

**BEFORE THE IMMIGRATION ADVISERS  
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2011] NZIACDT 17

Reference No: IACDT 005/10

**IN THE MATTER**

of a referral under s48 of the Immigration  
Advisers Licensing Act 2007

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**EGX**  
Complainant

**AND**

**BSL**  
Adviser

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**DECISION**  
**PUBLICATION VERSION**

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**REPRESENTATION:**

**Complainant**

In person

**Adviser**

In person

Date Issued: 6 July 2011

## Decision

### The Referral

- [1] This matter was referred to the Tribunal pursuant to section 45 of the Immigration Advisers Licensing Act 2007 (the Act) by the Registrar of the Immigration Advisers Authority. It concerns a complaint the Adviser dishonestly altered an agreement and withheld a passport until a payment was made.
- [2] The complaint is of the utmost gravity, and has been referred to the Tribunal as a complaint of dishonest and misleading conduct. The conduct would be a breach of the Code of Conduct, the Code having been developed pursuant to section 37 of the Act (published in [www.iaa.govt.nz](http://www.iaa.govt.nz)). It would also be a breach of section 44(2)(d) of the Act, which provides dishonest or misleading behaviour is a ground for upholding a complaint. Section 44(2)(e) also provides a breach of the Code is a ground for upholding a complaint.
- [3] The key issue for the Tribunal to determine is whether the factual basis of the complaint is sustained. The allegations are very serious ones and they will be assessed on the balance of probabilities with regard to the gravity of the allegations.

### Factual Issues

- [4] The Tribunal undertook a review of the whole of the papers presented, and issued a minute dated 16 December 2010. Among other procedural matters, the minute identified the factual matters in issue and the potential conclusions that could be reached on the papers before the Tribunal. The parties were given an opportunity to respond.
- [5] The minute raised the following matters.
- [6] The key events and circumstances raised by the complaint appeared to be:
- [7] The allegation against the Adviser is that he:
  - [7.1] Dishonestly altered an agreement after it was signed in blank to appear that greater fees than agreed were payable; and also
  - [7.2] Withheld a passport and identity document to support a demand for payment.
- [8] The minute gave notice to the parties that the key factual material before the Tribunal was as follows:
  - [8.1] In an email dated 11 June 2009, the Complainant raised a query with the Adviser regarding the fees claimed for the Adviser's professional services. The email had notes attached which the Adviser is said to have made and supplied to the Complainant.
  - [8.2] An email dated 11 June 2009 from the Adviser replied to the Complainant and attached a copy of the agreement relating to fees and details of dealings relating to fees.
  - [8.3] There is a further email from the Complainant dated 18 June 2009. It deals with matters of detail and says the Adviser has no right to "hold the passport". There is nothing evidencing any indication from the Adviser that the passport would be withheld.
  - [8.4] There is a letter dated 6 July 2009 returning the passport. This letter came from the office manager of the company which apparently employed the Adviser. This letter said the fees the Complainant said he was quoted were not consistent with the business practices of the company.
- [9] The minute explained conclusions open on the papers before the Tribunal were:
  - [9.1] There was no direct evidence of the allegations. The Tribunal had not identified any evidence supporting the allegations in the written material presented to it. The material was all consistent with proper professional standards being maintained.

- [9.2] It followed the Tribunal would make an assessment of the credibility of the Complainant's allegations. The allegations were not consistent with the written material. It was noted inconsistency is entirely understandable if the written records had been falsified by the Adviser. Falsification of records was an inherent part of the allegations the Complainant made.
- [9.3] There were aspects of the circumstances that made it implausible the Adviser had falsified records:
- [9.3.1] The Complainant contended he was told there was a sliding scale for fees and the fees depended on how long a visitor's permit was to be granted for. That would be a surprising basis for setting fees as there would be no obvious difference in the amount of work required, at least generally.
- [9.3.2] The Adviser was the employee of an organisation providing professional services and he claimed he had no financial incentive relating to the financial dealings with the Complainant. That left no obvious motive for the Adviser to falsify a record relating to fees (particularly discounting them below what appeared to be an unexceptional fee).
- [9.3.3] The Adviser's work appeared to be open to review by his employer. Apparently proper and adequate business records had been produced which supported what the Adviser claimed (an agreement and accounting records were produced).
- [9.4] The review, prior to the minute being issued, had sought evidence of a threat in relation to withholding a passport but there was nothing apparent in the written record. The evidence in support of the allegation was a vague assertion from the Complainant the Adviser issued such a threat. There was evidence the passport was returned on request and the Adviser had informed the office manager of his employer when this allegation was made.

### **Decision – Complaint Dismissed**

- [10] The minute gave the parties the opportunity to respond. There was no substantive response from any party.
- [11] In the absence of any further response from the parties and no further material coming before the Tribunal, I am satisfied the potential reasoning set out in the minute must be adopted as the Tribunal's assessment of the complaint.
- [12] I find no substance in the facts alleged in the complaint. The written record supports the Adviser's claim he conducted himself properly and professionally. It is implausible the Adviser has fabricated a false record, given:
- [12.1] The improbability of the deception alleged, and
- [12.2] The supervised professional environment in which the Adviser practised.
- [13] The complaint is accordingly dismissed.

### **Publication**

- [14] There is no specific statutory requirement in the Act to direct either publication or non-publication of decisions in the Act.
- [15] For a professional disciplinary body in contemporary New Zealand, the default position is that the Tribunal's decisions will be public documents.
- [16] In my view, publication of decisions is a core element of the Tribunal's procedures, and section 49(1) provides the authority to make directions concerning any limits that may be appropriate.

- [17] It is desirable to establish a standard procedure for dealing with publication in cases where a complaint has been dismissed. Having a standard procedure does not remove the need to deal with each case on its own merits and, importantly, to consider any application the parties may make in a particular case.
- [18] Where a complaint is dismissed, as an initial position the Tribunal will generally issue a direction in the decision that information which identifies either the Complainant or the Adviser will be removed, and the decision will be published in that form. That direction will reserve the right for any party to apply for a different order in a particular case.
- [19] The Court of Appeal in *R v Liddell* [1995] 1 NZLR 538, 546 per Cooke P said in relation to the question of name suppression:
- “The starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings and the right of the media to report the matter fairly and accurately as ‘surrogates of the public.’”
- [20] While the *Liddell* case dealt with a criminal conviction and attendant publications issues, the principles apply to a professional disciplinary body. The function of a professional disciplinary body is concerned with accountability of members of the profession to the public. Public confidence in a disciplinary body achieving fair outcomes and accountability is not well served by a secret process, and there is nothing in the Act indicating that it does create such a process. For the Tribunal to operate without being open and publicly accountable would not be in the interests of either the public or the profession.
- [21] When a complaint is dismissed, there is no significant public interest in publication of the identity of the Adviser. There is potential harm or embarrassment to an adviser in that uninformed discussion may well result from the fact of a complaint, notwithstanding it being dismissed.
- [22] There will usually be public interest in the nature of the complaint and the reasons for it being dismissed. It will likely be exceptional when the Tribunal does not consider it is appropriate for its findings of fact and reasoning to be publicly available. Public access to the reasons why the Tribunal dismisses particular complaints is as important for open justice as the reasons for upholding complaints.
- [23] Where a complaint is upheld, parties should expect publication of the decision with identifying information to follow as a matter of routine. In any case where that is not appropriate, parties should expect to make an application to restrict publication. It is not necessary or appropriate to deal with the principles for making those decisions in the present proceedings.

#### **Direction - Publication**

- [24] This decision is to be published, but only in form which does not identify the Complainant or the Adviser.
- [25] The decision will not be published for at least five working days from the issue of this decision.
- [26] Leave is reserved to the parties to apply to for any other order relating to publication within five working days (or such longer time as may be allowed on application).

**DATED** at WELLINGTON this 30<sup>th</sup> day of June 2011

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**G D Pearson**  
Chair