

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

Decision No: [2012] NZIACDT 36

Reference No: IACDT 030/10

IN THE MATTER

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

BETWEEN

Immigration Advisers Authority

Authority

AND

Ueite (Itaotemai) Letalu

Adviser

DECISION

REPRESENTATION:

Adviser: In person

Complainant: In person

Date Issued: 29 June 2012

DECISION

Introduction

- [1] This complaint has been lodged under section 46 of the Immigration Advisers Licensing Act 2007 as an own motion complaint.
- [2] Mr Letalu had instructions from a client to lodge an appeal with the Residence Review Board. He did not lodge it within the time limit, and the Board could not consider the late appeal.
- [3] Mr Letalu accepted he was at fault, but excused his conduct due to being busy.
- [4] The issue is whether the failure on Mr Letalu's part, in the context it occurred, justifies the complaint being upheld.

Events and Circumstances Presented by the Complaint and the Response

The Authority's complaint

- [5] Mr Letalu was acting as a licensed immigration adviser for a client, and lodged an application for residence.
- [6] On 13 August 2010 Immigration New Zealand sent a letter to Mr Letalu notifying him his client's application had been declined.
- [7] That letter had the date 13 August 2010 marked on it, and gave notice of the right of appeal. The letter said:

"The Residence Review Board must receive your appeal at its New Zealand address within 42 days after this decision has been notified to you. Please note that the 42 days will start 7 days after this letter was posted."
- [8] The Residence Review Board received an appeal submitted by Mr Letalu for his client on 8 October 2010. The appeal form was signed and dated by his client, on 22 August 2010. The Board could not consider the appeal, as it was lodged outside of the 42-day period. The Board wrote to Mr Letalu by letter dated 14 October 2010, pointing out the relevant legislation, and giving him the opportunity of responding.
- [9] Mr Letalu replied and said his client was in Samoa at the time, and accordingly the time for the appeal should have expired on 8 October 2010, not 4 October 2010, as the Board calculated.
- [10] By letter dated 2 November 2010, the Board explained to Mr Letalu that his calculation was based on the 42-day period commencing 14 days after the letter, whereas the correct commencement was 7 days after the letter, because the notification letter was posted to a New Zealand address. The 14-day period only applied to a letter posted to an address outside New Zealand.

Mr Letalu's reply to the complaint

- [11] Mr Letalu responded to the Authority's complaint by letter dated 8 December 2010.
- [12] He accepted he had made a mistake, which should not have happened. He stated "... it's easy to get side tracked on ones very busy schedule".
- [13] He also referred to the application for residence being declined on 30 August 2010, and a letter dated 2 February 2009. He did not provide documents supporting the comments, or develop them in relation to the effect they had on the complaint.

Issues

- [14] The Tribunal issued a Minute to the parties (23 April 2011), identifying the issues that appeared to arise on the papers before the Tribunal, and the conclusions that could potentially be reached.
- [15] The Minute noted that the Authority submitted the complaint on the basis that it evidenced incompetence, and should accordingly be upheld under section 44(2)(b).
- [16] The Minute noted that the view was open that the Tribunal should uphold the complaint, based on Mr Letalu's isolated mistake of failing to meet the deadline. This may indicate negligence in failing to calculate the deadline and lodge the appeal, rather than incompetence.
- [17] An isolated mistake may amount to negligence and be grounds for upholding a complaint under section 44(2)(a), but not necessarily establish incompetence. The Tribunal indicated it would consider any submissions directed to that issue.
- [18] The Tribunal indicated it would consider any material presented by the parties that would assist in understanding the circumstances that led to the error on the part of Mr Letalu.
- [19] The Registrar responded, and accepted that the better view of the facts, given Mr Letalu's response to the complaint, was a significant failure and a serious breach of the Code; but short of incompetence.
- [20] Mr Letalu responded, indicating he wished to be heard in person and reiterating he accepted he was in error.
- [21] The Tribunal issued a further minute indicating that if Mr Letalu was to pursue an application to be heard in person, he needed to support that with documentation and reasons. The Tribunal is required to deal with matters *on the papers*, unless there are good reasons for an oral hearing.
- [22] Mr Letalu did not pursue the matter.
- [23] Accordingly, the sole issue is whether the Tribunal should uphold the complaint, on the information before it.

Decision

- [24] I am satisfied the complaint must be upheld.
- [25] Mr Letalu has correctly accepted he was in error. In contemporary immigration practice the time limits for appeals are critical and are at the forefront of matters to be dealt with when instructed to pursue an appeal.
- [26] A licensed immigration adviser must ensure they accurately calculate the last date for filing the appeal, and confer with the appeal authority if there is some element of doubt.
- [27] If the adviser does not lodge the appeal in time, the prospect of having the appeal dealt with on its merits is remote, and there are likely significant adverse consequences for a client.
- [28] I have considered Mr Letalu's explanation regarding his other commitments, and invited him to provide further information. He has not developed the point. However, it is most unlikely other commitments will ever provide justification for failing to discharge a professional engagement that an adviser has accepted. Certainly nothing in the material before the Tribunal justifies Mr Letalu's failure to lodge the appeal in time.
- [29] I am satisfied Mr Letalu was negligent in failing to accurately determine the date for lodging the appeal, and ensuring it was filed within that time limit.

- [30] Mr Letalu breached the Code of Conduct found at www.iaa.govt.nz (established and published in accordance with section 38 of the Immigration Advisers Licensing Act 2007).
- [31] Clause 1 of the Code required Mr Letalu to act with due care, diligence, and professionalism. He failed to do so. Section 44(2)(e) provides that a breach of the Code is a ground for complaint.
- [32] Further, section 44(2)(a) also provides that negligence is a ground for complaint, and I am satisfied Mr Letalu was negligent.
- [33] It follows the complaint is upheld.

Submissions on Sanctions

- [34] Given the findings, section 50 allows the Tribunal to impose one or more of the disciplinary sanctions under section 51 of the Act.
- [35] The parties have the opportunity to present submissions.
- [36] The timetable for submissions will be as follows:
- [36.1] The Authority is make any submissions within 10 working days of the issue of this decision.
- [36.2] Mr Letalu is to make any submissions (whether or not the Authority makes any submissions) within 15 working days of the issue of this decision.
- [37] 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 29th day of June 2012


G D Pearson
Chair

