

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

Decision No: [2012] NZIACDT 44

Reference No: IACDT 014/12

IN THE MATTER

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

BY

Immigration Advisers Authority
Authority

BETWEEN

Geoffrey Bott
Complainant

AND

Glen William Standing
Adviser

DECISION

REPRESENTATION:

Complainant: In person

Adviser: In person

Date Issued: 24 August 2012

DECISION

Introduction

- [1] Mr Bott engaged Mr Standing to provide immigration services.
- [2] At the time of the engagement, Mr Standing was not a licensed immigration adviser, and did not need to be as the current regime was still being implemented.
- [3] When he became licensed, Mr Standing was required to comply with the various professional obligations on him.
- [4] He did so, to the extent that he entered into an agreement to provide services as a licensed immigration adviser.
- [5] However, Mr Standing was also required:
 - [5.1] To treat funds he held for Mr Bott to pay fees to Immigration New Zealand as client funds; that is, hold them in trust.
 - [5.2] To account for fees paid in advance in accordance with the Code of Conduct, including refunding fees that were not fair and reasonable in all the circumstances.
- [6] As it transpired, the professional services were not required as Mr Bott did not proceed with his immigration plans, and he asked Mr Standing to account for the money paid to him. Mr Standing said he would, but has not done so.
- [7] The Tribunal has found the material before it supports the complaint, and it has been upheld. Mr Standing was obliged to account for the money he received, and he has not done so. The evidence also establishes that Mr Standing has not accounted for the money to be paid to Immigration New Zealand as client funds, and not kept it in a separate bank account.

The Complaint and the Response

The complaint

- [8] Mr Bott met Mr Standing at a trade fair in the United Kingdom, and had a further meeting in the United Kingdom following that initial contact. The dates when these events occurred are not disclosed in the material before the Tribunal; it appears likely it was in 2008. Mr Bott and his wife were planning to migrate to New Zealand in September 2008.
- [9] Mr Standing told Mr and Ms Bott they could go to New Zealand using a visitor's permit, and apply for residence when in New Zealand. Their daughter had already migrated to New Zealand.
- [10] Mr Bott initially paid £1,895 in cash toward the fee for Mr Standing's professional services in relation to immigration applications that would be required to seek residence.
- [11] Mr Standing was a director and shareholder of Golden Sands Migration (NZ) Ltd (Golden Sands), and apparently conducted his immigration practice through the company at the time.
- [12] There were two licensed immigration advisers who provided immigration services through Golden Sands:
 - [12.1] Mr Standing, who became a licensed immigration adviser on 24 November 2008, and held a licence until it was cancelled by this Tribunal with effect from 15 August 2011.

- [12.2] Ms Leanne Climo, who held a licence between 10 March 2009 and 9 March 2010. She was not a shareholder or director of the company.
- [13] It appears Mr Bott was dealing with Ms Climo in the period after his initial contact with Mr Standing.
- [14] In August 2008 Ms Climo contacted Mr Bott and told him New Zealand's immigration policy was changing. It would take longer for a migrant to qualify as a "sponsor", and Mr and Ms Bott were to rely on their daughter as a sponsor. Accordingly, they had to delay their plans for a year until she qualified. At this point there was a disagreement between Ms Climo and Mr and Ms Bott, and communication broke down. Their daughter dealt with Mr Standing's office for a period.
- [15] Mr Bott paid £2,355, being the balance of the fees, on 4 December 2008. At this point Mr Standing was a licensed immigration adviser, and had to comply with the Code.
- [16] On 17 December 2008, Mr Bott signed an agreement with Golden Sands to assist with seeking residence in New Zealand. The fee was £4,250 (the balance of the two instalments that had been paid). Of that total, £690 was identified as being for Government fees that would be paid on behalf of Mr and Ms Bott.
- [17] The agreement identified Mr Standing as the "Director of Immigration", and indicated he signed the agreement for Golden Sands. However, the signature is not readable, so whether Mr Standing or someone on his behalf signed is not clear.
- [18] At the time the agreement was signed and the fees paid, only Mr Standing was licensed.
- [19] In May 2009, the forms to prepare an expression of interest were delivered to Mr and Ms Bott from Mr Standing's practice.
- [20] In a letter dated 16 June 2009, Mr Standing wrote to Mr Bott saying the first payment of fees had just been received. In fact, the final payment had been paid in December the previous year. This letter stated that Ms Climo had been appointed as Mr and Ms Bott's licensed immigration adviser (the copy held by the Tribunal does not show who the author of the letter was). However, Mr and Ms Bott had been dealing with Ms Climo the previous year.
- [21] In August 2009 Mr Bott returned the expression of interest forms.
- [22] In May 2011 Mr Bott told Mr Standing that he and Ms Bott would not be able to migrate to New Zealand due to bad investment advice given by an investment adviser they had met at the same trade fair where they met Mr Standing. However, it appears the investment adviser had no connection with Mr Standing.
- [23] Mr Standing agreed to refund the money he received, but has not done so.
- [24] On 17 August 2011 Mr Bott received a letter that Mr Standing appears to have sent out to his clients, as it was not personalised. The letter said Mr Standing's licence had been cancelled by this Tribunal as from 15 August 2011, and as a consequence the company through which he ran his practice had gone into liquidation. The company was Living New Zealand Ltd, which was a different company from Golden Sands.
- [25] Mr Bott wishes to have Mr Standing refund his fees, as he promised.

The response

- [26] The Authority put Mr Bott's complaint to Mr Standing, to give him the opportunity to respond, but he did not respond.

Request for Further Information from Mr Standing

- [27] 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.
- [28] The Minute made it clear to the parties they could provide further information, and that would be considered by the Tribunal.
- [29] The Minute also requested further information from Mr Standing.
- [30] The Minute noted:
 - [30.1] 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 has not produced that material to the Authority or the Tribunal.
 - [30.2] Pursuant to section 49(4)(a) the Tribunal requested Mr Standing to:
 - [30.2.1] Provide a full and complete copy of his client records relating to his professional engagement with Mr and Ms Bott.
 - [30.2.2] Explain and document how he dealt with the fees paid to him, and how he took into account his apparent 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.
 - [30.2.3] Respond to each of the issues raised by this complaint, with reference to his client record.
 - [30.3] Mr Standing had indicated to the Tribunal previously that he holds no client records, as they are in the hands of the liquidator of Living New Zealand Ltd (the company he was most recently operating his practice through).
 - [30.4] The Tribunal noted that 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.
 - [30.5] The Tribunal gave Mr Standing notice that if any person is withholding his client record, he should notify the Tribunal of the circumstances and the Tribunal will consider issuing a summons to that person, to secure the production of the client record.
 - [30.6] 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 would potentially take the view that he had chosen to withhold his record, and reach conclusions adverse to him on that basis.
- [31] Mr Standing did not respond to the Minute.

The Issues to be Determined

- [32] Mr Standing is bound by the Immigration Advisers Licensing Act 2007.
- [33] Clause 1 of the Code of Conduct requires:
 - [33.1] A licensed immigration adviser to act with professionalism. In doing so, they must ensure that the terms of professional engagements are fair and appropriate.

- [33.2] That a client engagement be established with an agreement that is in writing, and accepted in writing; and only after providing a copy of the Code to the client.
- [33.3] That a licensed immigration adviser discharge professional engagements with due care, diligence and respect. That requires them to ensure that their professional service delivery meets proper standards.
- [34] Clause 4 of the Code treats receipts, to the extent that they are held on behalf of clients, as trust funds, and a licensed immigration adviser must bank them separately.
- [35] Clause 8 of the Code prohibits a licensed immigration adviser setting a fee that is not “fair and reasonable”.
- [36] Clause 9 requires that complaints procedures are disclosed.
- [37] Section 44 of the Act provides breaches of the Code, negligence, incompetence, dishonesty and misleading behaviour are all grounds for complaint.
- [38] 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

Preliminary

- [39] 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 it is individual licensed immigration advisers who are the subject of complaints, and personally face disciplinary sanctions and orders for compensation.
- [40] Mr Standing is personally responsible both for the relevant professional service delivery, and accounting for receipts in relation to this matter.
- [41] Ms Climo apparently dealt with Mr Bott only after Mr Standing had initiated the client relationship and accepted the initial payment. Her advice is not the subject of the complaint, which relates to how money was dealt with. It appears Mr Standing was dealing with those issues, and accordingly the Tribunal must proceed on the basis that Mr Standing is responsible for the issues raised by the complaint.
- [42] I am satisfied the evidence supporting the complaint should be relied on. Each of the grounds of complaint is supported by the record, and the evidence from Mr Bott. That record has been put to Mr Standing by the Tribunal, and the implications potentially drawn from it have been explained to Mr Standing. He has been asked questions, and given the opportunity to respond.
- [43] Mr Standing has not provided information, answered questions or put forward an explanation. I am satisfied I must rely on the material before the Tribunal, and reach the conclusions evident from it.

Initiating the client relationship

- [44] When Mr Standing initiated the client relationship he was not a licensed immigration adviser, the Code did not apply, and this Tribunal has no jurisdiction over his conduct in that period.
- [45] When he became licensed, he was obliged to put the client relationship on a proper footing, and that is consistent with the written agreement that was entered into in December 2008.
- [46] Mr Standing complied with the Code in this regard, reasonably promptly after he became licensed.

- [47] However, when he became licensed, he was obliged to deal with client funds in accordance with the Code.

Failure to account for client funds

- [48] At least some of the money paid to Mr Standing was in respect of fees to be paid to Immigration New Zealand. The amount identified was £690, being a “Government Residency Fee” of £460, and “Government Migrant Levy Fee” of £230. There is no evidence any fees were paid to the Government on the material before the Tribunal. Mr Standing has been asked by the Tribunal to provide information, and has not claimed that such fees were paid.
- [49] Client funds are treated by the Code (clause 4) as trust funds, and must be banked in a separate bank account. It appears that all of the £690 was client funds and should have been banked in a separate bank account, and all or some of that should still be held on trust. This money has not been located or refunded.
- [50] When he became licensed, Mr Standing was obliged to ensure that he complied with the Code in respect of all money he then held, or received later, that constituted client funds. He received the second instalment of fees after he was licensed.
- [51] Where trust funds are received by a professional, and they are not banked into the appropriate account, and then are not accounted for, the probable reason involves misappropriation of the funds. There is no discretion in relation to dealing with client funds.
- [52] I am satisfied Mr Standing dishonestly failed to account for client funds, as he has not accounted for money he received to pay “Government fees”. He has provided no explanation, despite being requested to do so under the Tribunal’s statutory powers and warned of the implications of the evidence before the Tribunal.
- [53] I am satisfied this aspect of the complaint must be upheld, as a breach of the Code (clause 4), and it also involved a dishonest failure to account for funds. Section 44(2)(d) and (e) provide these circumstances are grounds for complaint.

Demanding and retaining excess fees

- [54] Mr Standing did not provide professional services that reflected the fees he demanded and retained.
- [55] Mr Standing was put on notice that:
- [55.1] Clause 8 of the Code obliged Mr Standing to set fees that were fair and reasonable.
- [55.2] The fee was not fair and reasonable, when his engagement terminated.
- [55.3] Clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.
- [55.4] The fees were repayable as they were not fair or reasonable, and he could no longer lawfully provide the professional services he agreed to supply.
- [55.5] He breached the Code by failing to refund fees.
- [56] I am satisfied I must reach these conclusions, and uphold the complaint in this respect also. His breach of the Code (clauses 8 and 3(d)) is grounds for complaint under section 44(2)(e) of the Act.

Submissions on Sanctions

Issues

- [57] 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 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.”

- [58] The Authority and the complainant 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 complainant.
- [59] 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.
- [60] The Tribunal will make any decision on the refund of fees based on the amount of fees identified in this decision, subject to any submissions from the parties.
- [61] It appears that the appropriate approach, if there is an order for the refund of fees, is that the amount paid should be converted to New Zealand dollars at the rate for the day it was paid, and an order made of a refund of that amount of New Zealand dollars.
- [62] That would be on the basis that the payment was intended to be for services in New Zealand and could be expected to be converted when paid. The parties may contend for some other basis.

Mr Standing’s circumstances

- [63] 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.
- [64] This Tribunal is currently dealing with other complaints against Mr Standing, and has previously dealt with complaints against Mr Standing.

- [65] Mr Standing is not presently a licensed immigration adviser; his licence was cancelled by this Tribunal, and limitations placed on him seeking another licence.
- [66] 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).
- [67] 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:
- [67.1] 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.
- [67.2] 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.
- [67.3] Overseas clients had paid \$635,769.49 in deposits for work that had not been completed.
- [68] 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.
- [69] 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.
- [70] This information is sufficient to raise a concern that Mr Standing has received a substantial body of fees which have not been accounted for.
- [71] Accordingly, the Tribunal puts Mr Standing on notice that if he claims he does not have the means to pay penalties, and compensation:
- [71.1] He is expected to explain to the Tribunal the circumstances identified in the liquidator's reports.
- [71.2] 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.
- [71.3] 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.
- [72] The timetable for submissions will be as follows:
- [72.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision; and
- [72.2] Mr Standing is to make any further submissions (whether or not the Authority or the complainant make submissions) within 15 working days of the issue of this decision.
- [73] 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.

- [74] 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