

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

Decision No: [2012] NZIACDT 43

Reference No: IACDT 047/11

IN THE MATTER

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

BY

Immigration Advisers Authority
Authority

BETWEEN

Susan Brighton and Robert Brighton
Complainants

AND

Glen William Standing
Adviser

DECISION

REPRESENTATION:

Complainants: In person

Adviser: In person

Date Issued: 24 August 2012

DECISION

Introduction

- [1] Ms Victoria Brighton (Victoria) engaged Mr Standing to provide immigration services. Her parents have lodged this complaint.
- [2] The complaint was supported by evidence that Mr Standing systematically breached professional standards, as he:
 - [2.1] Did not initially establish his professional relationship in accordance with the Code of Conduct.
 - [2.2] Was rude and manipulative.
 - [2.3] Failed to lodge an application for a work permit; as a result Victoria could not work.
 - [2.4] Dishonestly tried to cover up his failure to apply for a work permit by saying the Minister of Immigration was personally involved in Victoria's case and that would benefit her.
 - [2.5] Charged excessive fees, failed to perform his services to a minimum level, and then failed to refund fees.
- [3] Mr Standing was notified by the Tribunal that the evidence in support of the complaint could justify the complaint being upheld. He was asked under the Tribunal's statutory powers to provide information from his files, and answer questions. He did not do so, and has not been compelled, as the information held is sufficient to uphold the complaint without further evidence.
- [4] The Tribunal has upheld the complaint on each of the grounds.

The Complaint and the Response

The complaint

- [5] Ms and Mr Brighton lodged this complaint, which relates to Mr Standing's treatment of their adult daughter, Victoria. She has also provided information in support of the complaint.
- [6] Victoria entered into an agreement to have Mr Standing provide immigration services. The agreement was signed on 13 May 2009. It provided for Mr Standing to assist Victoria with "an application for Permanent Residency of New Zealand." The fee was \$7,500 plus GST of 12.5 per cent.
- [7] Prior to entering into the agreement, Mr Standing issued an invoice dated 17 April 2009 for \$6,055. The invoice included GST, and said this comprised:
 - [7.1] half of the full professional fees including GST, being \$5,355; and
 - [7.2] the Government fee for a residence application, being \$700.
- [8] Victoria paid the invoiced amount in two instalments, the first in April 2009, and the balance in May 2009.
- [9] On 1 July 2010, Mr Standing issued a further invoice for \$2,848.25. The second invoice, on a GST inclusive basis, stated that:
 - [9.1] the second half of the professional fee was \$2,288.25; and
 - [9.2] the balance of \$560 was for fees to be paid to Immigration New Zealand.

- [10] This second invoice when added to the first amounts to \$8,903.25. That exceeds the fee in the agreement which is \$8,437.50 (that is, \$7,500 plus GST).
- [11] There is no evident explanation for the first invoice saying half of the professional fee is \$5,355, and the second invoice saying the other half is \$2,288.25.
- [12] On 13 October 2009, Mr Standing lodged a residence application for Victoria. He withdrew the application the following day. He had no instructions to do so, and provided no explanation for his conduct. He failed to inform Victoria as to what he had done.
- [13] Victoria's work permit expired, and she was not able to continue working.
- [14] Victoria, Ms and Mr Brighton tried to contact Mr Standing, and could not do so. They have found his behaviour toward them to be condescending and rude. Mr Standing actively avoided receiving telephone calls.
- [15] Ms and Mr Brighton arranged to meet Mr Standing in Picton; however he failed to attend the meeting, and provided no justification.
- [16] Due to Mr Standing's unprofessional conduct, Victoria instructed her lawyer to approach Mr Standing. He called Mr Standing's office by telephone. Mr Standing responded by threatening Victoria. He did so in an email dated 27 October 2009.
- [17] In this email, Mr Standing said the lawyer was "very aggressive". The email stated:
- "I am very concerned when we receive calls such as this as it makes me feel that you do not have any trust in my ability to continue with this application, but moreover, I will not have my staff subjected to that type of aggressiveness at anytime."
- [18] In the email Mr Standing went on to make representations that were not obviously grounded in reality. He stated that:
- [18.1] Victoria's visitor's visa was current for a further two days.
- [18.2] She was allowed to remain in New Zealand while an application was determined.
- [18.3] He said she could not work until "a decision has been made by the Minister", and he had decided "to take your residency application directly to the minister of immigration himself", and if successful it would advance the residence process by two years.
- [18.4] If the Minister granted residence, Mr Standing would apply for a work permit "while your residency application is approved".
- [18.5] If the Minister declined then Victoria could leave New Zealand or make an application on a different basis.
- [18.6] If "we continue to receive aggressive calls from 3rd parties that have nothing to do with this process, I will have no choice but to retract from acting on your behalf."
- [19] Victoria understood the last point as a threat that if she continued to take legal advice, Mr Standing would keep the money she had paid, and provide no services.
- [20] Victoria and Ms Brighton have found Mr Standing's behaviour and its consequences for Victoria to be distressing and unpleasant.
- [21] Following these events there were further applications to Immigration New Zealand, and Victoria ultimately received a residence visa. As Mr Standing's file has not been made available, the details of this part of the process, and his role, are not presently evident. Victoria requested an explanation from Mr Standing, including a breakdown of costs. He has not supplied it.

- [22] The Tribunal does not have a copy of Mr Standing's file; accordingly, there is no continuous record of what Mr Standing did. Victoria, Ms and Mr Brighton believe Mr Standing did very little, and largely left them to assemble the material required by Immigration New Zealand.

The response

- [23] Mr Standing's response to the complaint was an email dated 20 December 2011, addressed to the Authority. This email states:

"As per previous complaints, I do not hold the files for these applicants and therefore not in a position to comment in any great detail. However, I can state that to the best of my knowledge there was never any misleading information given nor was I ever incompetent or in breach of the code of conduct."

Request for Further Information from Mr Standing

- [24] The Tribunal issued a Minute dated 31 July 2012, which identified the grounds of complaint, response, and the issues arising; and indicated conclusions that may be reached on the basis of the information held at that point by the Tribunal.
- [25] The Minute made it clear to the parties they could provide further information, and that would be considered by the Tribunal.
- [26] The Minute also requested further information from Mr Standing.
- [27] The Minute noted:
- [27.1] The Code (clause 3) requires Mr Standing to maintain complete client records for seven years, and confirm in writing the details of material discussions with clients. Accordingly, he should be in a position to present a fully documented record of the professional engagement which is subject to the complaint. He had not produced that material to the Authority or the Tribunal.
- [27.2] Pursuant to section 49(4)(a) the Tribunal requested Mr Standing to:
- [27.2.1] Provide a full and complete copy of his client records relating to his professional engagement with Victoria.
- [27.2.2] Explain and document how he quantified and dealt with the fees paid to him, and how he took into account his obligation to deal with the receipts in whole or in part as client funds held on trust, and keep them in a separate bank account, in accordance with clause 4 of the Code.
- [27.2.3] Respond to each of the issues raised by this complaint, with reference to his client record.
- [27.3] Mr Standing had indicated he does not have client records; apparently as they are in the hands of the liquidator of a company through which he conducted his practice.
- [27.4] However, Mr Standing was required to maintain client records for seven years, and be in a position to make them available. The Code has the force of law (see sections 37–39 and 44 of the Act). It is implausible that any responsible liquidator would impede Mr Standing from getting a copy of his client record to respond to a complaint, given the legal duties on Mr Standing.
- [27.5] Mr Standing had produced no evidence he has attempted to produce the record.
- [27.6] The Tribunal gave Mr Standing notice that if any person was withholding his client record, he should notify the Tribunal of the circumstances, and the Tribunal would consider issuing a summons to that person to secure the production of the client record.

[27.7] Mr Standing was further put on notice that unless he demonstrated he had taken the steps available to secure the production of his client record, the Tribunal could potentially take the view that he has chosen to withhold his record, and reach conclusions adverse to him on that basis.

[28] Mr Standing did not respond to the Minute.

The Issues to be Determined

[29] Mr Standing is bound by the Immigration Advisers Licensing Act 2007.

[30] Clause 1 of the Code of Conduct requires a licensed immigration adviser to act with professionalism. That includes taking and acting on their client's instructions. It also requires them to treat their client with respect.

[31] Likewise, clause 1 of the Code requires that a licensed immigration adviser discharge their professional engagements with due care, diligence and respect. That requires them to ensure that their professional service delivery meets proper standards.

[32] Clause 1 of the Code also requires that a licensed immigration adviser enter into a written agreement, and supply a copy of the Code of Conduct and complaints procedure (clause 9) before commencing an engagement.

[33] Clause 3 of the Code requires a licensed immigration adviser to report regarding progress with applications, and generally provide timely updates.

[34] Clause 8 of the Code prohibits a licensed immigration adviser setting a fee that is not "fair and reasonable".

[35] Section 44 of the Act provides breaches of the Code, negligence, incompetence, dishonesty and misleading behaviour are all grounds for complaint.

[36] The issue for the Tribunal to determine is whether it is satisfied Mr Standing breached any of these professional standards. The Tribunal is required to determine the complaint on the balance of probabilities; however the test must be applied with regard to the gravity of the finding (*Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1).

Decision

[37] The regime in the Act is one where individuals are licensed as immigration advisers and it is not possible for a corporate entity or a practice to be licensed. It follows that individual licensed immigration advisers are the subject of complaints, and personally face disciplinary sanctions and orders for compensation.

[38] Mr Standing was personally responsible for professional service delivery in relation to this complaint.

[39] I am satisfied that the evidence supporting the complaint should be relied on. Each of the grounds of complaint is supported by the record, and the evidence from Victoria, Ms Brighton and Mr Brighton. That record has been put to Mr Standing by the Tribunal, and the implications from it drawn to his attention. He has been asked questions, and given the opportunity to respond. He has not responded, and in these circumstances I am satisfied I must rely on the material before the Tribunal, and reach the conclusions it demands.

Unprofessional conduct

[40] I am satisfied Mr Standing failed to treat Victoria and her parents with respect and professionalism.

[41] He did that by dishonestly misrepresenting what he was doing, making threats and bullying, and arranging a meeting then failing to attend.

- [42] His conduct was sustained, and repeated throughout his professional engagement, and partly recorded in writing; in particular in Mr Standing's email of 27 October 2009 (above paras [17] and [18]).
- [43] The first element of concern in that email is that Mr Standing objected to Victoria engaging a lawyer to represent her. The view is open that it was prudent for her to take legal advice. Regardless, she was fully entitled to do so. Mr Standing only became a licensed immigration adviser by demonstrating that he understood the Code of Conduct. It required him to advise every client that they are entitled to seek legal advice prior to entering into agreements, and he must have appreciated the same would apply to all aspects of professional relationships.
- [44] Mr Standing couched his objection in terms of the lawyer's conduct. It is not evident there was anything untoward about the lawyer's conduct. If there was, the proper course was to complain to the lawyer, or his professional body. Her lawyer's style of interaction with Mr Standing was not Victoria's responsibility.
- [45] I am satisfied that Mr Standing's email was highly manipulative, putting matters in terms of "trust" and criticising Victoria for not placing unquestioning trust in him. Such communications have no place in professional correspondence. Victoria had the insight to fully appreciate Mr Standing's performance was deficient, and Mr Standing was endeavouring to use manipulation to avoid scrutiny. His threat to withdraw services for this reason was, it appears, an improper attempt to pressure his client with the intent of avoiding scrutiny.
- [46] Lacking Mr Standing's file, it is not entirely clear what was occurring; however in terms of the substance of what he said, the series of claims made by Mr Standing required explanation.
- [47] Mr Standing has been required to provide information to this Tribunal, and has not done so.
- [48] I am satisfied on the material before me that Mr Standing dishonestly misrepresented Victoria's circumstances. I have had regard to the standard of proof, and I am sure the material requires that this finding must be made against Mr Standing notwithstanding its gravity.
- [49] Mr Standing's representations to Victoria were implausible; to the point where they justify the finding that Mr Standing fabricated them to excuse his professional failings.
- [50] The nature of the implausibility was drawn to Mr Standing's attention in the Minute, and he has provided no explanation, despite this Tribunal questioning Mr Standing under its statutory power.
- [51] The particular matters are:

Excusing failure to act by claiming the Minister was personally involved

- [51.1] Mr Standing represented to Victoria she could not work until "a decision has been made by the Minister", and he had decided "to take your residency application directly to the minister of immigration himself", and if successful it would advance the residence process by two years.

Implausibility which was not explained

- [51.1.1] It is not evident from the record that the Minister of Immigration was personally involved, nor that if that occurred, how that could advance the immigration process by two years.
- [51.1.2] Victoria complained she could not work, as Mr Standing failed to lodge an application for a work permit in time. It was not evident any process involving the Minister of Immigration was impacting on a work permit, but the email appears to suggest that was the case.

Conclusion

[51.1.3] These specific issues were drawn to Mr Standing's attention. I am satisfied that in the absence of an explanation, the obvious explanation is the correct one. It is rare for the Minister to be personally involved, and highly unlikely that doing so would shorten an immigration process and the Minister considering residence would have no apparent connection with Victoria's work permit.

[51.1.4] The record is entirely consistent with Mr Standing dishonestly saying the Minister was personally involved to excuse his own failing to lodge a straightforward application in time. On the material before me, I am sure that occurred.

Misrepresentation of the immigration process to fit with false claim of Ministerial involvement

[51.2] Mr Standing also represented to Victoria that if the Minister granted residence, Mr Standing would apply for a work permit "while your residency application is approved".

Implausibility which was not explained

[51.2.1] If the Minister of Immigration was considering Victoria's entitlement to residence, and it was going to advance the process by two years, it is not evident why she would need a work permit, as she would have a residence permit. The Minister would have granted or refused a residence permit, if the Minister was doing what Mr Standing told Victoria he was doing.

[51.2.2] This implausible claim appeared to be an attempt to provide a false reason for having to apply for a work permit, which should have been applied for earlier. It was a necessary fabrication, as:

[51.2.2] On the one hand Mr Standing was saying the Minister was personally deciding the residence application.

[51.2.2] In truth, the only thing Mr Standing could do was apply for a work permit, late; so there was not going to be a residence permit issued by the Minister.

Conclusion

[51.2.3] This specific issue was also drawn to Mr Standing's attention. I am satisfied that in the absence of an explanation, the obvious explanation is the correct one. Mr Standing fabricated a false claim of Ministerial involvement, but in fact the only thing he was doing was applying for a work permit late. Victoria had lost income from not working, and it was Mr Standing's fault; he was dishonestly trying to hide the fact he was responsible.

[52] I am satisfied this aspect of the complaint must be upheld, as a breach of the Code (clause 1) amounting to sustained unprofessional conduct; and dishonest misrepresentation in relation to seeking to explain his failure to apply for a work permit in a timely manner. Section 44(2)(d) and (e) provide these circumstances are grounds for complaint.

Failure to establish a professional relationship in accordance with the Code

[53] The record indicates that Mr Standing demanded and received payments before he had a written agreement and had undertaken the disclosure processes required by the Code.

[54] Mr Standing has been asked for an explanation, and a copy of his records. That has not occurred. I am satisfied that on the material before the Tribunal that I must conclude Mr Standing commenced this professional engagement without an agreement in writing, and

failed to comply with the Code in relation to commencing his engagement. It does seem that he belatedly, at least partially, complied.

- [55] I am satisfied this aspect of the complaint must also be upheld, as a breach of the Code (clauses 1.4, 1.5, and 9). Section 44(2)(e) of the Act provides that is a ground for complaint.

Acting without instructions

- [56] Mr Standing lodged a residence application, and then elected to withdraw it. He had no instructions to do so, and did not report in a timely manner what he had done.
- [57] Mr Standing should not have withdrawn the application without instructions; his conduct lacked professionalism and was contrary to his lawful informed instructions, and regardless he needed to report to his client promptly so she knew her immigration situation.
- [58] I am satisfied this aspect of the complaint must also be upheld, as a breach of the Code (clauses 1.1, and 3). Section 44(2)(e) provides that is a ground for complaint.

Failing to lodge application for a work permit promptly

- [59] Mr Standing failed to lodge a work permit application in time, and as a result Victoria could not work and lost wages.
- [60] Mr Standing has provided no excuse or justification, and I have found that he tried to cover up his failure through dishonesty.
- [61] I am satisfied the failure to lodge the application in a timely manner was a breach of the Code (clause 1.1), and the complaint must be upheld in this respect also.

Demanding and retaining excessive fees

- [62] Mr Standing did not provide professional services that reflected the fees he demanded and retained. The fees when set originally were apparently high, and likely excessive, for the work to be performed.
- [63] The fees were grossly excessive, at the end of the engagement, as Mr Standing had systematically failed to meet the standards of professional service delivery required of him, and could not expect to be paid for what he had done.
- [64] Mr Standing was put on notice that the material before the Tribunal may lead to the conclusions that:
- [64.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.
- [64.2] The fee was not fair and reasonable, either at inception or when his engagement terminated.
- [64.3] Clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.
- [64.4] The fees were repayable in whole or in part, as they were not fair or reasonable.
- [64.5] He breached the Code by failing to refund fees.
- [65] I am satisfied I must reach those conclusions, and uphold the complaint in this respect also. Mr Standing failed to set fees that were fair and reasonable, and then failed to perform the professional services to a level that justified the fees that he had been paid. His breach of the Code (clauses 8 and 3(d)) are grounds for complaint under section 44(2)(e) of the Act.

Submissions on Sanctions

Issues

- [66] As the complaint has been upheld, section 51 allows the Tribunal to impose sanctions. The section 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 2 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.”

- [67] The Authority and the complainants have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees, and compensation. Whether they do so or not, Mr Standing is entitled to make submissions and respond to any submissions from the Authority and the complainants.

- [68] 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.

- [69] If the complainants are seeking that the Tribunal make an order in favour of Victoria for the loss of income during the time she could not work, the Tribunal would be assisted by particulars of:

[69.1] The time period she could not work.

[69.2] Her income before and after that period.

[69.3] Any other related expenses.

- [70] If the complainants seek a refund of fees, or a portion of fees, in favour of Victoria, the Tribunal will make its decision on the basis of the amount of fees identified in this decision, subject to any submissions from the parties.

Mr Standing’s circumstances

- [71] This Tribunal is an inquisitorial body and is required to pursue issues raised by complaints, where necessary requesting further information and requiring persons with information to appear before the Tribunal.

- [72] This Tribunal is currently dealing with other complaints against Mr Standing, and has previously dealt with complaints against Mr Standing.
- [73] Mr Standing is not presently a licensed immigration adviser; his licence was cancelled by this Tribunal, and limitations placed on him seeking another licence.
- [74] Mr Standing had also informed the Tribunal that the company through which he most recently conducted his practice had gone into liquidation (Living New Zealand Limited – now struck off, as liquidation has been completed).
- [75] In this and other complaints Mr Standing is alleged to have failed to meet financial obligations to clients. The Tribunal is aware of the liquidator's reports, and draws Mr Standing's attention to those reports which state:
- [75.1] Mr Standing has been referred to the National Enforcement Unit in relation to suspected criminal offences, which apparently relate to Mr Standing's conduct and the absence of funds to pay creditors.
- [75.2] The company had assets that could be realised of \$8,078, and liabilities and liquidation expenses of \$497,422. Creditors received no distribution from the liquidation.
- [75.3] Overseas clients had paid \$635,769.49 in deposits for work that had not been completed.
- [76] The Tribunal is aware this company did not operate all the time Mr Standing was operating his practice, and the fees received relate only to clients where work was incomplete. Accordingly, the fees received from overseas clients of \$635,769.49 are less than the total fees Mr Standing received.
- [77] Mr Standing is facing complaints before this Tribunal that he procured the payment of fees and failed to perform work; in many cases those fees were deposited into offshore bank accounts.
- [78] This information is sufficient to raise a concern that Mr Standing has received a substantial body of fees which have not been accounted for.
- [79] Accordingly, the Tribunal puts Mr Standing on notice that if he claims he does not have the means to pay penalties, and compensation:
- [79.1] He is expected to explain to the Tribunal the circumstances identified in the liquidator's reports.
- [79.2] He should consider making arrangements for a chartered accountant to prepare a source and application of funds statement in relation to his practice, and producing that to the Tribunal.
- [79.3] He will be expected to fully explain his personal financial circumstances, including providing a statement of assets and liabilities.
- If Mr Standing does not respond, the Tribunal may proceed on the basis that Mr Standing has the means to meet a financial penalty that fully reflects the findings against him, and doing so will not adversely affect his ability to pay any compensation that may be ordered.
- [80] The timetable for submissions will be as follows:
- [80.1] the Authority and the complainants are to make any submissions within 10 working days of the issue of this decision; and
- [80.2] Mr Standing is to make any further submissions (whether or not the Authority or the complainants make submissions) within 15 working days of the issue of this decision.

- [81] Any party may apply to extend the timetable. If Mr Standing seeks to have time to have the assistance of a chartered accountant, he should provide a written statement from that person identifying the work they are undertaking, and the likely time required to complete it.
- [82] 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 24th day of August 2012.

G D Pearson
Chair