

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

Decision No: [2011] NZIACDT 20

Reference No: IACDT 022/10

IN THE MATTER

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

BY

Immigration Advisers Authority
Authority

BETWEEN

Allister Rhoda
Complainant

AND

Glen William Standing
Adviser

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Adviser

In person

Date Issued: 7 July 2011

Decision

The decision on the complaint

- [1] In a decision dated 7 April 2011, the Tribunal upheld a complaint in this matter.
- [2] The facts and background are set out in the earlier decision.
- [2.1] The Adviser failed to return client funds promptly to the Complainant when he and his family decided not to pursue their intention to migrate to New Zealand.
- [2.2] The Adviser acted honestly but failed to appreciate his duties in relation to client funds.
- [2.3] There was a delay of at least three months in making the refund.
- [3] There was an inadvertent error in the amount refunded, which is not material for present purposes. The amount understood to be due as a refund was \$1,800.
- [4] The Adviser has now refunded the money and also paid an additional amount of \$1,500 to the Complainant voluntarily as compensation.
- [5] The conduct was in breach of clauses 3 and 4 of the Code of Conduct.
- [6] The sanctions which are potentially open are prescribed by section 51, which provides:

"Disciplinary sanctions

- (1) The sanctions that the Tribunal may impose are –
- (a) caution or censure;
 - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period;
 - (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions;
 - (d) cancellation of licence;
 - (e) an order preventing the person from reapplying for a licence for a period not exceeding two years, or until the person meets specified conditions;
 - (f) an order for the payment of a penalty not exceeding \$10,000;
 - (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution;
 - (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser;
 - (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person."

Submissions on disciplinary sanctions

- [7] The parties did not make any submissions on the appropriate disciplinary sanction.

Decision

- [8] The finding against the Adviser is not one of dishonesty. However, virtually any significant failure to meet obligations in relation to client funds is a serious lapse from professional standards.

- [9] Keeping client funds separate from the Adviser's funds and accounting for them in an accurate and timely manner is a fundamental requirement of professional practise.
- [10] The Act has established licensed immigration advisers as a professional group. Subject to certain exceptions, they have the exclusive right to provide immigration advice. The main exception is lawyers, who are governed by professional obligations and a separate disciplinary system to ensure standards are maintained.
- [11] The Act records in section 3 that its purpose is:
- "... to promote and protect the interests of the consumers receiving immigration advice, and to enhance the reputation of New Zealand as an immigration destination, by providing for the regulation of persons who give immigration advice."
- [12] The Authority has established a Code of Conduct under the Act, which prescribes what the Adviser's obligations in day-to-day professional practice entail.
- [13] One of the requirements of a professional practice operating under the Code is to deal properly with client funds. That is an important part of maintaining the standards contemplated by the Act.
- [14] If a person fails to deal properly with client funds, it is an issue of sufficient gravity to raise the question of whether they have the skills or accept the level of professional responsibility required to be in practise on their own account.
- [15] It follows I have necessarily considered whether the Adviser's full license should be cancelled, as it allows him to practise without supervision.
- [16] I am conscious the Adviser's practice is in Golden Bay, which is a relatively remote part of New Zealand. It may not be feasible for him to practise under supervision in that location. At best, it would be a fragile arrangement. Requiring him to do so may prevent him practising at all.
- [17] I am also conscious the subject matter of the complaint arose at a time when the obligations on the profession were new and there was a process of gaining experience. Unless a person has a background in professional practise they may not fully appreciate the seriousness of failing to deal with client funds as a trustee. It is apparent the Adviser lacked awareness of his obligations. Such a lack of awareness is not justifiable, but it is a material factor.
- [18] There is an additional factor that is important. The Adviser has, since becoming aware of his obligations, indicated he accepts his professional duties to his clients and has compensated the Complainant for his failure to meet them. That gives the Tribunal confidence the Adviser has the commitment and insight to ensure he will meet his professional obligations in the future.
- [19] In these circumstances, I will deal with the matter by way of censure and a financial penalty.

Order

- [20] The Adviser is censured.
- [21] The Adviser is ordered to pay a penalty of \$1,500.
- [22] No orders are required in relation to the refund of fees or compensation as the Complainant is satisfied that has already been addressed adequately.

[23] There has been no application for an order for payment of the costs and expenses of the inquiry, so no order is made.

DATED at WELLINGTON this 30th day of June 2011



G D Pearson
Chair

