

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

Decision No: [2012] NZIACDT 13

Reference No: IACDT 032/10

IN THE MATTER

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

BY

Immigration Advisers Authority
Authority

BETWEEN

Fraser Williamson

Complainant

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

DECISION

REPRESENTATION:

Adviser

In person

Complainant

In person

Date Issued: 28 March 2012

DECISION

Outline

- [1] This complaint has been lodged by Mr Williamson, who is a relative of Mr Hakaumotu. The complaint concerns Mr Hakaumotu's professional engagement with Ms Tangilanu.
- [2] Ms Tangilanu had undertaken immigration work for Mr Hakaumotu. She became a licensed immigration adviser on 24 September 2010. This Tribunal deals only with licensed immigration advisers. Accordingly, anything done prior to Ms Tangilanu becoming licensed is not within the Tribunal's jurisdiction.
- [3] The only relevance of prior work is that Ms Tangilanu was obliged to put her dealings with Mr Hakaumotu on a proper professional basis when she did become licensed.
- [4] After Ms Tangilanu became licensed Mr Hakaumotu repeated earlier instructions to Ms Tangilanu to apply for a residence visa on his behalf.
- [5] The complaint is that Ms Tangilanu did not complete the process for client engagement when she received these instructions from Mr Hakaumotu, failed to undertake the work she agreed to complete, and ignored the obligations placed on her by the Code of Conduct.
- [6] In addition, Mr Williamson has complained Ms Tangilanu misrepresented that \$750 had been paid to Immigration New Zealand, and did so knowing it had not been paid, intending dishonestly to avoid refunding fees to that extent.
- [7] Ms Tangilanu denied there was a basis for the complaint, but provided no substantial information to support that denial.
- [8] The issue for determination is whether the complaint that Ms Tangilanu ignored her obligations under the code of Conduct and acted dishonestly is established, after considering all of the material before the Tribunal.

The Complaint, and the Adviser's Response

- [9] The key events and circumstances raised by the complaint were:
 - [9.1] Mr Hakaumotu engaged Ms Tangilanu to apply for a visitor's visa. In January 2009 Ms Tangilanu made the application for a fee of \$150. The application was successful.
 - [9.2] Mr Hakaumotu saw an advertisement in a newspaper, which said Ms Tangilanu would process residence applications for \$600. He approached her, and was told that fee no longer applied. On 7 January 2009 Mr Hakaumotu agree to pay Ms Tangilanu \$2,500 to lodge a residence application as his circumstances were urgent. She said it would take three months. A receipt from Ms Tangilanu's company for this sum was produced (dated 7/1/09).
 - [9.3] Mr Hakaumotu tried to contact Ms Tangilanu after 3 months. He was not successful, so contacted Immigration New Zealand and found no residence application had been lodged.
 - [9.4] In November 2009 Mr Hakaumotu visited Ms Tangilanu. She said her secretary stole his money, and threw away his residence application
 - [9.5] At this point in the narrative Ms Tangilanu became a licensed immigration adviser (on 24 September 2010).
 - [9.6] On 4 October 2010 Mr Hakaumotu visited Ms Tangilanu and was told she would return the \$2,500 in one months' time and lodge a residence application (without requiring fees to be paid).

- [9.7] On 8 October 2010 Mr Hakaumotu returned to Tonga. The next day he visited Ms Tangilanu at her Tongan office and was told things would be sorted within a month. Ms Tangilanu has not taken further steps.
- [9.8] On 4 November 2010 Mr Williamson visited Ms Tangilanu in New Zealand, and asked for the return of the \$2,500. Ms Tangilanu informed him she could not refund the full fee as \$750 had been paid to Immigration New Zealand, despite no residence application having been made. She promised to call Mr Hakaumotu that evening, but no further contact was made.
- [10] Mr Hakaumotu sought to have \$2,500 refunded.
- [11] Ms Tangilanu responded to the complaint as follows:
- [11.1] Mr Hakaumotu had been her client since 2006, and the amount of \$2,500 was the total of fees paid for her work to date.
- [11.2] She had done work other than applying for a visitor's visa, and taking instructions to apply for a residence permit. She had also tried to get permits under section 35A of the Immigration Act 1987.
- [11.3] She never advertised a fee of \$600.
- [11.4] She informed Mr Hakaumotu on 9 October 2010 she would assist him with his residence application without payment of a further fee.

Minute Issued by the Tribunal

- [12] The Tribunal reviewed the papers before it, and issued a minute giving notice of the potential findings on the papers then before the Tribunal. The parties were given the opportunity to provide further evidence and submissions; and if appropriate to seek an oral hearing.
- [13] The minute gave notice that the potential findings were:
- [13.1] This Tribunal has no jurisdiction over persons who are not licensed immigration advisers. Accordingly, Ms Tangilanu's actions prior to being licensed are not a basis for upholding the complaint.
- [13.2] However, when Ms Tangilanu became a licensed immigration adviser on 24 September 2010, she had a client relationship with Mr Hakaumotu. She was, from that point, obliged to fulfil her professional obligations to him, and this Tribunal has jurisdiction over any failure to do so.
- [13.3] On 24 September 2010, Ms Tangilanu held funds on behalf of Mr Hakaumotu. She had existing instructions to pursue a residence visa, and on 4 October 2010 (or thereabouts) Ms Tangilanu agreed to undertake the immigration work, namely apply for a residence visa. This was effectively a renewal of her instructions (though she had existing instructions).
- [13.4] The inference from the written material was that no proper professional engagement followed from the 4 October 2010 meeting. Ms Tangilanu had provided no evidence of a written agreement, or any of the other steps required by the Code. She provided no evidence of discharging that engagement, and the inference was open that she wholly failed to discharge her engagement.
- [13.5] At the meeting of 4 November 2010, Ms Tangilanu falsely represented that \$750 could not be refunded as it had been paid to Immigration New Zealand, when she knew no application had been lodged, and no fee paid.
- [13.6] If those circumstances are established, Ms Tangilanu has failed to meet her professional obligations in her dealings with Mr Hakaumotu. In particular, she:

- [13.6.1] Failed to establish a professional engagement with Mr Hakaumotu in the manner required by the Code.
- [13.6.2] Failed to carry out Mr Hakaumotu's instructions to prepare and lodge his residence application.
- [13.6.3] Failed to use Mr Hakaumotu's funds only for the purpose for which they were given to her, and did not deal with them as client funds in accordance with the Code.
- [13.6.4] Failed to refund fees when work was not undertaken.
- [13.6.5] Dishonestly misrepresented that money paid for fees had been paid to Immigration New Zealand, knowing that was false. She did so endeavouring to justify not refunding that money to her client.
- [13.6.6] Failed to effectively communicate with, and report to, Mr Hakaumotu regarding his application.

Decision

- [14] Ms Tangilanu responded to the minute issued by the Tribunal stating:
 - [14.1] Mr Hakaumotu had been an "overstayer" since 2006, and the fees were for services that related to those issues.
 - [14.2] Mr Hakaumotu did not pay Ms Tangilanu anything after May 2009.
 - [14.3] Mr Williamson was "a third party who knows nothing about what was happening".
- [15] Mr Williamson responded for Mr Hakaumotu. Mr Williamson reiterated the evidence regarding his meeting with Ms Tangilanu on 4 November 2010, and being told that her secretary had stolen the money, torn up the residence application, and \$750 in fees had been paid to Immigration New Zealand (to avoid a refund).
- [16] Mr Williamson emphasised the key communications were direct between him and Ms Tangilanu.
- [17] I am satisfied the complaint must be upheld, on the basis identified in the minute.
- [18] When Ms Tangilanu became a licensed immigration adviser, regardless of what had occurred previously, she was obliged to conduct her professional relationship in accordance with the Code of Conduct from that point forward.
 - [18.1] The Licensed Immigration Advisers Code of Conduct (www.iaa.govt.nz) was developed pursuant to section 37 of the Act. The Code applied to Ms Tangilanu, and contains the conventional contemporary obligations on a professional person providing services to the public. The Code requires:
 - [18.1.1] 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.
 - [18.1.2] 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).
 - [18.2] Mr Williamson has provided evidence of Ms Tangilanu accepting instructions to apply for a residence permit on 4 October 2010. He personally addressed her

failure to deal with those instructions, and she admitted she had been instructed. Further, he was personally told that \$750 had been paid to Immigration New Zealand to avoid refunding fees, and that was false.

- [18.3] This evidence and its consequences have been drawn to Ms Tangilanu's attention by the Tribunal. Ms Tangilanu has not produced any of the records that would be expected on the basis of her obligation to keep records under the Code. She has not produced any evidence from anyone else in her office.
- [18.4] Further, she has failed to provide a coherent or sensible response to the evidence against her; at best she has made a general denial; in the face of serious allegations of dishonesty.
- [18.5] I am satisfied Ms Tangilanu's response is consistent with the complaint made against her, which is to the effect that she made no attempt to comply with the Code in her dealings with Mr Hakaumotu, and acted dishonestly.
- [18.6] 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. The issues are at the most serious end of that scale, as they involve allegations of a person in a position of privilege dishonestly attempting to take funds from a client through a misrepresentation.
- [18.7] I am satisfied the following breaches of the Code have occurred:
 - [18.7.1] Ms Tangilanu systematically failed to act with care, diligence and professionalism in performing her services, by ignoring the requirements of the Code, and accordingly breached clause 1.1 of the Code.
 - [18.7.2] She failed to commence her professional engagement as a licensed immigration adviser with a written agreement, and accordingly breached clause 1.5 of the Code.
 - [18.7.3] She failed to carry out Mr Hakaumotu's instructions to apply for a residence visa. This was a breach of clause 1.1 of the Code, as she failed to act with care and professionalism, and did not carry out the lawful informed instructions of her client.
 - [18.7.4] She failed to report to Mr Hakaumotu. This was a breach of clause 3 of the Code.
 - [18.7.5] She failed to use Mr Hakaumotu's funds only for the purpose for which they were given, and did not deal with them as client funds in accordance with the Code. She failed to refund fees when work was not undertaken. These were breaches of clause 4 of the Code.
- [18.8] 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 in these respects.
- [18.9] I am also satisfied Ms Tangilanu was dishonest and misleading. These are grounds for upholding a complaint pursuant to section 44(2)(d). I am satisfied Ms Tangilanu dishonestly told Mr Williamson the application had been lodged, knowing it had not, and that a fee of \$750 had been paid to Immigration New Zealand. In fact, she knew no such fee had been paid, and made the dishonest representation with the intention of misappropriating that sum of money.
- [18.10] No other plausible inference is available on the facts. Ms Tangilanu has failed to provide any sensible explanations when allegations, and potential findings were put to her by the Tribunal.

Submissions on Sanctions

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

[20] 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.”

[21] The Authority and Mr Williamson have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees, and compensation.

[22] Mr Hakaumotu, through Mr Williamson, has indicated he seeks a refund of fees paid. That is part of the compensation the Tribunal will consider. Mr Williamson indicated the fees paid were in total \$2,500. I will treat that as accurate unless any party establishes I should take a different view of the amount.

[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] Ms Tangilanu will have the opportunity to respond to any submissions from the Authority and Mr Williamson. Whether or not they make submissions, Ms Tangilanu may provide submissions on penalty.

[25] Should Ms Tangilanu 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 Mr Williamson are to make any submissions within 10 working days of the issue of this decision.

- [26.2] Ms Tangilanu is to make any submissions (whether or not the Authority, or Mr Fraser, make submissions) within 15 working days of the issue of this decision.
- [27] 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 28th day of March 2012

G D Pearson
Chair