provision of architectural services for the project.*
- 1.2 On or around 20 September 2016, you met with the Client to discuss the brief and provision of services for the project and you told the Client that his proposed budget of \$800,000 was 'tight'.*
- 1.3 In an email exchange between you and the Client on 22 September 2016, in which the Client specified a project budget of \$800,000 total you did not mention the project being 'tight', nor did you set his expectations as to the likely cost of the project.*
- 1.4 Quotes from various builders in relation to the project did not occur until about April 2018 and ranged between \$823,350 to \$1.2 million.*

Allegation 2

On or about 4 October 2016, you were guilty of unprofessional conduct within the meaning of s 32(c) of the Act in that you entered into a client agreement for the town planning stage of the development of three townhouses at 23 Catalina Street, Heidelberg West that did not include a reasonable estimate of disbursements, as required by clause 4(2)(f) of the Victorian Architects Code of Professional Conduct which by virtue of regulation 9 of the Architects Regulations 2015 constitutes unprofessional conduct.

Allegation 3

On or about 14 August 2017, you were guilty of unprofessional conduct within the meaning of s 32(c) of the Act in that you entered into a client agreement for the building permit and construction stage of the development of three townhouses at 23 Catalina Street, Heidelberg West that did not include a reasonable estimate of disbursements, as required by clause 4(2)(f) of the Victorian Architects Code of Professional Conduct which by virtue of regulation 9 of the Architects Regulations 2015 constitutes unprofessional conduct.

The Architect admitted the allegations.

On 7 April 2020, the parties filed written submissions as to penalty and costs. On 14 April 2020, the Tribunal Panel decided to make its decision 'on the papers'. On 20 April 2020, the Tribunal Panel made further inquiries of the Architect. On 23 April 2020, the Architect made further written submissions in response to those inquiries.

FINDINGS

With the Architect having admitted the allegations, the Tribunal Panel finds the allegations proven.

The Tribunal Panel has considered the written submissions made to it by the parties in respect of an appropriate determination pursuant to section 32 of the Architects Act 1991 (Vic) (the **Act**).

Under section 32 of the Act, the Tribunal may determine to caution the Architect, reprimand the Architect, require the Architect to undertake further education, impose a condition or limitation on the Architect's registration, require the Architect to pay a penalty not exceeding 50 penalty units, or suspend or cancel the Architect's registration.

Counsel assisting the Tribunal submitted that the conduct the subject of the allegations is at the lower end of the scale and, as a result, a caution or reprimand and a fine at the lower end of the range would be appropriate. Counsel assisting also submitted that the Architect should pay the Tribunal's costs of the inquiry.

The Architect acknowledged that his conduct was below the standard required of the profession and submitted that a caution with no financial penalty would be appropriate. The Architect also submitted that he is willing to pay the Tribunal's costs of the inquiry.

DETERMINATION

The Tribunal determines pursuant to the powers under Section 32 of the Act that:

1. the Architect is cautioned;
2. the Architect undertake further education in a course of study under continuing professional development related to the Client-Architect Agreement and provide evidence of completion of the course to the Architect's Registration Board of Victoria within 3 months of the date of this determination;

3. the Architect pay a penalty fixed in the sum of \$500;
4. the Architect pay the Tribunal's costs of the inquiry fixed in the sum of \$1,224.

The Architect is granted a stay of 30 days in which to pay the above penalty and costs.



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Vanessa Bleyer
Chair of the Tribunal

On behalf of the Tribunal Panel
Vanessa Bleyer
Bronwyn Naylor
Maggie Edmond

14 May 2020