

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

Decision No: [2012] NZIACDT 46

Reference No: IACDT 040/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Michelle Connell and Timothy Connell

Complainants

AND

Glen William Standing

Adviser

DECISION

REPRESENTATION:

Complainant: In person

Adviser: In person

Date Issued: 30 August 2012

DECISION

Introduction

- [1] Ms and Mr Connell engaged Mr Standing to provide immigration services.
- [2] They paid money to him in advance for professional fees, and also gave him money that he was to pay to Immigration New Zealand on their behalf to lodge applications.
- [3] When he asked for some of the money, Mr Standing represented he had to pay it to Immigration New Zealand immediately and would do so, but in fact he took it for his own purposes.
- [4] The money to be held for payment to Immigration New Zealand was “client funds”, and had to be treated as money held on trust and banked separately. There is no discretion in relation to client funds; if not held properly and accounted for, the obvious explanation is misappropriation.
- [5] Mr Standing has neither accounted for nor explained to the Connells where the client funds have gone, and has not accounted to them for fees paid in advance that he has not earned.
- [6] He did little or no work to earn the fees, and has not refunded them.
- [7] 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 before the Tribunal is sufficient to uphold the complaint without further evidence.
- [8] The Tribunal has upheld the complaint. The evidence supporting the complaint requires that the Tribunal conclude Mr Standing obtained funds through misrepresentations, dealt with the money dishonestly, and has failed to account for it.

The Complaint and the Response

The complaint

- [9] On 17 March 2011, Mr Connell signed an agreement with Mr Standing for the provision of immigration services. Mr Standing was a licensed immigration adviser, and he is identified in the agreement as being licensed.
- [10] The service was to apply for a residence visa, although the agreement noted that seeking a temporary permit may be an option in the interim.
- [11] The agreement provided for fees of \$9,500 (exclusive of GST) to be paid. This equates to \$10,925 including GST. The agreement, apparently incorrectly, said GST was not payable.
- [12] The agreement identifies \$6,681.50 (including GST) being for professional fees, and the balance of \$4,243.50 (including GST) being for fees payable to Immigration New Zealand.
- [13] Ms and Mr Connell paid the full GST inclusive amount in two instalments. The first was \$6,325 paid on 18 March 2011, and the second \$4,600 paid on 29 July 2011.
- [14] The second instalment was paid as Mr Standing contacted Mr and Ms Connell, and told them Immigration New Zealand had agreed they could stay in New Zealand for a further year, and a payment had to be made to Immigration New Zealand. Mr Standing used this as a reason for them to make the further payment, though it is not evident it was due under the terms of the agreement, and the funds Mr Standing already held could, it appears, have been used.

- [15] The material accompanying the complaint does not indicate what work, if any, Mr Standing did. It appears that Mr and Ms Connell already held temporary permits, and they were extended, but who completed the applications is not evident.
- [16] On 16 August 2011, Immigration New Zealand wrote to Mr Connell and told him Mr Standing could no longer represent him, as his licence had been cancelled the previous day. On 17 August 2011, Mr Standing wrote a generic letter which was received by, but not personally addressed to, the Connells. This letter said Mr Standing had his licence cancelled by this Tribunal. He proposed to continue with providing immigration services in an “administrative capacity”.
- [17] Mr and Ms Connell made inquiries, and were informed by Immigration New Zealand they had to pay \$1,200 for their temporary permits, as Mr Standing had not made that payment.
- [18] Mr Standing had not lodged an application for residence visas for Mr and Ms Connell, or accounted for or refunded the fees paid to him.

The response

- [19] Mr Standing’s response to the complaint was a letter dated 28 November 2011, addressed to the Authority. This letter is written in the context of multiple independent complaints to the Authority. The letter states:

“Living New Zealand Limited is now in liquidation and as such, I no longer hold the files for [the Connells].

I can however conclusively state that in each complaint, there was no dishonesty, breach of the code of conduct or any other matter that I would be concerned about.

As previously mentioned within other complaints, had my license not been cancelled, many of these applicants would not have lodged complaints.”

Context and Scope of Evidence and Mr Standing failing to respond to questions

Other complaints

- [20] The Tribunal issued a Minute dated 20 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.
- [21] The Minute made it clear to the parties they could provide further information, and that would be considered by the Tribunal.
- [22] The Minute also requested further information from Mr Standing, and put him on notice any response should take account of the fact he was facing multiple complaints, some of which had strikingly similar components.
- [23] The Minute explained to Mr Standing:
 - [23.1] 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.
 - [23.2] This Tribunal was currently dealing with other complaints against Mr Standing, as his response indicated. Further, this complaint was not unique in presenting an allegation that substantial fees have been paid in advance, followed by a total or substantial failure to deliver the professional services promised, a failure to refund fees, and the failure to account for client funds.
 - [23.3] The approach this Tribunal would take is that it will not unnecessarily use evidence in one complaint to support another complaint. However, multiple complaints which

involve strikingly similar features may be probative evidence when the Tribunal determines whether there was systematic dishonesty, incompetence, or a set of circumstances amounting to an innocent explanation.

- [23.4] At that point, subject to further submissions, the Tribunal considered it was sufficient to put Mr Standing on notice that this complaint should be addressed in a context where he faced multiple complaints that included the features of:
- [23.4.1] Demanding and receiving fees in advance amounting to several thousands of dollars.
 - [23.4.2] Failing to account for client funds.
 - [23.4.3] Failing to deliver the professional services promised.
 - [23.4.4] Refusing to refund the fees paid in advance when he did not deliver the professional services he promised.
- [23.5] Accordingly, Mr Standing was asked to consider informing the Tribunal of any general circumstances that may have affected professional service delivery in his practice and recognise that he cannot expect the Tribunal to approach this complaint as though it was an isolated lapse in the context of a practice that was otherwise meeting the minimum professional standards, if this is the Tribunal's finding when other complaints have been determined.
- [23.6] If the Tribunal did find a series of complaints have established Mr Standing had repeatedly taken fees, failed to account for client funds, failed to perform professional services, and not refunded fees when services have not been provided, that would potentially be regarded as material when determining the present complaint, subject to any submissions on the point.
- [24] As it has transpired, Mr Standing has not provided any explanation, beyond the response to the Authority identified above.
- [25] 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). I am mindful that the complaint involves an allegation of dishonesty and deception. That is at the highest end of the scale, and I must be sure the evidence requires such a finding.
- [26] I am satisfied this complaint is made out on the evidence presented in support of it, and it is not necessary to refer to the other complaints to find this complaint is made out.
- [27] The other potentially relevant complaints are published in the series of this Tribunal's decisions: [2012] IACDT 46 to 58. In that series of decisions, there are other examples of complaints that have the features identified in para [23.4], and have been upheld.
- [28] The complaints, when viewed together, show Mr Standing was systematically using similar strategies to have multiple clients pay him money in advance, that he failed to deal properly with, and account for, client funds, failed to deliver the professional services he promised to induce payment of fees in advance, and then refused to refund fees.
- [29] The potential relevance of that evidence lies not in establishing this complaint, but rather in evaluating any explanation advanced and the extent to which Mr Standing is entitled to the "benefit of the doubt". As matters have evolved, Mr Standing has provided no explanation. I have simply found the complaint established on the evidence presented in support of it. Mr Standing has been put on notice of the potential implications of the evidence supporting the complaint.

Request for further information from Mr Standing

- [30] The Tribunal's Minute made it clear to the parties they could provide further information, and that would be considered by the Tribunal.
- [31] The Minute also requested further information from Mr Standing.
- [32] The Minute noted:
 - [32.1] The Licensed Immigration Advisers Code of Conduct (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.
 - [32.2] Pursuant to section 49(4)(a) of the Act the Tribunal requested Mr Standing to:
 - [32.2.1] Provide a full and complete copy of his client records relating to his professional engagement with Mr and Ms Connell.
 - [32.2.2] Explain and document how he 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.
 - [32.2.3] Respond to each of the issues raised by this complaint, with reference to his client record.
 - [32.3] Mr Standing had indicated he does not have client records, as they are in the hands of the liquidator of Living New Zealand Ltd.
 - [32.4] 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 was 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.
 - [32.5] Mr Standing had produced no evidence he has attempted to produce the record.
 - [32.6] 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.
 - [32.7] Mr Standing was further put on notice that unless he demonstrated he has taken the steps available to secure the production of his client record, the Tribunal would potentially take the view that he has chosen to withhold his record, and reach conclusions adverse to him on that basis.
- [33] Mr Standing did not respond to the Minute.

The Issues to be Determined

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

- [36] Clause 1 of the Code also 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.
- [37] Clause 4 of the Code treats receipts, to the extent they are held on behalf of clients, as trust funds, and a licensed immigration adviser must bank them separately.
- [38] Clause 8 of the Code prohibits a licensed immigration adviser setting a fee that is not “fair and reasonable”.
- [39] Section 44 of the Act provides breaches of the Code, negligence, incompetence, dishonesty, and misleading behaviour are all grounds for complaint.
- [40] The issue for the Tribunal to determine is whether it is satisfied on the evidence that Mr Standing breached any of these professional standards, having regard to the standard of proof.

Decision

- [41] 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.
- [42] Mr Standing was personally responsible for professional service delivery in relation to this complaint.
- [43] 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 the complainants. 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.

Misappropriation of trust funds

- [44] At least some of the money paid to Mr Standing was for fees to be paid to Immigration New Zealand. The agreement indicates that of the \$10,925 he received, \$4,243.50 was for fees payable to Immigration New Zealand.
- [45] He necessarily received those funds as trust funds, and clause 4 of the Code required him to bank the money separately and account for it as trust funds.
- [46] To the extent he was not immediately entitled to the balance of the receipts, they too were trust funds, and to be held in the separate bank account as client funds.
- [47] Mr Standing has not accounted for any of the client funds.
- [48] I am satisfied at least \$4,243.50 was client funds. This money has not been located or refunded.
- [49] Where trust funds are received by a professional person, 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.
- [50] Mr Standing dishonestly misappropriated client funds. Given the fruitless and repeated efforts to have Mr Standing account for this money, which he was obliged to hold in a designated bank account, I am satisfied he took his clients’ money for his own purposes.

- [51] This aspect of the complaint must be upheld, as a breach of the Code (clause 4). It also involved a dishonest failure to deal with, and account for funds. Section 44(2)(d) and (e) provide these circumstances are grounds for complaint.

Misrepresentation

- [52] Mr Standing procured the second payment by representing it was in whole, or in part, for the purpose of making a payment to Immigration New Zealand that was currently due. He did not use the money for that purpose.
- [53] I am satisfied that Mr Standing dishonestly made the representation to secure the payment and intended to use the funds for his own purposes, and did so.
- [54] This is the only apparent explanation for his request for the payment, given the fact he did not apply the funds in the manner he represented, has not banked the funds in the manner required and has not accounted for them.
- [55] I am satisfied this aspect of the complaint must be upheld. Mr Standing's behaviour was both misleading and dishonest, and accordingly grounds for complaint under section 44(2)(d) of the Act.

Demanding and retaining excess fees

- [56] I am satisfied Mr Standing did not provide professional services that reflected the fees he demanded and retained.
- [57] Mr Standing was put on notice that:
- [57.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.
- [57.2] The fee was not fair and reasonable, either at the inception, or when his engagement terminated.
- [57.3] Clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.
- [57.4] 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.
- [57.5] He breached the Code by failing to refund fees.
- [58] Mr Standing was given the opportunity to advance a case to answer the evidence, which indicated he should have refunded fees. He has not done so, and has not answered questions put to him under the Tribunal's statutory processes.
- [59] I am satisfied on the material before the Tribunal that Mr Standing provided no services, or services of minimal value, and was obliged to refund all of the fees he received. The amount he was required to refund was \$10,925 (which includes the fees he was to pay to Immigration New Zealand).
- [60] I uphold the complaint in this respect also. Mr Standing's breach of the Code (clauses 8 and 3(d)) is a ground for complaint under section 44(2)(e) of the Act. Failing to account for the client funds component was also in breach of the Code, clause 4, although that adds nothing to the dishonest misappropriation of those funds already addressed).

Submissions on Sanctions

Issues

- [61] 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.”

[62] The Authority and Ms and Mr Connell 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.

[63] 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.

[64] 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.

Mr Standing’s circumstances

[65] 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.

[66] This Tribunal is currently dealing with other complaints against Mr Standing, and has in the past dealt with complaints against Mr Standing.

[67] Mr Standing is not presently a licensed immigration adviser, as his license was cancelled by this Tribunal and limitations placed on him seeking another license.

[68] Mr Standing has also informed the Tribunal that the company through which he most recently conducted his practice has gone into liquidation (Living New Zealand Ltd – now struck off, as liquidation has been completed).

[69] 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:

- [69.1] 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.
- [69.2] 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.
- [69.3] Overseas clients had paid \$635,769.49 in deposits for work that had not been completed.
- [70] 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 from overseas clients of \$635,769.49 are less than the total fees Mr Standing received.
- [71] 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.
- [72] This information is sufficient to raise a concern that Mr Standing has received a substantial body of fees which have not been accounted for.
- [73] Accordingly, the Tribunal puts Mr Standing on notice that if he claims he does not have the means to pay penalties, and compensation:
- [73.1] He is expected to explain to the Tribunal the circumstances identified in the liquidator's reports.
- [73.2] 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.
- [73.3] He will be expected to fully explain his personal financial circumstances, including providing a statement of assets and liabilities.
- [74] If Mr Standing does not respond, the Tribunal may proceed on the basis that Mr Standing has the means to meet the financial sanctions that fully reflect the findings against him.
- [75] The timetable for submissions will be as follows:
- [75.1] The Authority and the complainants are to make any submissions within 10 working days of the issue of this decision; and
- [75.2] 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.
- [76] 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.
- [77] 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 30th day of August 2012.

G D Pearson
Chair