

IN THE MATTER of the *Architects Act 1991*

AND IN THE MATTER of an Inquiry into the professional conduct of [the Architect],

BETWEEN

ARCHITECTS REGISTRATION BOARD OF VICTORIA
Board

AND

[The ARCHITECT]
Architect

APPEARANCES:

Mr. J Stoller of the Victorian Government Solicitor

Mr. J Petts of TressCox Lawyers

DETERMINATION

The Tribunal determines that:-

1. In respect of allegations 1 and 2, the Tribunal finds the allegations proved and determines to caution the Architect under section 32(g) of the *Architects Act 1991* ("the Act") and to impose a total penalty of \$1,500.00 under section 32(k) of the Act.
2. That in respect of allegation 3, the Tribunal finds the allegations proved and determines to reprimand the Architect under section 32(h) of the Act and to impose a penalty of \$1,500.00 under section 32(k) of the Act.
3. That in respect of allegation 4, the Tribunal finds the allegations proved and determines to reprimand the Architect under section 32(h) of the Act and to impose a penalty of \$2,000.00 under section 32(k) of the Act.
4. Pursuant to section 32 of the Act, the Architect must pay the Board's costs of the Inquiry fixed in the agreed sum of \$6,300.80.
5. The Architect is granted a stay of 2 months in which to pay the above penalties and costs.

FINDINGS

1. By way of Notice of Inquiry dated 23 February 2016 the Architects Registration Board of Victoria ("the Board"), pursuant to section 18 of the Act, decided to hold an Inquiry into the professional conduct of [the Architect],\ (Registered Architect No. []) of [address] in respect of 4 allegations.

2. The Board repeats the allegations (excluding the particulars) contained in that Notice of Inquiry below:-

"Allegation 1:

- (a) You breached and/or failed to comply with a provision of the Act, namely s 6, which provides that:

- (1) A body corporate must not represent itself to be an architect and must not allow itself to be represented to be an architect unless it is an approved company.

Penalty: 60 penalty units

- (2) A person must not represent a body corporate to be an architect if the person knows or ought reasonably to know that the body corporate is not an approved company.

Penalty: 60 penalty units

Allegation 2:

You are guilty of unprofessional conduct (including in accordance with the meaning of 'unprofessional conduct' in regulation 16(a) with reference to regulation 12 of the *Architects Regulations 2004*, as in force at the relevant time) as a consequence of your failure to ensure that all representations made in connection with the supply of services to the clients, which purported to be architectural services, were accurate and current.

Allegation 3:

You are guilty of unprofessional conduct in that your conduct fell so far short of the standard expected of a registered architect so as to constitute unprofessional conduct. This occurred as a consequence of your failure to ensure that all written communications from the company to the clients in relation to the provision of services, which were purported to be architectural services, disclosed the names of all directors of the company who are architects and stated that those directors are architects.

Allegation 4:

You are guilty of unprofessional conduct (including in accordance with the meaning of 'unprofessional conduct' in regulation 16(a) with reference to regulation 14 of the *Architects Regulations 2004*, as in force at the relevant time) as a consequence of the fact that the company accepted an engagement to provide services to the clients and did in fact provide services to the clients (which services were purported to be architectural services) but failed to provide, in writing, a description of the terms and conditions of the engagement and to provide a copy of that documents to the clients."

3. Section 32 of the Act provides:

"If after considering the submissions made at an inquiry the Tribunal finds that—

- (a) the architect is careless or incompetent in his or her practice; or
- (b) the professional standards of the [architect](#) are demonstrably lower than the standards which a competent [architect](#) should meet; or
- (c) the architect is guilty of unprofessional conduct; or
- (d) the architect has breached or failed to comply with any provision of [this Act](#); or
- (e) the architect has been convicted in Victoria of an indictable offence or has elsewhere been convicted of an offence which if committed in Victoria, would be an indictable offence; or
- (f) the registration of the architect has been obtained by fraud or misrepresentation or concealment of facts—

the Tribunal may make one or more of the following determinations—

- (g) to caution the architect;
- (h) to reprimand the architect;
- (i) to require the architect to undertake further education of a kind, and to complete it within a period, stated in the determination;
- (j) to impose a condition or limitation on the architect's registration relating to the architect's practice;
- (k) to impose a penalty not exceeding 50 penalty units;
- (l) to suspend the architect's registration for the period stated in the determination;
- (m) to cancel the architect's registration—

and may make any determination as to costs that it thinks fit."

4. The Tribunal was assisted by a helpful Statement of Agreed Facts signed by the Architect on 29 April 2016 and on behalf of the Board on 2 May 2016. The parties also made helpful written submissions as to penalty.
5. The Architect admitted all of the 4 allegations.
6. The Tribunal has had regard to the Architect's submissions on penalty dated 13 May 2016 and the Board's submissions on penalty dated 27 May 2016.
7. The Tribunal has taken into account not only the above documents but also the following facts:-

- (a) The Architect admitted the allegations at the earliest opportunity, was cooperative and there was agreement to pay the Board's costs and also as to the amount thereof.
- (b) The Architect did initially provide a quotation to the clients which stated his intended fees.
- (c) Allegations 1, 2 and 3 relate to compliance matters, in that the Architect was eligible to be registered but had failed to comply with the requirements of the Act at the relevant times.
- (d) The clients had not complained to the Board in respect of allegations 1, 2 and 3 to the Tribunal's knowledge.
- (e) The Tribunal was concerned that in respect of allegation 4, the Architect had previously appeared before the Tribunal on a similar matter, albeit in 2005.
- (f) None of the allegations involved fraud.
- (g) The Architect also appeared to understand and be genuinely remorseful of the breaches of the Act which he had admitted.
- (h) The parties had agreed on the appropriate penalties which the Tribunal should impose although the Tribunal has independently considered this matter.

8. Accordingly, the Tribunal finds as follows:-

- (a) In respect of allegations 1 and 2, the Tribunal finds the allegations proved and determines to caution the Architect under section 32(g) of the Act and to impose a total penalty of \$1,500.00 under section 32(k) of the Act.
- (b) That in respect of allegation 3, the Tribunal finds the allegations proved and determines to reprimand the Architect under section 32(h) of the Act and to impose a penalty of \$1,500.00 under section 32(k) of the Act.
- (c) That in respect of allegation 4, the Tribunal finds the allegations proved and determines to reprimand the Architect under section 32(h) of the Act and to impose a penalty of \$2,000.00 under section 32(k) of the Act.
- (d) The Architect has agreed to pay the Board's costs fixed in the sum of \$6,300.80.

9. The Tribunal grants a stay in which to pay the penalties imposed and the Board's costs for a period of 2 months; noting that the Architect is intending to contact the Board to arrange payment by instalments, which request will no doubt be duly considered by the Board given the Architect's circumstances.

LES SCHWARZ

Chair of the Tribunal

August 2016

TONY MUSSEN

Tribunal Member

August 2016

BRONWYN NAYLOR

Tribunal Member

August 2016