

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Miles T. Sweeney Ltd. v. G.D. Brokerage Inc., 2017 NSSM 50

BETWEEN:

MILES T. SWEENEY LIMITED

Claimant

- and -

G.D. BROKERAGE INC.

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on September 12, 2017

Decision rendered on September 18, 2017

APPEARANCES

For the Claimant

Keith Lehwald
Counsel

For the Defendant

Deborah Crowell
Co-Owner

BY THE COURT:

[1] The Claimant is a Dartmouth-based accounting firm headed by Miles T. Sweeney, who holds the designation as a Certified Professional Accountant (formerly Chartered Accountant).

[2] The Defendant is a company that operates in the meat wholesaling business. A significant part of its business is supplying chicken to restaurants and other large-scale end-users.

[3] Poultry is a highly regulated business. The federal government through Global Affairs Canada allocates quotas, without which the trade or importation of poultry on a large scale is not lawful. The Defendant has been doing this kind of business for about twenty years. Part of the process requires filing audited reports (called "Tariff Rate Quota" reports, or commonly known as TRQ's) on an annual basis.

[4] As testified to by co-owner Deborah Crowell, she looks after all of the bookkeeping for the company and supplies the accountant with the electronic records of the year's transactions. The job of the accountant is to supply a letter that assures the government that the accounting records appear to be legitimate.

[5] Ms. Crowell testified that in recent years she had become concerned that her fees for accounting services, not limited to the TRQ's, were increasing unreasonably. She sought out a recommendation for a new accountant from a contact at the Business Development Bank of Canada, who had at one time given her a recommendation for a new lawyer. The name given to her was Miles

Sweeney. Ms. Crowell trusted the accountant referral as she had been quite happy with the lawyer referral.

[6] In or about mid-2016 Ms. Crowell spoke to Mr. Sweeney on the phone to explore the possibility of his firm taking on the accounting for the Defendant company. There was no specific mention of the TRQ. She testified that she told Mr. Sweeney that she was very cost-conscious. Mr. Sweeney neither admitted nor denied any specific reference to professional fees.

[7] In any event, nothing further occurred until about December 15, 2016 when Ms. Crowell contacted Mr. Sweeney about doing the TRQ return. The normal filing deadline had been missed, and Mr. Sweeney was told that the work had to be done ASAP. There is no evidence of any discussion at that time about what fees would likely result. Ms. Crowell testified that in previous years she had paid her accountant approximately \$2,000.00 for the accountant's involvement in the TRQ process. There is no evidence that she revealed this to Mr. Sweeney.

[8] Mr. Sweeney candidly admitted that he had never done a TRQ audit before, but he was easily able to become familiar with what was expected of the accountant. He testified, and there is no reason to doubt this, that he and some of his staff essentially dropped everything else they were doing and spent most of December 15 and 16 doing the work. The letter was transmitted electronically to Global Affairs Canada late in the day on Friday, December 16, and it apparently satisfied the government's requirements.

[9] Mr. Sweeney testified that it was good accounting practice to have letter of engagement (prepared by the accountant) signed by the client, instructing the

accountant what to do and agreeing to pay its fees and expenses. Under other conditions, such a letter would have preceded the engagement, though here - because of the urgency in getting the letter out to Global Affairs Canada - the engagement letter was not prepared until early the following week.

[10] In that engagement letter, the Defendant agreed to pay the firm's professional fees *"based on our regular billing rates, plus direct out-of-pocket expenses and applicable GST/HST"*

[11] The work done by the Claimant, stated simplistically, was to select a sample out of the many individual transactions involving poultry, and subject those transactions to audit scrutiny. Ms. Crowell was asked to dig out the supporting documentation, such as invoices, which were then scrutinized by the accountants to be satisfied that things were correct and legitimate.

[12] As revealed later in time records, Mr. Sweeney and his staff spent a total of 34.95 hours over the course of the engagement. An invoice was generated, using the various hourly rates, which totalled \$5,875.00 plus HST.

[13] Upon receiving the bill, Ms. Crowell hit the roof. It vastly exceeded her expectation. She emailed Mr. Sweeney and said that she normally paid \$2,500.00 for this service.

[14] Mr. Sweeney took the matter under advisement and decided to offer a reduction in the bill to \$4,000.00 plus HST. Still Ms. Crowell was not satisfied, and the bill has not been paid.

[15] It is this amount, plus interest and costs, that the Claimant seeks to recover in this claim.

Legal principles

[16] The legal principles are not complicated. There is a written contract for services, reflected in the engagement letter. Because hourly billing rates are not specified, the court has a duty to ensure that they are within a reasonable range. Also because it does not say how long the engagement will take, I have to decide whether the time spent appears reasonable.

[17] This does not mean that I approach the task too critically, given that I am not an accountant. Even so, I have a general sense of what hourly rates are within the accounting profession, and the time spent should be proportional to what was at stake.

[18] Mr. Sweeney himself is a very senior accountant with about 40 years of experience. He had a billing rate of \$225.00 per hour, which does not seem unreasonable for someone of his experience. Other less senior staff billed at lower rates, as would be expected.

[19] I am satisfied on the evidence that Mr. Sweeney understood what was required and took his duty as an auditor very seriously. His lack of experience with TRQ may have caused him to be a little over-cautious and to spend more time than others more experienced may spend. Had he been told that he was expected to keep his fees under \$2,500.00, he might have refused the

engagement, or done things differently. But he was never told specifically what the client's expectation was.

[20] The Defendant does millions of dollars worth of business per year, and the fees charged are not out of proportion to what was at stake, namely the Defendant's good standing to retain its quota and to stay in business.

[21] I do not give much weight to the evidence of Ms. Crowell to the effect that she had never paid more than \$2,500.00 for this service. She did not call her previous accountant as a witness to explain what he did, which might have shed some light on why the Claimant firm did as much work as they did.

[22] When Mr. Sweeney voluntarily reduced the bill to \$4,000.00 plus HST, I find that he made a reasonable effort to meet the client halfway.

[23] In the final result, I am satisfied that the amount in the amount of \$4,600.00 was something that the client agreed to pay, and I see no principled basis to reduce it.

[24] I am not unsympathetic to the Defendant, who appeared sincere in her surprise at the amount of the bill, but in the end it was she who ought to have communicated her expectation more explicitly before the work was done. Having allowed the Claimant to undertake the engagement, knowing what he knew at the time, it would be unjust to hold him to a very different agreement than the one he made.

[25] The Claimant is also entitled to prejudgment interest at 4% from December 22, 2016 to the date hereof, which I calculate to be \$136.11.

[26] The Claimant is also entitled to its costs of filing and serving the claim in the amount of \$99.70 and \$97.75 respectively.

Eric K. Slone, Adjudicator