

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

Decision No: [2011] NZIACDT 34

Reference No: IACDT 006/10

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**Rubalmeet Singh**  
Complainant

**AND**

**Rajesh Kumar**  
Adviser

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**DECISION**

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Hearing: 13 September 2011

Appearance: The Adviser (in person)

The Complainant (in person)

Date Issued: 21 October 2011

## Decision

### Introduction

- [1] Mr Singh has complained about Mr Kumar's conduct as a licensed immigration adviser. He says Mr Kumar required cash payments for his services and received payment in full. However, when his application for a residence permit was successful, he says Mr Kumar demanded more money which was not due, and retained his passport to secure payment.
- [2] Mr Singh also says a sum paid for the purpose of paying fees to Immigration New Zealand was misappropriated at this point.
- [3] Mr Kumar denies he received cash payments, says Mr Singh refused to pay anything at all for the services he received, and alleges he has fabricated this complaint to evade payment. He says there was a delay in returning Mr Singh's passport as he needed to be satisfied he was delivering it to an authorised person.
- [4] The case primarily turns on the credibility of Mr Singh and Mr Kumar. They both gave evidence at an oral hearing with a number of other witnesses.
- [5] The issues are clear; I must decide whether I am satisfied:
- [5.1] Mr Kumar improperly demanded fees he was not entitled to, and
- [5.2] misappropriated a further sum paid for meeting fees due to Immigration New Zealand.
- [6] I have concluded I must reject Mr Kumar's evidence. I am satisfied Mr Singh's evidence is truthful and uphold the complaint.

### Evidence

#### *The Complaint*

- [7] Mr Singh and his aunt, Ms Kaur, gave evidence and explained the grounds for the complaint.
- [8] Mr Singh came to New Zealand as a student, obtained business qualifications and commenced his career in a managerial position. Mr Kumar assisted Mr Singh with his immigration applications. The material element of the professional relationship commenced in June 2007 when Mr Singh began the process to obtain a residence permit.
- [9] Mr Singh paid \$2,500 for Mr Kumar's services and a further \$800 for Immigration New Zealand fees. The money, at Mr Kumar's insistence, was paid in cash. No receipts were issued for the payments.
- [10] These payments were the amounts agreed in a written agreement dated 25 July 2007. The contract says \$500 will be paid on signing the contract, \$1,500 when invited to apply for a residence permit, and a further \$500 on the application being approved, amounting to a total of \$2,500.
- [11] Mr Singh had bank records showing various cash withdrawals. He said the withdrawals were to pay Mr Kumar and also to pay other expenses. Accordingly, there was not a direct match between the withdrawals over a period of time and what he paid to Mr Kumar. However, he is clear he paid the full sums of \$2,500 and \$800 over a period in instalments.
- [12] At the end of July 2009, Mr Singh's application for a residence permit was granted. The procedure was for \$300 to be paid to Immigration New Zealand and then the permit would be entered into his passport on presentation to Immigration New Zealand.
- [13] Mr Singh's aunt, Ms Kaur, delivered the passport to Mr Kumar's office with \$300 cash on 31 July 2009.

- [14] On 13 August 2009, Mr Singh contacted Immigration New Zealand direct as his passport had not been returned. He ascertained his passport had not been delivered to have the permit entered.
- [15] Mr Singh contacted Mr Kumar for an explanation. He was told he had to pay a further \$1,000 in fees for Mr Kumar's services and, until he did so, his passport would be retained by Mr Kumar.
- [16] Mr Singh complained to the Authority, including his concern that Mr Kumar retained his passport to enforce his demand. The Authority contacted Mr Kumar.
- [17] Ms Kaur was able to uplift the passport on 25 August 2009 from Mr Kumar on presenting a written authority to uplift the document. He retained the \$300 despite having not paid the fees to Immigration New Zealand.
- [18] Mr Kumar wrote a letter to Mr Singh dated 26 August 2009 saying he was owed \$500 and that he would have the matter referred to a debt collection agency if not paid. The letter was faxed to his place of work, which was calculated to draw the matter to the attention of other people working there. The letter also had a physical address on it, Mr Kumar could have posted the letter confidentially.
- [19] Mr Singh responded and said he had paid the agreed \$2,500 for services, and also \$800 and \$300 payments for fees for Immigration New Zealand. There was nothing owed; his passport was being withheld improperly, and he requested receipts for the payments he had made.
- [20] Mr Kumar did not provide receipts and referred the matter to a debt collection agency. The agency demanded additional fees and threatened Mr Singh with impairment of his ability to obtain credit if he did not meet the demand.

*Mr Kumar's defence to the complaint*

- [21] Mr Kumar claims Mr Singh and Ms Kaur fabricated evidence to avoid paying his fees.
- [22] He says he was a personal friend of Ms Kaur and, through that association, treated Mr Singh as a friend. They exploited the friendship, so as not to pay Mr Kumar any fees at all.
- [23] Mr Kumar accepts the formal contract for his to provide professional services was signed by both parties, and it required fees to be paid. He says, however, no fees at all were paid. He said that was due to the friendship. He says there was an oral agreement the fees of \$2,500 would be paid only after the residence permit was granted and then paid in full. He said the fee had been discounted to \$2,500 from \$3,000 which he would have charged if the work were not for friends.
- [24] He says he never received any payments toward the \$2,500, but did receive \$800 to pay Immigration New Zealand's fees. He says, when Ms Kaur presented Mr Singh's passport, \$300 was not delivered to him.
- [25] Mr Kumar has produced various financial records to show the claimed cash receipts were not accounted for in his financial records, with particular emphasis on the \$300 Ms Kaur says was delivered for payment to Immigration New Zealand on 31 July 2009.
- [26] He says he decided he would only demand \$500 and then pursue that amount through the debt collection agency as that was the final instalment figure. He explained Mr Singh was a friend who was not happy. That, he says, was his motivation for recovering \$500 rather than \$2,500 he was due.
- [27] He says he only retained Mr Singh's passport until he had written authority to release it and did nothing inappropriate.
- [28] Mr Kumar called a series of clients who gave evidence they had not been the subject of dishonesty on Mr Kumar's part and were very satisfied with his services, which were proper and professional. He also called a person who described herself as a student and office

assistant who had worked in Mr Kumar's office. She said payments in cash, by cheque, or bank transfer were properly receipted and banked.

## Decision

- [29] This complaint involves an allegation of dishonesty. The standard of proof is the balance of probabilities, but on a sliding scale reflecting the gravity of the allegation. In this case, the gravity is at the highest level, given the allegation of dishonesty in the course of professional practise.
- [30] This case has at its heart an allegation Mr Kumar received cash payments, then pretended he had never received them. It is a familiar factual matrix, usually presenting in the context of an tax fraud prosecution.
- [31] Mr Kumar attempts to counter the allegation by showing the funds he is alleged to have received were not recorded in his financial records. I accept Mr Kumar's financial records do not show receipt of either the \$2,500 or the \$300 Mr Singh and Ms Kaur say he received.
- [32] However, where a person takes cash receipts and does not intend to account for them, they will obviously not appear in financial records. It is the nature of the complaint not an answer to it.
- [33] There is a contemporaneous record which bears on Mr Singh's evidence of paying \$2,500 in cash. The written agreement says that sum would be paid for Mr Kumar's services. The existence of that written agreement is not consistent with Mr Kumar's evidence that nothing was paid. Neither is it consistent with his claim the fee due was \$2,500 and he elected to recover only \$500.
- [34] In an affidavit dated 23 December 2010 filed in this proceeding, Mr Kumar said the fee due was \$500. He explained the difference between the amount in the contract and the amount demanded as a concession on the basis of friendship.
- [35] I reject Mr Kumar's explanation. He demanded a payment of \$500 by sending an open fax message to Mr Singh's work place, clearly intending to embarrass him. He referred the same amount to debt collection agency which added fees and made threats. It is beyond belief:
- [35.1] Mr Kumar was taking this aggressive approach, while
- [35.2] only demanding \$500 due to friendship, when
- [35.3] he truly believed he was owed a legitimate debt of \$2,500, which had been discounted from a normal fee of \$3,000.
- [36] I am satisfied Mr Kumar knew he had received cash payments and opportunistically demanded an additional \$1,000 to which he was not entitled, and then took recovery action for \$500 being a figure he could relate to the written contract.
- [37] I accept Mr Singh's evidence he paid the full amount due in cash, and then received a demand for a further \$1,000.
- [38] In relation to the payment of \$300, I accept Ms Kaur's evidence she paid it personally to Mr Kumar. Mr Kumar admits that when Ms Kaur delivered the passport she was aware \$300 had to be paid to Immigration New Zealand. Mr Singh expected to receive his passport back and made inquiries with Immigration New Zealand when that did not happen. It would be surprising if he did so without believing the fee had been paid. Furthermore, Ms Kaur's evidence is consistent with my finding Mr Kumar failed to account for other cash receipts from Mr Singh.
- [39] I have considered Mr Kumar's explanation the irregularities in relation to the fees occurred as a result of friendship. As observed, his conduct makes that explanation implausible. The level of friendship does explain why Mr Singh and Ms Kaur were sufficiently trusting to make cash payments without demanding receipts, providing the opportunity for Mr Kumar to take advantage of the situation.

- [40] I accept Mr Singh's evidence Mr Kumar threatened to withhold his passport to support his demand for additional fees. That is consistent with the improper demand for additional fees. Mr Kumar denies he ever took that approach and simply exercised caution to ensure he returned the passport to an authorised person. I do not accept his explanation. He received the passport from Ms Kaur; he had a long period of dealing with her, and knew she delivered it with Mr Singh's authority. He had no reason to suppose he was not authorised to return it to Ms Kaur who had given it to him. If he thought there was some technical obstacle and required further authority, he could have taken the initiative and provided an explanation, contacted Mr Singh and obtained consent. Instead, the passport was only returned after contact from the Authority.
- [41] I am satisfied beyond reasonable doubt Mr Kumar took the occasion of Mr Singh being granted a residence permit as an opportunity to dishonestly demand fees he knew he was not entitled to, and withheld Mr Singh's passport to support the demand.
- [42] It follows the complaint is upheld. Mr Kumar engaged in dishonest behaviour, which is a ground for complaint under section 44(2) of the Act. The course of conduct was also in defiance of Mr Kumar's professional obligations under the Code of Conduct developed pursuant to section 37 of the Act (published [www.iaa.govt.nz](http://www.iaa.govt.nz)). The Code requires a licensed immigration adviser to act with professionalism, and return passports on request. A breach of the Code is also a ground for complaint under section 44(2).

### **Submissions on disciplinary sanctions**

- [43] Given the findings, disciplinary sanctions under section 51 of the Act may be imposed by the Tribunal.
- [44] The sanctions which are potentially open are prescribed by section 51 which provides:

#### **“ Disciplinary sanctions**

- (1) The sanctions 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**

- [45] The Authority and the Complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees, and compensation.
- [46] Any application for an order for the payment of costs or expenses under section 51(1)(g) should be accompanied by a schedule particularising the amounts and basis for the claim.
- [47] The Adviser will have the opportunity to respond to any submissions from the Authority and the Complainant. Whether or not they make submissions, the Adviser may provide submissions on penalty.
- [48] Should the Adviser have a submission regarding inability to pay a penalty, that submission is to be supported by a statement of assets and liabilities and particulars of income and outgoings.
- [49] The timetable for submissions will be as follows:
  - [49.1] The Authority and the Complainant are to make any submissions within 10 working days of the issue of this decision, and
  - [49.2] The Adviser is to make any further submissions (whether or not the Authority or the Complainant make submissions) within 15 working days of the issue of this decision.
- [50] The parties are notified this decision will be published with the names of the parties after five working days unless any party applies for orders not to publish any aspect.

**DATED** at WELLINGTON this 21<sup>st</sup> day of October 2011

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**G D Pearson**  
Chair