

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

Decision No: [2012] NZIACDT 12

Reference No: IACDT 26/10

**IN THE MATTER**

of a referral under s 48 of the Immigration  
Advisers Licensing Act 2007

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**Shalini Rao**  
Complainant

**AND**

**Prem Adeep Singh**  
Adviser

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**DECISION**

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**REPRESENTATION:**

**Adviser**

In person

**Complainant**

In person

Date Issued: 27 March 2012

## DECISION

### Preliminary

- [1] Ms Rao engaged Mr Singh, who was a licensed immigration adviser, to assist her and her family in relation to their immigration situation.
- [2] Mr Singh lodged an application with Immigration New Zealand. The application was declined, and he told Ms Rao he had referred the matter to the Ombudsmen.
- [3] Mr Singh could not be contacted after that point. Accordingly, Ms Rao contacted Immigration New Zealand directly, and found there were no processes in train, and she and her family were simply unlawfully in New Zealand without permits.
- [4] Ms Rao complained about Mr Singh's failure make the appropriate applications and advise her and her family of their situation. In addition, she wanted her family's personal documents to be returned by Mr Singh.
- [5] Mr Singh said he had acted professionally and competently in all respects. However, he has not provided any records from his files to support this claim. He has suggested that Ms Rao should look to a former business associate of Mr Singh to recover the personal documents.
- [6] The issues are:
  - [6.1] Did Mr Singh give Ms Rao appropriate advice, and communicate with her appropriately.
  - [6.2] Is Mr Singh responsible for Ms Rao's personal records.

### The Complaint and the Response

- [7] The key events and circumstances raised by Ms Rao in her complaint were:
  - [7.1] Mr Singh was a licensed immigration adviser.
  - [7.2] He was engaged in April 2009 to apply for a work permit under section 35A of the Immigration Act 1987 by Ms Rao, so her family could remain New Zealand.
  - [7.3] The application was made in May 2009. Ms Rao initially paid \$1,200 to Mr Singh, and later a further \$280.
  - [7.4] In June 2009 Immigration New Zealand declined the application.
  - [7.5] Mr Singh informed Ms Rao the application had been declined, and said he had referred the file to the Ombudsmen to review that decision.
  - [7.6] From this point Mr Singh could not be contacted, and did not report further to Ms Rao.
  - [7.7] Mr Singh had closed his office.
  - [7.8] Ms Rao telephoned Immigration New Zealand in about September 2009. She was told the application was declined in June 2009, and Immigration New Zealand did not consider any process challenging that decision was in effect. Accordingly, Ms Rao and her family were unlawfully in New Zealand.
  - [7.9] Mr Singh neither advised Ms Rao and her family of the consequences of being in New Zealand unlawfully, nor took any effective action.

- [7.10] Ms Rao also complained that Mr Singh had taken and failed to return personal documents belonging to Ms Rao and her family. He had taken possession of the documents as they were necessary to progress the application to Immigration New Zealand.
- [8] Ms Rao seeks the return of all personal documents held by Mr Singh, and a refund of the fees paid, being \$1480.
- [9] Mr Singh responded to the complaint through his counsel:
- [9.1] He denied any deficiency in the professional services he provided. However, no records to support the claim were produced.
- [9.2] He said a person identified only as "Bob" had introduced Ms Rao and her family to Mr Singh. It appears Bob operated a job recruitment agency independently of Mr Singh, but there was some level of cooperation between them.
- [9.3] The company through which Mr Singh provided his professional services "closed down" in May 2010. Mr Singh has "remained in the country to face clients, both his and Bobs."
- [9.4] Mr Singh accepted instructions to apply under section 35A, did so properly, reported the failure of the application promptly, and thereby discharged his obligations.
- [9.5] Mr Singh does not have Ms Rao and her family's personal documents in his possession. He suggests Ms Rao should approach Bob, as he introduced her to Mr Singh.
- [9.6] Mr Singh is no longer a licensed immigration adviser.

#### **Issues Raised with Mr Singh by the Tribunal**

- [10] The Tribunal issued a minute to the parties. It identified the conclusions that could be reached on the papers then before the Tribunal, and invited the parties to provide any further information and make any submissions regarding the complaint.
- [11] The minute gave notice to Mr Singh that he had provided no evidence of the terms of his engagement, or how he discharged that engagement. Further, he denied failings but provided nothing to support his position. He was required to maintain and preserve adequate records, but did not produce any records relating to the issues arising from the complaint.
- [12] In the absence of a reasoned response, supported by the documentation Mr Singh was required to keep, he was put on notice that it was potentially open to find the complaint established.
- [13] The minute gave notice to the parties that the papers then before the Tribunal left open the conclusions that:
- [13.1] Mr Singh failed to establish a professional relationship, and in particular did not identify the work he would undertake, and what the fees he charged would cover.
- [13.2] Mr Singh failed to communicate effectively with Ms Rao regarding the progress of the section 35A application, and failed to provide necessary advice regarding the application being declined, and the consequences for Ms Rao and her family.
- [13.3] Mr Singh failed to meet minimum professional standards in his dealings with Ms Rao.
- [13.4] Mr Singh failed to protect and return personal documents.

- [14] The minute gave notice that, in summary, the material left open the view that Mr Singh took fees, cannot demonstrate what he was to provide for the fees, cannot show what he did to earn the fees, and has lost the personal papers that were the property of Ms Rao. Accordingly, unless he explained the circumstances, the conclusion may be reached that he failed to exercise any level of professional responsibility.

### Decision

- [15] The parties did not respond to the minute issued by the Tribunal.
- [16] I am satisfied the complaint must be upheld, for the reasons identified in the minute.
- [17] Ms Rao and her family were in New Zealand unlawfully, in that they did not hold current immigration permits allowing them to be in New Zealand. It followed:
- [17.1] There were limited options that could be pursued. In terms of applying for permits, an application would have to be made under section 35A, as a person who was unlawfully in New Zealand could not otherwise apply for a permit.
- [17.2] However, section 35A is a discretionary provision, and a client who was unlawfully in New Zealand would need to be advised carefully. First, of the purely discretionary nature of an application under that section and second, that their unlawful status in New Zealand exposed them to enforcement action, with various consequences if they failed to leave New Zealand in a timely manner. Without such advice a client is unlikely to be in a position to give informed consent to making an application under section 35A.
- [17.3] The Licensed Immigration Advisers Code of Conduct ([www.iaa.govt.nz](http://www.iaa.govt.nz)) was developed pursuant to section 37 of the Act. The Code applied to Mr Singh, and contains the conventional contemporary obligations on a professional person providing services to the public. Relevant to the present complaint the Code requires:
- [17.3.1] The professional engagement is to commence with a written agreement, which includes a full description of the services to be provided (clause 1.5 of the Code). There are accompanying disclosure requirements such as providing a copy of the Code to the client.
- [17.3.2] The licensed immigration adviser must ensure that personal documents are held securely, and return passports and other personal documents on request (clause 1.3 of the Code).
- [17.3.3] The licensed immigration adviser must also maintain professional business practices relating to finances, records, documents, contracts, and confirm in writing to clients when applications have been lodged, and give timely updates (clause 3 of the Code).
- [17.4] Ms Rao has provided evidence that Mr Singh accepted engagement as a licensed immigration adviser, but did not refer to an engagement process, receiving advice regarding the course of action taken, or being advised of the consequences and action required when the application was declined. Further, documents her family supplied were not accounted for.
- [17.5] If Mr Singh was acting in accordance with the Code, then in the absence of some exceptional event depriving him of access to his records, he should have been in a position to describe what he did, and support that with documentation. He was put on notice by the Tribunal that he was expected to do so, and the conclusions that could be reached if he did not do so.
- [17.6] As Mr Singh has failed to respond to that notice. I am required to assess the material before me on the balance of probabilities, though on a sliding scale according to the seriousness of the issues to be determined. I regard the issues as

serious, given that the potential findings amount to a delinquent disregard of Mr Singh's professional obligations. I am satisfied the following breaches of the Code have occurred:

- [17.6.1] Mr Singh systematically failed to act with care, diligence and professionalism in performing his services, by ignoring the requirements of the Code, and accordingly breached clause 1.1 of the Code.
  - [17.6.2] He failed to commence his professional engagement with a written agreement, and breached clause 1.5 of the Code.
  - [17.6.3] He failed to provide advice; first on the merits of the application he advised his client to make, and later on the issues concerning being in New Zealand following the failure of the application. That was a breach of clause 1.1 of the Code, as he failed to act with care and professionalism.
  - [17.6.4] He failed to keep secure and return personal documents, and thereby breached clause 1.3 of the Code.
  - [17.6.5] He failed to keep proper records, so as to be in a position to account for his professional advice and the basis for the fees he charged in his dealings with Ms Rao. Accordingly, he breached clause 3 of the Code.
- [17.7] A breach of the Code is a ground for a complaint pursuant to section 44(2)(e) of the Act. Accordingly, the Tribunal upholds the complaint.

### Submissions on Sanctions

[18] Given the findings, disciplinary sanctions under section 51 of the Act may be imposed by the Tribunal.

[19] Section 51 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."

- [20] The Authority and Ms Rao have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees and compensation.
- [21] Ms Rao has indicated she seeks a refund of fees paid. That is part of the compensation the Tribunal will consider. Ms Rao indicated the fees paid were in total \$1,480. I will treat that as an accurate estimate unless any party indicates I should take a different view of the amount.
- [22] It appears Mr Singh has not returned personal documents, and will either not do so or is unable to do so. If Ms Rao seeks a compensation payment to cover the costs of replacing these personal documents, and any related costs, she should provide particulars.
- [23] 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.
- [24] Mr Singh will have the opportunity to respond to any submissions from the Authority and Ms Rao. Whether or not they make submissions, Mr Singh may provide submissions on penalty.
- [25] Should Mr Singh 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.
- [26] The timetable for submissions will be as follows:
- [26.1] The Authority and Ms Rao are to make any submissions within 10 working days of the issue of this decision; and
- [26.2] Mr Singh is to make any further submissions (whether or not the Authority or Ms Rao make submissions) within 15 working days of the issue of this decision.
- [27] The parties are notified that 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 27<sup>th</sup> day of March 2012

  
 G D Pearson  
 Chair

