

Court of King's Bench of Alberta

Citation: Lau v Dentons Canada LLP, 2024 ABKB 497

Date: 20240816
Docket: 2203 17332
Registry: Edmonton

Between:

Jessica Lau As the Personal Representative of the Estate of Ricky Lau

Applicant

- and -

Dentons Canada LLP

Respondent

**Memorandum of Decision
of the
Honourable Justice C.L. Arcand-Kootenay**

Introduction

[1] The Applicant Jessica Lau as the Personal Representative of the Estate of Ricky Lau (hereinafter "Applicant"), applied for an Appointment for Review of a Retainer Agreement and Lawyer's Charges pursuant to R.10.13, of the *Alberta Rules of Court*.

[2] On February 28, 2023, Dennis Pawlowski, Review Officer/Deputy Clerk of the Court (hereinafter "Review Officer"), issued a Certificate of Review of Lawyer's Charges.

[3] The Review Officer's decision was to allow fees, taxable disbursements, non-taxable disbursements, other charges and GST in the amount of \$115,972.58 less amounts paid to date by the Applicant on the accounts reviewed with an outstanding amount owing on the account of \$49,600.01.

[4] The Applicant appeals the Review Officer's decision.

[5] The issue in this Appeal is whether the Review Officer erred in law and in fact in fixing legal fees payable by the Applicant to the Respondent's law firm.

Standard of Review

[6] A Review Officer's decision is entitled to deference on Appeal, given the specialized knowledge and experience of Review Officers in assessing reasonableness of lawyer's accounts: *Rocks v Ian Savage Professional Corporation*, 2015 ABCA 77 at para 15. The standard of review is otherwise governed by the framework established in *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235: Extrinsic errors of law and errors in principle are subject to a review on a correctness standard. To the extent that the decision requires an interpretation of the Rules of Court, and such interpretation is an extricable error of law, it is subject to review on a correctness standard: *Betser-Zilevitch v Prowse Chowne LLP* ("*Betser-Zilevitch*"), 2021 ABCA 129 at para 13.

[7] Questions of fact, factual inferences, and the application of a legal standard to questions of fact are reviewed for palpable and overriding error: *Super Save Disposal (Alberta) Ltd. v. Shenwei Enterprises Ltd.*, 2017 ABQB 805 at para 3; *McCallum v. Edmonton Frame and Suspension (2002) Ltd.*, 2016 ABQB 271 at paras 48 -50.

Issues

[8] Whether the Review Officer properly applied the findings of fact to the law to determine the reasonableness of the Retainer Agreement and Lawyer's Charges.

[9] A Review Officer may fall into error in at least the following ways:

1. Erring in fact, for which a party must find that the fact as found is "clearly in error": *Sweetgrass First Nation v Rath & Company* ("*Rath & Company*"), 2013 ABQB 165 (Alta QB) at para 27.
2. Erring in principle (law), which will be shown if a party can demonstrate that the review officer proceeded on an erroneous principle, failed to apply a required principle or that the award of the review officer is so high or low as to betray an error of principle: *Rath & Company* at para 27.
3. Failing to provide a hearing that is procedurally fair, for which a standard of correctness will apply: *Anderson v. Alberta Securities Commission*, 2008 ABCA 184, (Alta. C.A.) at para 30.

[10] Should the Appeal be allowed, and the Review Officer's decision be confirmed, varied, revoked, or referred back to another Review Officer.

[11] Should I make any order I consider appropriate, R.10.27.

Analysis of Facts and Law

[12] The *Alberta Rules of Court* (hereinafter "ARC") govern the practice and procedure in the Court of King's Bench of Alberta, and the Court of Appeal of Alberta: R 1.1(1). They also govern all persons who come to the Court for resolution of a claim, whether the person is a self-represented litigant or is represented by a lawyer; R. 1.1(2).

[13] The Rules do not permit laxer standards for non-represented or self-represented parties. *Koerner v Capital Health Authority*, 2011 ABCA 289.

[14] I have considered ARC 10.1 to 10.27, Division 1, Lawyers' Charges, Retainer Agreements and Right of Review.

[15] ARC Lawyers' Charges

10.2(1) Except to the extent that a Retainer Agreement otherwise provides, a lawyer is entitled to be paid a reasonable amount for the services the lawyer performs for a client considering

- (a) the nature, importance and urgency of the matter,
- (b) the client's circumstances,
- (c) the trust, estate or fund, if any, out of which the Lawyers' Charges are to be paid,
- (d) the manner in which the services are performed,
- (e) the skill, work and responsibility involved, and
- (f) any other factor that is appropriate in the circumstances.

...

(3) Every lawyer's account must

- (a) contain a reasonable statement or description of the services performed,
- (b) show the fee for service, and
- (c) set out separately the details of any disbursements paid or to be paid by the lawyer or any other charges of the lawyer in performing the lawyer's services.

...

Review Officer's Authority

10.17(1) For the purpose of conducting a review under this Division, a Review Officer may do all or any of the following:

- (a) take evidence either by affidavit or orally under oath, or both;
- (b) direct the production of records;

...

(f) require details of a Retainer Agreement, or of the services provided, money collected and expended, disbursements or other charges claimed or any other matter necessary to understand the agreement or charges and decide whether the agreement or charges, or both are reasonable.

...

Background

[16] On October 30, 2018, a Retainer Agreement between Jessica Lau and G. James Thorlakson, Dentons Canada LLP was entered.

[17] The Retainer Agreement states as follows:

Scope of Representation: You have retained us to bring proceedings against **Eddie Ho, also known as Chi Kan Ho** (“Ho”) in relation to misconduct by Ho in the operations of Koon Shing Resources Canada Limited (“Koon Shing”). In this letter, we refer to the proceedings against Ho as the “Matter”. In pursuing this mandate, a key objective will be to remove Ho as a shareholder and director Koon Shing, and to recover embezzled funds and seek recovery for damage caused as a result of Ho’s actions.

...

In representing you, we will use our professional judgment to provide the legal services reasonable, necessary, and appropriate to complete this mandate. We will also deal with incidental matters that arise, such as responding to audit letter requests.

...

Our Agreement. This engagement letter (the “Letter”) and our *Terms of Business* (the “Terms”) together form our agreement (the “Engagement Agreement”) respecting the Matter. A copy of the terms is attached.

[18] The Terms provided the following:

15. ..If you disagree with any invoice, please contact us immediately, otherwise we will understand that the invoice is agreeable to you.

...

21. You may terminate the engagement at any time for any reason...

[19] Dentons provided legal services for the Applicant commencing October 5, 2018, up to and including approximately November 8, 2021.

[20] On November 4, 2022, the Applicant filed an Appointment for Review.

[21] On December 13, 2022, the Appointment for Review was Adjourned by consent.

[22] On January 4, 2023, the Appointment for Review was Adjourned due to power loss in the KB Courthouse

[23] On February 28, 2023, the Review Officer provided his Certificate of Review of Lawyer’s Charges. The Invoice Dates for the accounts reviewed were for the period November 30, 2020, up to and including January 31, 2022.

[24] On March 27, 2023, a Notice of Appeal of Review Officer’s Decision was filed by the Applicant.

[25] In the Index to Documents for Appeal of the Review Officer’s Decision, the Applicant includes the following from the Record of Proceedings:

- A. Appellant’s written argument
- B. Transcript of the proceedings before the review officer
- C. Documents provided to the review officer by Ms. Lau *
- D. Documents provided to the review officer by Dentons

E. Form 42, Appointment for Review

F. Review officer's Certificate

[26] The Applicant made a note to Tab C "Documents provided to the Review Officer by Ms. Lau" as follows:

*Included herein are all Dentons accounts (26 total). No separate tab for 'Accounts reviewed' included in this Index, as technically the Review Officer did not undertake a review of the accounts' specific charges and time entries, which forms one of the Grounds of Appeal.

[27] The Respondent's accounts attached at Tab C includes 70 pages of invoice entries for the period October 5, 2018, to April 18, 2022.

[28] The Overview and Statement of Facts contained in the Respondent's Brief state as follows:

1. This Review Officer appeal concerns fees incurred in proceedings brought by and responded to by the Appellant's estate. The main asset and issue of contention was the ownership of millions of dollars of investments whose sources were unclear and hotly contested by a sophisticated opposing party.
2. After a lengthy assessment hearing, involving careful examination of voluminous documents, the Review Officer gave reasons upholding the accounts issued by the law firm.
3. There was a written retainer agreement signed by Ms. Lau.
4. In those reasons, the Review Officer observed that an action involving \$10 million will involve billings that are higher because of the amounts involved, and because of the diligence required to prosecute or defend actions involving that sort of money. The billings were proportionate to what was at stake.
5. The liquidation order included a carve out of the issue of the ownership of the \$10 million, and the order itself made good sense. The chambers judge (Justice Lema) expressed appreciation and congratulated both counsel for having the ability to put together something that he described as being a very sensible, workable arrangement.
6. The law firm's fees were allowed in full.

[29] Was the review officer correct in his findings.

[30] As noted above, the scope of the retainer was as follows:

Scope of Representation: You have retained us to bring proceedings against **Eddie Ho, also known as Chi Kan Ho** ("Ho") in relation to misconduct by Ho in the operations of Koon Shing Resources Canada Limited ("Koon Shing"). In this letter, we refer to the proceedings against Ho as the "Matter". In pursuing this mandate, a key objective will be to remove Ho as a shareholder and director Koon Shing, and to recover embezzled funds and seek recovery for damages caused as a result of Ho's actions.

...

In representing you, we will use our professional judgment to provide the legal services reasonable, necessary, and appropriate to complete this mandate. We will

also deal with incidental matters that arise, such as responding to audit letter requests.

...

[31] Pursuant to R.10.17, the review officer has jurisdiction to request the retainer agreement for the purposes indicated in (f).

[32] The retainer agreement was understandable enough to comply with R.10.17, R.10.19 and R.10.2.

[33] *Betsler-Zilevitch*, para 20: “To ensure fairness in the assessment of fees, including consideration of the client’s reasonable expectations in the circumstances, the review officer is instructed to turn to the provisions of Rule 10.2. Those provisions give the review officer wide latitude to determine the reasonableness of a particular account having regard to several factors, including any retainer agreement, and all the surrounding circumstances, such as the number of hours worked, the settlement achieved, the time recorded, the result, and “any other factor that is appropriate to consider in the circumstances”: Rule 10.2(1)(f). The review officer is charged with looking at what the lawyer did for the client and its value, having regard to all the circumstances.”

[34] As the Applicant filed her Appointment for Review on November 4, 2022, the review officer determined that he could only review ten accounts beginning November 30, 2020, up to and including January 31, 2022.

[35] On page 2, Line 28 to 31 of the Proceedings Transcript, February 28, 2023 (hereinafter “Transcript”), the Review Officer stated: “—if a lawyer’s statement of account is more than two years old before an appointment for review is filed, those accounts cannot be reviewed. And the theory behind that is that a review of a lawyer’s accounts of charges can lead to a judgment, so it’s covered by that two-year period under the *Limitations Act*.”

[36] The review officer found the other accounts for the period October 29, 2021, going back to November 30, 2020, were out of time for a review.

[37] The review officer was correct in determining the applicable time having regard to R.10.10, R.10.17 and the *Limitations Act*, RSA 2000 c L-12 section 3.

[38] At the assessment hearing, the review officer asked questions of both the Applicant and the Respondent to ensure he understood the nature of the retainer, the work done, and the steps taken by the Respondent to advance the Applicant’s claim(s).

[39] The Respondent’s submissions appear on page 9 through 12 of the Transcript. The review officer asked the Respondent to give his submissions first even though it was the Applicant’s review application.

Mr. Thorlakson ...

So a difficult fight. Very complex. We do have some 70 pages of, of, of time detail on this, as we had to go through each step of it, prepare for, explain, talk to Ms. Lau about, about things, put together the affidavit materials, and the, the largest problem of course is that the estate itself had very poor records and could not contribute anything towards showing where this money came from. In, in a perfect world, there would have been some records from, from the estate that Ms. Lau was administering that show where that came from. So this was, this was really the core

evidentiary problem that resulted in racking up very extensive legal fees on, on both sides here.

...

At the end of the day, we, we went to a liquidation application, appeared before Justice Lema, and the idea was, yes, let's liquidate this company but carve out this claim for the estate. And it's at that point, right after that happened, that Ms. Lau retained new counsel. She retained Bryan & Company as new counsel to press forward with the claims. At that point, she did not abandoned those claims. Indeed, she pressed forward with exactly the same claims which went in, I think in April of 2022 before Mr. Justice Lema, and, and the claim unfortunately was dismissed. Mr. Justice Lema had a number of reasons.

...

There is a reported decision on it.

[40] The Applicant was asked to provide her submissions to the review officer, once the Respondent provided their submissions, Transcript, page 12:

The Review Officer: All right. So, Ms. Lau, you can comment on anything you've heard if you think there's, you know, something that I need to know about the background that was incorrect or maybe wasn't covered and/or you can start beginning, you can begin, sorry, to explain what your concerns are about the billings.

Ms. Lau: Sure.

The Review Officer: And once we know what the concerns are, then we'll start looking at the invoices themselves.

[41] The Applicant did not ask for a line-by-line review of the accounts nor indicate concerns with any specific invoice in her submissions.

[42] The Applicant focused her submissions on the Liquidation Order, and whether the carve-out provisions were included as she did not believe the carve-out provisions were included or negotiated in the draft form of Order.

[43] On page 34 of the Transcript, the review officer reads from a transcript of the liquidation hearing before Justice Lema that confirms the parties were going to do further drafting to the form of Order and had "already agreed to a set of paragraphs around the quote/unquote carve-out claim that we had discussed".

[44] As noted above, the Applicant focused her submissions on this issue, the carve-out provisions, as she believed they were not included in the Liquidation Order. However, based on the read in from the liquidation hearing transcript it is clear the carve-out claim was going to be included in the further draft of the Liquidation Order.

[45] The review officer found the Respondent was involved up to and including the date of the liquidation hearing, October 22, 2021, and was involved in further drafting of the Liquidation Order which did have a term to "provide a carve-out of the issue of the ownership of the 10 million, that would not be distributed by the liquidator in any fashion but would rather be litigated within the liquidation action,..." Transcript, page 50, lines 28 to 30.

[46] The review officer also found that the Respondent was involved in getting the new firm up to speed due to the date that the Applicant needed to have her claim in by (November 15th) as the new firm had just been retained shortly prior to that date.

[47] The Respondent ceased to be counsel for the Applicant on or about November 8, 2021.

[48] The Applicant did not believe the Respondent was following her instructions and that the Respondent did not take precautions to ensure the Applicant could continue to advance claims on behalf of her father's estate at the time of the liquidation hearing. Thus, the Applicant retained new counsel.

[49] However, in the invoices provided by the Applicant in Tab C of her material, there is an entry on October 29, 2021, that states: Telephone conversation with client regarding meeting with Dr. Mah, and Affidavit in opposition of Summary Dismissal Application and in support of our Derivative Action Application.

[50] Thus, the Respondent was still moving forward with the Derivative Action at that time, October 29, 2021, approximately 10 days before the Applicant changed counsel and 8 days after the liquidation hearing.

[51] The Applicant's concerns regarding the Derivative Action proceeding despite the liquidation hearing was the primary reason she appears to give for a change of counsel in November 2021.

[52] However, the review officer read in a clause in the draft Liquidation Order as follows: "Notwithstanding the claims process referred to in paragraph 10, should the estate wish to bring a claim of any kind against the corporation, such estate claim shall be submitted for filing and served on the corporation and Mr. Eddie Ho on or before..." (Transcript, page 20, line 36 to 40).

[53] The Respondent stated on page 21, lines 3 to 11, transcript: "...The idea here was to cover two things. Well, actually three. Oppression claims, would be an estate claim; the derivative action application, which had already been filed, was an estate claim through that process; and of course the biggest item was the estate claim for the, for the ownership by, by – well, various ways of describing it, by constructive trust, having the court characterize the investment funds as, as, as a shareholder investment or loan..."

[54] As the Respondent was not counsel of record when the Liquidation Order was granted, he could not have been involved in the final terms nor have consented to any Order on behalf of the Applicant at that time.

[55] It is clear from the read-ins that the Applicant could still advance her claims as provided for in the terms of the Liquidation Order.

[56] The review officer further states in the Transcript, page 50, line 35 to 40: "Ms. Lau says she wasn't aware of discussions leading to the order. She didn't give authority for those matters, and, and that may, that may or may not be true. Perhaps that's an issue that should be taken to the Law Society, for example, is a different forum. I have no jurisdiction to deal with those sorts of things. I just have to look and see what was the job was done and was it worth, was it worth what was charged. The result does convince me that it was worthwhile."

[57] The Applicant also submitted that the Respondent exceeded the scope of their retainer.

[58] The Retainer Agreement stated in the “Scope of Representation” that “We will also deal with incidental matters that arise.”

[59] The Applicant is a lay person and may not have understood legal principles nor litigation.

[60] However, based on my findings below, the Respondent had a considerable amount of communication with the Applicant during their carriage of the file. Invoice entries describe conversations with the client regarding next steps; what needs to be done in the matter; to discuss case strategy; proposed responses to opposing counsel; and, to receive instructions.

[61] As the Respondent stated during his submissions in the review hearing, this matter “was very complex”.

[62] The Respondent stated that the other party, Mr. Ho, was also taking legal steps and filing applications that the Applicant’s counsel needed to respond to.

[63] I have reviewed the 70 pages of invoices and entries provided by the Applicant in the record of proceedings. These entries show a very detailed road map of steps taken by the Respondent in this matter, based upon communication with and instructions from the Applicant.

[64] Upon my line by line review of the invoices provided, during the course of their retainer, the Respondent: discussed the shareholder dispute with the Applicant; drafted and filed Statements of Claim; drafted and filed Affidavits for the Applicant; discussed strategies with the Applicant regarding a derivative action and oppression claim and to remove Eddie Ho as a shareholder; reviewed tax notices and non-resident tax notice of collection; researched case law to oppose Ho’s lawyers application for liquidation and dissolution of the company where the company’s debts are not resolved; and, continually communicated with the Applicant regarding next steps and instructions.

[65] While the Respondent had carriage of this file, Covid hit. There is an entry in the invoice records that note “Correspondence to Jessica Lau regarding suspension of sittings” dated March 23, 2020.

[66] Further entries are regarding preparing for a remote sitting in Queen’s Bench dated June 2, 2020; and the Applicant raising concerns regarding the delay of the matters on September 4, 2020, resulting in a telephone conversation with counsel on September 11, 2020, regarding what needs to be done in the matter and the client’s thoughts on moving the matter forward.

[67] This period was during Covid and shuttering of the courthouses, which I take judicial notice of.

[68] I will also take judicial notice that during the Covid epidemic, Court operations were significantly impacted.

[69] The invoices provided by the Applicant also confirm that there was communication between the Respondent and the Applicant in the fall of 2020 and into 2021 to discuss next steps and case strategy, during the Covid epidemic.

[70] There are approximately 200 entries in the invoices included in Tab C that indicated communication with the Applicant either through meetings, emails, telephone conversations or letters for the period January 10, 2020, to November 8, 2021.

[71] As there are 52 weeks in a year, and 104 weeks over a two-year period, based on the foregoing there may have been communication between the Applicant and the Respondent more than once per week, during this two-year period.

[72] On page 50, line 5 to 7 of the Transcript of Proceedings, February 28, 2023, the review officer stated, “There’s been no complaints really about unnecessary work being done or, you know, time entries that were inflated or anything like that.”

[73] As indicated in paragraph 63 of my decision above, the invoices outlined all steps taken and work performed by the Respondent on behalf of the Applicant.

[74] Upon the review officer’s review of the retainer agreement, he stated as follows:

“...I will just mention that I’m aware that this matter involved shareholder, corporate shareholder litigation that the estate that Ms. Lau represents, estate of Ricky Lau, was one of the shareholders in the corporation. Other shareholder in the corporation was – well, the corporation I think is, is Koon Shing Resources, if I’m not mistaken, Koon Shing Resources Canada Limited, or maybe that’s the other shareholder. There’s a second shareholder, and the fight was all about ownerships of assets and tax issues, and it was a file that involved a considerable sum, in excess of 2 million.” Transcript, page 9, line 4 to 11.

[75] The review officer found that the Respondent took steps necessary to advance the claim of the Applicant, they used their “professional judgment to provide the legal services reasonable, necessary, and appropriate” to “recover embezzled funds and seek recovery for damage caused as a result of Ho’s actions.”: **Retainer Agreement.**

[76] In the Transcript on page 50, part of the review officer’s decision regarding the fees follows:

The Review Officer: The main complaint really was what happened at the liquidation application. Ms. Lau takes issue with the fact that, or with her version of the fact that she was not briefed appropriately on, on what was going to go into this order. Rather, she was told that the application is not going to be successful, there won’t be any liquidator. She was given a copy of a draft order for her review and comment. She says she never looked at it because she was convinced that the liquidation application was simply going to fail. Mr. Thorlakson, on the other hand, says he had discussions with her about the draft order, but that is not as important as, as the order that actually arose and, and what it does.

The order, from the evidence that I have before me, including the partial transcript or extract of the transcript, makes it clear to me that the order did provide a carve-out of the issue of ownership of the 10 million, that would not be distributed by the liquidator in any fashion but would rather be litigated within the liquidation action, and the provision of the order really also was not limited to the 10 million. It allowed any claim to be made against the corporation. That’s pretty clear, and while there was a deadline for filing of materials to get those issues on, the order itself made good sense.

...I just have to look and see what was the job done and was it worth, was it worth what was charged. The result does convince me that it was worthwhile. It was a good order...

[77] The Review Officer was correct that the Agreement and charges were reasonable. R.10.2 and 10.17.

[78] Once the Review Officer identified the concerns, specifically the carve-out of the derivative action in the Liquidation Order, he had indicated the parties would look at the invoices.

[79] However, once the Review Officer decided that what was done, and what was charged for what was done was reasonable, he allowed the charges in full.

[80] On page 50, lines 10 to 33 of the Transcript, the Review Officer confirmed that the billings were proper and proportionate to what was at stake: an action involving a huge amount of money.

[81] The invoices were not reviewed in the assessment process until after the Review Officer gave his decision, then the parties entered a discussion regarding outstanding invoices that had not been paid.

[82] The following is an excerpt of the discussion regarding the ten invoices that were not barred by the limitation, all were paid but for the last three invoices sent to the Applicant, on page 57 of the Transcript:

Ms. Lau: I would have stopped paying after the, the liquidation hearing because of the fact that things were done without my consent. So it would have been after October basically I stopped, I wouldn't have paid any bill that's after like --

[83] The Applicant, by her own submissions, agreed there was no issue as to seven of the ten invoices allowed by the Review Officer.

[84] The Applicant's position was that she only stopped paying after October, specifically after the liquidation hearing as she submitted that the Respondent had consented to the terms of a draft Liquidation Order without her consent. The Applicant submitted that she was opposed to the Liquidation Order.

[85] The Applicant's concerns regarding the Derivative Action proceeding despite the liquidation hearing was the primary reason she gave for a change of counsel in November 2021.

[86] The Applicant may not have understood all the terms of the draft Liquidation Order and the carve-out provisions as noted above.

[87] The last three invoices not paid by the Applicant, which she submitted were after the date of the liquidation hearing, are as follows:

- a) Invoice #3623105: August 24, 2021, to October 15, 2021, \$36,445.87.
- b) Invoice #3629377: October 16, 2021, to November 8, 2021, \$11,206.39.
- c) Invoice #3648773: November 24, 2021, to January 11, 2022, \$1,947.75.

[88] Upon my review of Invoice #3623105, I find the following entries:

31-Aug-21 Work on arguments opposing immediate liquidation.

...

01-Sep-21 ...Correspondence to opposing counsel regarding objection to liquidation.
...
02-Sep-21 Telephone conversation with client regarding Affidavit opposing application for liquidation and resolution of the Company.
...
07-Sep-21 Work on opposition to liquidation application.
...
13-Sep-21 ...Correspondence to Jessic Lau regarding opposition to liquidation.
...
27-Sep-21 ...Work on strategy opposing liquidation of investments.
...
12-Oct-21 Work on liquidation brief – opposing liquidation.
...
13-Oct-21 Work on brief opposing liquidation.
...
14-Oct-21 Editing, drafting, and revising the Brief of Law filed in opposition the liquidation proceeding.

[89] The date and time entries in Invoice #3623105 confirm that the Respondent was working on opposing the liquidation pursuant to the Applicant’s instructions. All entries for work done were prior to the liquidation hearing.

[90] Upon my review of Invoice #3629377, I find the following entries:

...
22-Oct-21 Final preparations for and attendance at liquidation application.
...
08-Nov-21 Telephone conversations with client and client’s new counsel regarding transition of file to new counsel and coming Application.

[91] The Liquidation Hearing occurred on October 22, 2021.

[92] The time entries on this invoice between October 22, 2021, to November 8, 2021, total 4.5 hours wherein the Respondent is still having communication with the Applicant and working on case strategies; liquidation issues; and a declaration that the Estate is the beneficial owner of the investment funds.

[93] The Respondent is still working towards the goals identified in the Retainer Agreement with the Applicant.

[94] The final of the three invoices not paid by the Applicant, is Invoice #3648773. A total of five hours is billed to the Applicant to prepare the file and transition to new counsel for the client.

[95] In the *Terms of Business* attached to the Retainer Agreement, paragraph 20 **Your File and Our Records Retention** states in part: “We may maintain a Client File during our engagement in which case we will provide the Client File to you during or at the conclusion of a matter, at your request, and we may charge you for doing so.”

Decision

[96] A Review Officer may fall into error in at least the following ways:

1. Erring in fact, for which a party must find that the fact as found is “clearly in error.

[97] The Review Officer found that the Respondent charged for necessary steps in advancing the Applicant’s claim based upon the materials provided including the Retainer Agreement; and the invoices which provided a very detailed roadmap of the litigation process.

[98] It was a logical path, *Repchuk v Silverberg*, 2013 ABQB 305.

[99] The Review Officer’s findings of fact were not in error.

[100] The Review Officer did not misapprehend the facts.

[101] I find no overriding and palpable error.

2. Erring in principle (law), which will be shown if a party can demonstrate that the review officer proceeded on an erroneous principle, failed to apply a required principle or that the award of the review officer is so high or low as to betray an error of principle.

[102] The Review Officer’s reasons were justified, transparent and intelligible in his decision-making process. The Review Officer was aware of time limitations for the invoices that he could review, and his own authority under R.10.17 whereby he could decide whether the agreement or charges or both were reasonable.

[103] The Review Officer found both the agreement and charges were reasonable.

[104] I find no overriding and palpable error.

3. Failing to provide a hearing that is procedurally fair, for which a standard of correctness will apply: *Anderson v Alberta Securities Commission*, 2008 ABCA 184 (Alta. C.A.) at para 30.

[105] The Review Officer stated to the Applicant, on page 12 of the Transcript noted above, that she could speak to her concerns about the billings, and then they could look at the invoices themselves.

[106] I find the hearing was not procedurally fair for the following reason: the Review Officer gave his decision then he had a discussion with the Applicant regarding the invoices. The Review Officer did not give the Applicant an opportunity to explain her concerns about the billings before he made his decision.

[107] Pursuant to R.10.27, I can do any one or more of the following orders outlined in (a) to (d).

[108] Although I have found the hearing was procedurally unfair, I am making a final order that I consider appropriate. I find the fees charged in all ten invoices, including the final three invoices, are reasonable.

[109] Upon my review of the Record of Proceedings, I find the charges on the final three invoices reasonable for the following reasons:

- a. The Applicant's own submissions were that she stopped paying the invoices after the Liquidation Hearing, as her instructions to the Respondent were to oppose the application. Thus, she had an opportunity to express her concerns to the Review Officer regarding the invoices albeit after the decision was made. The Applicant's concerns were only about invoices submitted after the Liquidation Hearing.
- b. All entries in Invoice #3623105 were for work performed prior to the Liquidation Hearing and upon reviewing the entries it is clear that the Respondent was working on opposing the Liquidation Application as instructed by the Applicant. All work performed on this Invoice was reasonable and based on instructions from the Applicant per the Retainer Agreement and will be allowed.
- c. All entries in Invoice #3629377 and work performed prior to the Liquidation Hearing, were reasonable and based on instructions from the client per the Retainer Agreement.

The time entries on this invoice between October 22, 2021, to November 8, 2021, after the Liquidation Hearing, total 4.5 hours wherein the Respondent is still having communication with the Applicant and working on case strategies; liquidation issues; and a declaration that the Estate is the beneficial owner of the investment funds. The Respondent is still working towards the goals identified in the Retainer Agreement with the Applicant. All work performed was reasonable and based on instructions from the Applicant per the Retainer Agreement and will be allowed.

- d. The final of the three invoices not paid by the Applicant, is Invoice #3648773. A total of five hours is billed to the Applicant to prepare the file and transition to new counsel for the client. Based on paragraph 20 of the *Terms of Business* attached to the Retainer Agreement, these fees are also reasonable and will be allowed.

[110] I confirm the decision of the Review Officer regarding the *Limitations Act* and his review of only ten invoices, and not allowing a review of a further sixteen invoices as they could not be considered because of the *Limitations Act*.

[111] I confirm the fees, disbursements, and other charges and GST charged by the Respondent on the first seven invoices reviewed are reasonable and allow those amounts.

[112] I find the final three invoices are reasonable and allow the fees, disbursements, and other charges and GST charged by the Respondent on the accounts.

[113] For these reasons, the Applicant's application is dismissed.

[114] The decision of the Review Officer will be entered as a Judgment in the amount of \$49,600.01 plus costs.

Costs

[115] Costs in the amount of \$2,685 are awarded to the Respondent as follows:

- a. Contested review before Review Officer: \$1,000
- b. Contested application requiring written brief: \$1,685

and are payable forthwith.

Heard on the 9th day of August 2024.

Dated at the City of Edmonton, Alberta this 16th day of August 2024.

C.L. Arcand-Kootenay
J.C.K.B.A.

Appearances:

Jessica Lau
Personal Representative of the Estate of Ricky Lau
for the Applicant

G. James Thorlakson
Dentons Canada LLP
for the Respondent