

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

Decision No: [2012] NZIACDT 29

Reference No: IACDT 024/10

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**ONC**  
Complainant

**AND**

**MDT**  
Adviser

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**DECISION**

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**REPRESENTATION:**

**Adviser**

In person

**Complainant**

In person

Date Issued: 18 June 2012

## **DECISION**

### **Introduction**

- [1] Mr ONC complained about Mr MDT's conduct as a licensed immigration adviser.
- [2] Mr ONC says he paid for Mr MDT's services in the Philippines and, after his arrival in New Zealand, Mr MDT stood over him and forced him to sign a promissory note to pay further fees he should not have had to pay. He also says Mr MDT kept his personal documents despite requests to return them.
- [3] Mr MDT denies he did more than charge a normal fee and assist Mr ONC with the appropriate paperwork to pay by instalments.
- [4] He also says the only issue with returning the documents was that he did not know where Mr ONC was, as he did not provide a current address to Mr MDT.
- [5] The issue is the reliability of the complaint. I am satisfied the complaint is not reliable and must be dismissed.

### **Mr ONC's Complaint**

- [6] Mr MDT was acting as a licensed immigration adviser for Mr ONC.
- [7] Mr ONC says he paid USD4,000 in the Philippines, and when he came to New Zealand Mr MDT took him to the National Bank and forced him to sign a promissory note to pay a further USD2,200 (NZD3,300) to Mr MDT's immigration company. It appears implicit he contends this demand for fees was improper.
- [8] In addition, Mr ONC says Mr MDT has retained his personal documents, despite requests to return them.

### **Mr MDT' Reply to the Complaint**

- [9] Mr MDT gave an explanation regarding the complaint in two letters; one to the Authority, forwarded on 8 October 2010 (undated), and the second dated 14 October 2010 addressed to this Tribunal.
  - [9.1] The first letter stated that:
    - [9.1.1] Initial contact with Mr MDT was made by an agent in Manila on Mr ONC's behalf, in April 2008.
    - [9.1.2] Mr MDT explained that the service he provided included practical arrangements to assist Mr ONC to establish himself in New Zealand, such as personally taking him to the position of employment he was taking up.
    - [9.1.3] Mr ONC arrived in New Zealand in September 2008, and commenced employment in Blackball. That proceeded successfully, until April 2009. Until that time Mr ONC was in regular contact with Mr MDT.
    - [9.1.4] In April 2009 Mr ONC's employer contacted Mr MDT and said Mr ONC had resigned, and left no contact address.
    - [9.1.5] From that time, Mr MDT received no further communication from Mr ONC.
    - [9.1.6] All of Mr ONC's personal documents were kept safely in Mr MDT's office. He held them as he had no means of contacting Mr ONC.

- [9.1.7] Mr MDT said he suspected Mr ONC did not make contact intentionally, as he was taking independent steps in relation to his immigration status, and that of his family. Further, there was still NZD500 outstanding in unpaid fees.
- [9.1.8] After the complaint, Mr MDT contacted the agent in Manila, and asked for a breakdown of the USD4,000 Mr ONC had paid to the agent. The fee is said to cover airfares, various government fees, and the agent's fee.
- [10] Mr MDT provided material with the second letter that documented the work undertaken, which included:
  - [10.1] A copy of an agreement for the provision of professional services dated 3 May 2008, which appeared to be signed by both Mr MDT and Mr ONC. The agreement contained a schedule of fees, totalling USD3,200, and set out a description of the services Mr MDT was to provide.
  - [10.2] The agreement also had provision for the payment of the fee in instalments. Mr MDT provided invoices, receipts, and an analysis of when payments were made. There was an automatic payment authority, for fortnightly payments of NZD200, and a document showing instalments of \$200 being paid fortnightly, totalling NZD2,800.
  - [10.3] Mr MDT produced an analysis showing total liability of NZD3,300 for fees, and payments coinciding with the automatic payment authority (14 payments of \$200, totalling \$2,800). That left \$500 of the total of NZD3,300 unpaid.
  - [10.4] There was some lack of clarity relating to the denomination of fees in United States or New Zealand dollars, but it is not important for present purposes.
- [11] The second letter also said Mr MDT had returned the personal documents, as he had now obtained Mr ONC's address.

### **The Facts**

- [12] The Tribunal issued a minute to the parties (16 April 2012), identifying the issues that appeared to arise on the papers then before the Tribunal, and the conclusions that could potentially be reached.
- [13] The minute identified two key elements in the complaint:
  - [13.1] First, Mr MDT improperly forced Mr ONC to sign a promissory note to pay NZD3,300 when he had already paid USD4,000.
  - [13.2] Second, Mr MDT retained personal documents improperly.
- [14] The accounts given by Mr ONC and Mr MDT were fundamentally different.
- [15] Mr MDT said he was not involved in the fee of USD4,000 charged by the Manila agent, though he had made inquiries and passed on an explanation from the agent that it was for services and expenses unrelated to Mr MDT's engagement.
- [16] Mr MDT also produced records that support him having agreed a fee with Mr ONC, and details of payments made, whereas Mr ONC said he paid fees and was then coerced into paying more fees.
- [17] Mr ONC said he made repeated demands for the return of his documents, whereas Mr MDT says there was no such contact, and he had no means of knowing where he could send the documents.
- [18] In the absence of further information, the minute gave notice that Mr MDT had produced records that accounted for the fees charged, and paid.

- [19] Those records appeared to document Mr MDT's claim that he properly agreed on the payment of fees with Mr ONC, and recorded it in writing (as required by the Code). The written material did not appear to be consistent with Mr MDT coercing Mr ONC into paying further fees, when he had already paid for the services. Further, the automatic payment form Mr MDT produced appeared consistent with the agreement to pay fees.
- [20] In relation to the return of documents, Mr MDT gave an explanation that he returned the documents when he could locate Mr ONC, and was very aware of his obligations to keep the documents safe and return them.
- [21] Mr ONC said he made repeated demands for the documents, and they were not returned. However, the only particular was that about 24 August 2010 Mr ONC contacted Mr MDT, and was told to get the documents from Mr MDT's lawyer, whereas Mr MDT said that was not correct as he had no contact with Mr ONC and was away much of the week around 24 August 2010.
- [22] There was nothing in the way of telephone records or other material that would confirm Mr ONC made contact with Mr MDT.
- [23] Accordingly, the Tribunal gave notice in the minute that on the papers then before it, it may conclude the complaint should be dismissed, observing:
- [23.1] The grounds of complaint are serious, and would result in the complaint being upheld if established.
- [23.2] The complaint in relation to fees charged had been answered with material that tended to show Mr ONC may have been mistaken regarding the circumstances. There were other possible explanations, but further evidence would be required to reject the explanation put forward by Mr MDT.
- [23.3] The complaint in relation to retaining documents was answered with an apparently reasonable explanation, which included the documents being returned when Mr MDT knew where Mr ONC could be located. Evidence would be required to reject Mr MDT's explanation.
- [24] The parties were invited to respond to the minute.
- [25] Mr ONC responded to the minute by sending a copy of an email, which did not address the issues raised in the minute.
- [26] Mr MDT did not wish to add to his existing submissions.

## **Decision**

- [27] I am satisfied the complaint must be dismissed. Mr MDT's contention that his arrangements in relation to fees were unexceptional, and set in accordance with the Code, is consistent with the written record he produced. I am satisfied his evidence must be accepted.
- [28] Mr ONC may have been under a misapprehension in relation to the process, as he referred to a promissory note. However, the documents evidence a conventional arrangement for payment of fees by instalment. Mr MDT made inquiries relating to the fees paid in the Philippines, and said they were for expenses unrelated to his fees. Mr ONC has not endeavoured to address this issue.
- [29] Similarly, Mr MDT has shown he returned the documents promptly, when he had an address for Mr ONC. There was no documentary evidence of any reluctance on Mr MDT's part; or of Mr ONC making requests for the documents as he claimed. I am satisfied Mr MDT's account must be accepted.

[30] I am not satisfied the complaint is reliable, and it must be dismissed pursuant to section 50 of the Act.

**DATED** at WELLINGTON this 18<sup>th</sup> day of June 2012

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**G D Pearson**  
Chair