

CITATION: *Legal Services Commissioner v Gould* [2017] QCAT 205

PARTIES: Legal Services Commissioner
(Applicant)
v
Robert John Gould
(Respondent)

APPLICATION NUMBER: OCR047-15

MATTER TYPE: Occupational regulation matters

HEARING DATE: 27 June 2017

HEARD AT: Brisbane

DECISION OF: **Justice DG Thomas, President**

Assisted by:
Ms Megan Mahon (Legal panel member)
Dr Susan Dann (Lay panel member)

DELIVERED ON: 27 June 2017

DELIVERED AT: Brisbane

ORDERS MADE: **1. The sum of \$342.00 is to be paid by way of compensation by Robert John Gould to Mr D'Antoine and Ms Ngarimu-Antonio, by:**

4:00pm on 27 August 2017.

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – UNSATISFACTORY PROFESSIONAL CONDUCT – PROFESSIONAL MISCONDUCT – COMPENSATION ORDER – where the respondent was found to have committed unsatisfactory professional conduct and professional misconduct in relation to a matter wherein the respondent acted for the complainants – where the complainants seek a compensation order against the respondent – whether the claimants' loss is a result of the conduct identified as unsatisfactory professional conduct and professional

misconduct – whether a compensation order is in the interests of justice

Legal Profession Act 2007 (Qld) ss 464, 465, 466

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 32

Legal Services Commissioner v Gould [2016] QCAT 533

This matter was heard and determined on the papers pursuant to section 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* ('QCAT Act').

REASONS FOR DECISION

- [1] On 4 March 2016, Jeff D'Antoine and Karen Ngarimu-Antonio (the Complainants) filed a Notice of Intention to Seek Compensation order pursuant to section 464 of the *Legal Profession Act 2007 (Qld)* ('LPA'). Attached to the Compensation Order is supporting documentation which includes:
- a) Email dialogues between John Gould, Frank Redmond, Jeff D'Antoine and Karen Ngarimu-Antonio
 - b) 7 May 2009 Letter from Compass Legal Solutions;
 - c) Emails from John Gould to Frank Redmond dated 24 June 2011 and 24 November 2011;
 - d) Compass Legal Solutions Tax Invoice rendered 20 April 2010.
- [2] On 16 December 2016, the Tribunal directed the Complainants to file further submissions on the Compensation Order.
- [3] On 8 February 2017, Mr D'Antoine advised the Tribunal that the Complainants would not be filing anything further and would rely on the material filed.

Background

- [4] As to Mr D'Antoine and Ms Ngarimu-Antonio, the charges were that the respondent failed to maintain the reasonable standards of competence and diligence in the conduct of a matter in which he acted in behalf of Mr D'Antoine and Ms Ngarimu-Antonio, and also that he mislead Mr D'Antoine.
- [5] The reasons for the failure to maintain reasonable standards of competence and diligence concern neglect and delay in the conduct of the matter and also the respondent's inexperience which led to the failure to conduct the matter in a timely and efficient way. In that respect, the Tribunal found that his conduct amounted to unsatisfactory professional conduct.

- [6] As to charge 2, the Tribunal found that the respondent misled his client by saying that delay in progressing the claim was because of other solicitors.

Complainant's Submissions

- [7] The Complainants submit that the amount of the invoice dated 20 April 2010, and attached to the Notice of Intention to Seek Compensation, is disputed. The Complainants submit that Mr Gould overcharged an amount of "\$3,802.15 from 3/12/09 to 15/4/2010".
- [8] In an email dated 2 November 2016, Mr D'Antoine submits that Mr Gould "duped us out of thousands of dollars by taking on our litigation matter between 2008 – 2012, when he was clearly not qualified to do so."
- [9] Mr D'Antoine further submits in the email that "Gould's incompetence cost us an opportunity to seek justice in our matter" and refers to Gould's conduct as so misleading and incompetent as to found reasonable grounds of negligence.

Disposition

- [10] The Complainants' claim relates to costs. There is an assertion that from the period from 3 December 2009 to 15 April 2010, the sum of \$3,802.15 was overcharged.
- [11] On the basis that the claim relates to a refund of costs, a compensation order of the type mentioned in section 464(a) LPA is relevant. Under section 464(a) a compensation order can be made that a law practice "must repay the whole or a stated part of the amount that the law practice charged the Complainant for stated legal services."
- [12] As the compensation order is made in the context of a finding against the practitioner of either unsatisfactory professional conduct or professional misconduct, the claim for compensation must follow from the findings of the Tribunal in relation to the conduct of the practitioner.
- [13] The crux of the Complainants' claim of \$3,802.15 appears to be based on the invoice dated 20 April 2010 issued by Compass Legal Solutions.
- [14] The invoice dated 20 April 2010 is for an amount of \$8,616.85. In support of the claim of overcharging, the Complainants have annotated the itemised bill provided to them with the invoice of 20 April 2010 to address the amounts on the bill which they dispute and which comprise the figure of \$3,802.15 claimed to have been overcharged.
- [15] It seems that the Complainants have taken issue with some of the items of charge, which are reflected in the details contained in the invoice. It does not seem that all items are challenged or in that context, that there is any assertion that no value was obtained.

- [16] No evidence is offered in support of the annotations made. The annotations are lines, arrows, asterisks, circles with numbers written throughout the invoice. Little, and inadequate, explanation is provided.
- [17] It is not possible to follow the calculations which have been made.
- [18] Against that background, the Tribunal makes the following observations with respect to the following items of work.

Date	Details	Time Units	Amount	Comment
13/01/10	Research services provisions under UCPR.	4	152.00	There should not have been a need to research the service provisions under the UCPR. This must have arisen through inexperience, which was the subject of the finding of the Tribunal.
15/04/10	Attend to file to finalise account	5	190.00	The solicitor cannot charge for finalising an account. The amount may have been included as a result of the inexperience of the practitioner.
Total	342.00			

- [19] It is not clear what the other circles, crosses and lines on the notated account mean. None of the other notations appear obviously to be as a result of delay, neglect or inexperience of the practitioner and so do not result from the orders made by the Tribunal.
- [20] On that basis, the Tribunal orders that the sum of \$342.00 be paid by way of compensation from the respondent to Mr D'Antoine and Ms Ngarimu-Antonio, within one month of the date of this order.