

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

Decision No: [2012] NZIACDT 35

Reference No: IACDT 022/12

IN THE MATTER

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

BY

Immigration Advisers Authority
Authority

BETWEEN

OWG
Complainant

AND

VJM
Adviser

DECISION

(Application for Leave to Withdraw)

REPRESENTATION:

Complainant: R Gapes/V Clements, Simpson Grierson, Lawyers, Auckland.

Adviser: R Small, Pacific Legal Ltd, Lawyers, Auckland.

Date Issued: 29 June 2012

DECISION

Preliminary

- [1] This complaint concerns Mr VJM, who is a licensed immigration adviser. He acted for Ms OWG and her late husband, who engaged him to pursue an appeal against a decision to decline a residence application for Ms OWG. He also agreed to seek a temporary visa so Ms OWG could remain in New Zealand in the interim.
- [2] The complaint involved a series of deficiencies on the part of Mr VJM. It suffices to say the allegation amounts to incompetent handling of the appeal, and applications for temporary permits. The allegations also extended to claimed misrepresentation.
- [3] Ms OWG and Mr VJM have reached a settlement, and now seek to have the complaint withdrawn.
- [4] The Authority has indicated it will abide the decision of the Tribunal on the request to withdraw the complaint.
- [5] It is necessary to determine whether leave should be granted to withdraw the complaint.

Principles

- [6] The Tribunal deals with complaints under a statutory process. A complaint which has been lodged with the Tribunal is not solely an *inter partes* matter. Public interest issues arise in many professional disciplinary cases, and that is so in the present case. The complaint, if made out, would be relevant to Mr VJM's fitness to practice.
- [7] The Tribunal will take account of a request to withdraw a complaint, but it is not the complainant's right to withdraw a complaint from the Tribunal.
- [8] This Tribunal, as is commonly the case for professional disciplinary tribunals, has an inquisitorial function. The Tribunal is not dependent on a complainant to prosecute a complaint. Indeed, in the case of this Tribunal, it is not usual for counsel to represent complainants and actively prosecute their complaint.
- [9] The Act provides for complaints to be put before the Tribunal, and requires the Tribunal to hear the complaint; usually on the papers, and where necessary, by exercising powers to seek further information (section 49, Immigration Advisers Licensing Act 2007).

Decision

- [10] In the present case the allegations are serious, and if the settlement and the nature of the complaint were the sole factors, there is little doubt the Tribunal would proceed with the complaint.
- [11] However, Mr VJM's counsel has raised a further factor which must be given considerable weight. Mr VJM has had a heart attack, and been diagnosed with serious coronary artery disease. He requires coronary artery bypass surgery, but has declined to undergo surgery. There is no medical evidence regarding the extent to which Mr VJM's coronary artery disease may have affected his ability to discharge his professional duties at the time of the complaint. However, given that at present he can walk for less than 50 meters without angina symptoms, and that he has unstable angina and pain at rest, indicate it may have been a factor.
- [12] Mr VJM has retired from immigration practice due to his health, and his licence has now expired.
- [13] In addition, Mr VJM has produced a letter from Judge X, a former Chief Justice of Samoa and retired New Zealand District Court Judge. He said he has known Mr VJM for some 10 years, and is in a position to comment on his professional practice. Mr VJM had consulted the judge in relation to professional issues, and Judge X knew many clients of Mr VJM. The

retired judge regarded Mr VJM as cautious in his practice, and that he would take care to consult and seek assistance in areas that were outside his experience and competence. The core of the complaint is that Mr VJM failed to do that in the present case.

- [14] In these circumstances I am satisfied the complaint should not proceed further. The factors leading to that conclusion are:
- [14.1] Ms OWG is represented by counsel, and is satisfied her complaint has been addressed appropriately.
- [14.2] There is some protection for consumers of immigration services as:
- [14.2.1] Mr VJM is no longer practising, and does not hold a licence.
- [14.2.2] If Mr VJM were to seek to resume practice he could not renew his licence as it has expired (section 24). The Registrar would, under section 19, before granting a licence have to be satisfied that Mr VJM met appropriate standards.
- [14.3] There is a humanitarian factor, in that Mr VJM's medical advisers have indicated he should avoid stress. Unnecessarily extending this matter would potentially affect his health.
- [14.4] The retired judge's evidence suggests that if the complaint was made out, it may not reflect Mr VJM's usual professional standards.
- [15] Section 50 requires that the Tribunal uphold or dismiss complaints. This complaint is dismissed. It is dismissed without determining the merits, for the reasons expressed.
- [16] In accordance with the usual practice where a decision is dismissed, this decision will be published, but only with the names and information that may identify the parties being removed. That will include not identifying Judge X, who will simply be referred to as a retired judge.

DATED at WELLINGTON this 29th day of June 2012

G D Pearson
Chair