

Case study

Mortgage broker fee

Background

A customer had an existing mortgage with his bank. He intended to subdivide his section and approached a mortgage broker to secure a second loan from another lender to complete this work. He signed a Service Agreement which noted that typically there was no cost to the customer for their services as they obtain commission from the lenders, however there were exceptions and fees were listed for such.

The mortgage broker presented options and the customer accepted a conditional lending offer, made subject to due diligence. The lender required a Certificate of Currency from the insurer for the property. The customer declined to produce the Certificate of Currency as they were concerned that their existing bank would be notified of their additional mortgage. The lender then withdrew their offer of a second loan.

The mortgage broker sent the customer an invoice seeking \$750 plus GST for their services, which the customer disputed, so the broker began to pursue the debt. The customer contacted Financial Dispute Resolution Service (FDRS) stating that the broker was bullying them into paying a fee that they didn't owe and sought to be reimbursed for the costs incurred to procure a valuation of their property for the purpose of their loan application. In addition, they claimed the lender had provided poor advice about the ability to proceed with the loan without their original bank being made aware. The mortgage broker did not agree with the customers claims and they provided copies of documentation and communications between them.

Next steps

Taking into account the subject matter of the dispute and the positions of the parties, FDRS determined that this matter should proceed directly to be adjudicated. Adjudication is where an independent person investigates the complaint and makes a decision. The decision is binding on the financial service provider. The adjudicator reviewed all the information provided by both the customer and lender.

They found that the mortgage provider had delivered the services requested, by seeking lending offers. They found there to be insufficient evidence to show the mortgage broker had misled the customer or provided poor advice. The customer's existing mortgage compliance and insurance requirements were subject to his pre-existing agreements and the onus was on the customer to meet those obligations. The adjudicator did note that the Service Agreement could have been drafted better, however they found that it did not indicate 'no loan no fee' and that it listed set fees to be incurred in other circumstances.

Outcome

The adjudicator issued a final decision to not uphold the complaint, and on that basis the customer is liable for the mortgage broker costs.



**Names have been changed to protect our customers' identities*