

CITATION: Kramer Henderson v. Salgado, 2007 ONCA 56
DATE: 20070129
DOCKET: C45307

COURT OF APPEAL FOR ONTARIO

RE: In the Matter of *the Solicitors Act*, and in the matter of
**KRAMER HENDERSON (Solicitors of the Superior Court of
Justice/Respondent) – and – ANTONIO SALGADO and HOUSE
OF SALGADO LIMITED (Clients/Appellants)**

BEFORE: **O’CONNOR A.C.J.O., FELDMAN and ROULEAU JJ.A.**

COUNSEL: **Edwin G. Upenieks
for the appellants**

**Gregory M. Sidlofsky
for the respondent**

**HEARD &
RELEASED**

ORALLY: **January 23, 2007**

**On appeal from the order of Justice John R. Belleghem of the Superior Court of
Justice dated April 7, 2006.**

ENDORSEMENT

[1] The appellants appeal the order of the motion judge dated April, 7, 2006, in which he allowed the respondent’s motion to vary the order of an assessment officer.

[2] The respondent was the appellants’ solicitor and charged a premium of \$60,000 after successfully negotiating a settlement to the appellants’ litigation. The assessment officer denied the \$60,000 premium, the motion judge set aside the order of the assessment officer and allowed the solicitor to charge the premium. On the confirmation motion, the motion judge determined that the assessment officer had failed to take into account the exceptional skill and ability demonstrated by the solicitor.

[3] In our view, the motion judge erred in varying the assessment officer’s report. The assessment officer correctly identified the various factors that ought to be considered. His reasons then focused on the facts that the solicitor did not face a risk of

non-payment of fees, was not carrying the litigation for the client, was not working at a reduced rate and had an agreement with the client on fees.

[4] Although other factors such as the skill of the solicitor were not specifically reviewed by the assessment officer, it is clear that the assessment officer was aware of the extraordinary result and the nature of the windfall. We see no basis, therefore, for finding that the assessment officer did not take all of the relevant factors into account in reaching his decision.

[5] Based on the findings of the assessment officer, the client had an agreement on rates and terms with the solicitor and, these arrangements did not involve the possibility of a premium: see *Burgess v. Dauncey*, 2005 WL 434738, 2005 CarswellOnt 815 (Ont. C.A.) par. 5. The parties were aware that there would be a windfall before all of the work was completed. There was no attempt by the solicitor to renegotiate the terms of the fee arrangement after the solicitor and the client became aware of the windfall. In fact, the solicitor wrote to the client at that time confirming that he would be charging his hourly rate as agreed and taking his fees from the settlement funds. The solicitor then simply charged the premium as part of his final account. The findings of the assessment officer were fully supported by the record before him and are entitled to deference in this court and in the court below.

[6] As a result, we set aside the order of the motion judge and reinstate the decision of the assessment officer. Costs of the motion below to the appellants are fixed in the amount of \$6,000 inclusive of GST and disbursements. Costs of the appeal to the appellants are fixed in the amount of \$7,500 inclusive of GST and disbursements.

“Dennis O’Connor A.C.J.O.”

“K. Feldman J.A.”

“Paul Rouleau J.A.”