

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

Decision No: [2012] NZIACDT 47

Reference No: IACDT 016/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Rene Fabian Reyes Retto

Complainant

AND

Glen William Standing

Adviser

DECISION

REPRESENTATION:

Complainant: In person

Adviser: In person

Date Issued: 30 August 2012

DECISION

Introduction

- [1] Mr Retto engaged Mr Standing to provide immigration services.
- [2] He paid money to him in advance for professional fees, and also gave him money that he was to pay to the New Zealand Qualifications Authority.
- [3] Mr Standing represented to Mr Retto his ability to migrate to New Zealand was essentially assured, and the money was paid in reliance on those representations.
- [4] After paying the money, Mr Standing did little or nothing to provide the services he had agreed to provide.
- [5] Mr Retto came to New Zealand to try and resolved these issues. He met with Mr Standing and concluded he was not providing the services he agreed to provide.
- [6] Mr Retto terminated Mr Standing's engagement, and requested that Mr Standing refund the money he had paid. Mr Standing ignored the requests.
- [7] The evidence provided grounds for potentially taking the view that Mr Standing dishonestly misrepresented to Mr Retto he could provide him with the opportunity to migrate to New Zealand, with the intention that he would pay fees in advance, and Mr Standing would not deliver that service and retain the fees.
- [8] Mr Standing was notified by the Tribunal that the evidence in support of the complaint could justify the complaint being upheld. He has not answered the evidence that supports Mr Retto's complaint.
- [9] The Tribunal has upheld the complaint. The evidence supporting the complaint requires that the Tribunal conclude Mr Standing obtained funds dishonestly through misrepresentations, and has failed to account for the money he dishonestly solicited.

The Complaint and the Response

The complaint

- [10] On 3 February 2010 Mr Standing signed an agreement with Mr Retto, who was living in Spain.
- [11] The agreement stated that it was:

“to formalise a request by [Mr Retto] for [Golden Sands Migration (NZ) Limited] to act on his/her behalf with regard to [Mr Retto's] application for **Permanent Residency of New Zealand**.”
- [12] Mr Standing was a party to the agreement, and identified as a licensed immigration adviser, with his licence number. Golden Sands Migration (NZ) Limited (Golden Sands) was the company through which Mr Standing conducted his practice as a licensed immigration adviser.
- [13] The professional fee for this service in the agreement was identified as \$6,500, with further fees to be paid to third parties giving a total of \$10,665.
- [14] The agreement indicated Mr Retto would need to find work and apply for residence after finding work, and Golden Sands Migration (NZ) Limited (“Golden Sands”) would provide assistance with all aspects of that process for the fee charged.
- [15] Mr Retto was induced to enter into the agreement, in part by a representation in an email dated 16 December 2009 from Mr Standing, which stated that finding employment was “the least of your worries”, and stated he had 132 vacancies. The email did not signal any issues of caution or concern relating to eligibility for residence.

- [16] Mr Retto paid \$6,665 in fees which were invoiced on 25 January 2010 (\$5,500 professional fees, and \$1,165 being a fee to be paid to the New Zealand Qualifications Authority).
- [17] Mr Retto was told by a representative of Golden Sands, by email dated 17 June 2010, that it was too early to approach prospective employers. In the period from August 2010 to January 2011 Mr Retto sent several emails to Golden Sands, and received no reply.
- [18] On 18 January 2011, Mr Retto emailed Mr Standing and complained that it appeared he was receiving no service, despite payment of fees. He threatened to complain to various authorities.
- [19] On 19 January 2011, Golden Sands sent an email claiming it had not been possible to do anything until closer to the time Mr Retto came to New Zealand, and claimed the previous emails had not been received.
- [20] On 17 March 2011, Mr Retto came to New Zealand on a visitor's visa and met with Mr Standing.
- [21] Mr Retto was not satisfied Mr Standing was providing the service in the agreement of 3 February 2010, and accordingly terminated the professional engagement and requested a refund of the fees he had paid, compensation for his expenses, and the return of his documents.
- [22] The request was ignored.
- [23] Mr Standing and Golden Sands provided little or no assistance to Mr Retto.
- [24] The compensation Mr Retto sought (in addition to a refund of fees of \$6,665) was:
 - [24.1] \$148 (flight from New Zealand to Australia);
 - [24.2] \$50.90 (postage from Spain to New Zealand);
 - [24.3] \$945.45 (translation of documents).
- [25] Mr Retto has more recently itemised a claim for \$20,148.46, to compensate him for the losses he says he has incurred.

The response

- [26] Mr Standing's response to the complaint was in the following terms, in a letter dated 30 April 2011 addressed to the Authority:

"Whilst we understand that Mr Reyes is disappointed that he has not secured employment in New Zealand, our terms of business clearly states ... that we cannot guarantee him employment, we only assist him.

[The agreement also] states that if Mr Reyes cancels the agreement, no refund is due.

In closing, we have honoured our contractual agreement with Mr Reyes and have returned all documentation owned by him to the address stated with the complaints form. I do not see where I have been negligent, dishonest or in breach of the code of conduct."

The Issues to be Determined

- [27] The allegation against Mr Standing is to the effect that:
 - [27.1] He induced Mr Retto to enter into an agreement for the provision of professional services, for a substantial fee.

- [27.2] He did so using his status as a licensed professional and using misrepresentations regarding professional service delivery.
- [27.3] Having secured the fees he did not intend to provide the services, or he failed to deliver them.
- [27.4] He then relied on the terms of the agreement to disclaim liability for his own unprofessional conduct.
- [28] Mr Standing was a licensed professional, who is bound by the Immigration Advisers Licensing Act 2007, and the Licensed Immigration Advisers Code of Conduct.
- [29] Clause 1 of the Code of Conduct (developed and published pursuant to sections 37 and 38 of the Act) found at www.iaa.govt.nz, 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, and instructions accepted with the client's informed consent.
- [30] Clause 1 of the Code requires that a licensed immigration adviser must discharge professional engagements with due care, diligence and respect. That requires them to ensure that their professional service delivery meets proper standards.
- [31] Clause 5 of the Code requires that a licensed immigration adviser must not in a false, fraudulent or deceptive manner, misrepresent or promote himself or herself, their business, or their client's immigration opportunities.
- [32] Clause 8 of the Code prohibits a licensed immigration adviser from setting a fee that is not "fair and reasonable".
- [33] Section 44 of the Act provides that breaches of the Code are grounds for complaint, and that both dishonest and misleading behaviour are also grounds for complaint.
- [34] The issue for the Tribunal to determine is whether it is satisfied Mr Standing breached any of these professional standards.

Context and Scope of Evidence and Mr Standing Failing to Respond to Questions

Other complaints

- [35] The Tribunal issued a Minute dated 11 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.
- [36] The Minute made it clear to the parties they could provide further information, and that would be considered by the Tribunal.
- [37] The Minute also requested further information from Mr Standing, and put him on notice that any response should take account of the fact he was facing multiple complaints, some of which had strikingly similar components.
- [38] The Minute explained to Mr Standing:
- [38.1] 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.
- [38.2] The Tribunal was currently dealing with other complaints against Mr Standing. This complaint is not unique in presenting an allegation that substantial fees have been paid in advance by an offshore client, followed by a total or substantial failure to deliver the professional services promised, and a refusal to refund fees in reliance on the terms of the contract.

- [38.3] 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, where fees were paid and service was not delivered, may be probative evidence when the Tribunal determines whether there was systematic dishonesty, incompetence, or a set of circumstances amounting to an innocent explanation.
- [38.4] 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 faces multiple complaints that include the features of:
- [38.4.1] Demanding and receiving fees in advance amounting to several thousands of dollars from offshore clients.
 - [38.4.2] Failing to deliver the professional services promised, or negligently providing substandard services.
 - [38.4.3] Refusing to refund the fees paid in advance in reliance on contractual terms.
- [38.5] Accordingly, Mr Standing was invited 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 failure to deliver service 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.
- [38.6] If the Tribunal did find a series of complaints establishes that Mr Standing has repeatedly taken fees and not provided services, this will potentially be regarded as material when determining the present complaint, subject to any submissions on the point.
- [39] As it has transpired, Mr Standing has not provided any explanation, beyond the response to the Authority identified above. He has not responded to the Minute issued by the Tribunal.
- [40] 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.
- [41] 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.
- [42] 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 [38.4], and have been upheld.
- [43] The complaints, when viewed together, show Mr Standing was systematically using similar strategies to have multiple clients pay him money in advance, failing to deliver the professional services he promised to induce the payment of fees in advance; and then refused to refund fees.
- [44] 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.

Decision

- [45] 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.

- [46] Mr Standing was personally responsible for professional service delivery in relation to this complaint.
- [47] The Code (clause 3) required 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 to date. The Minute drew that to his attention.
- [48] 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 Mr Retto. I am sure that the evidence establishes the grounds of complaint have been made out.
- [49] The assurance that the serious findings of dishonesty are required and justified is affirmed by the fact that the 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.
- [50] He has not responded, and must face the consequences of the evidence against him.

Dishonest or misleading behaviour

- [51] When read together, Mr Standing's email of 16 December 2009 and the service delivery agreement (signed by Mr Standing on 3 February 2010) create the impression that Mr Retto could reasonably expect to gain a residence visa.
- [52] To pursue that prospect he had to pay \$6,500 in non-refundable fees.
- [53] If he was acting honestly, professionally, had set fees that were fair and reasonable, and accurately represented Mr Retto's immigration opportunities, Mr Standing would be expected to hold a written record (Code clause 3) documenting that he:
 - [53.1] Evaluated Mr Retto's eligibility for a residence visa.
 - [53.2] Informed Mr Retto of any reasonably material risks associated with his entitlement to gain a residence visa.
 - [53.3] Adequately informed Mr Retto of the process for applying for a residence visa.
 - [53.4] Made an evaluation of the proper cost of the professional services required, and satisfied himself the figure of \$6,500 was fair and reasonable (taking account of it not being refundable).
 - [53.5] Disclosed and obtained Mr Retto's informed consent to an agreement to charge a non-refundable fee.
- [54] The evidence gives no indication that Mr Standing did attempt a professional evaluation and disclosure process of that kind; rather it indicates unqualified promises which were made without inquiry or evaluation, and an absence of any attempt to gain informed instructions from Mr Retto.
- [55] The material before the Tribunal does not reflect the record of a professional engagement conducted in accordance with the Act and the Code. Mr Standing had the opportunity to correct that impression if it was wrong.
- [56] Further, the material before the Tribunal shows Mr Standing failed to deliver professional services that reflected the fees he demanded and accepted.
- [57] A licensed immigration adviser having Mr Retto's instructions would be expected to be actively communicating with him. The evidence before the Tribunal shows Mr Standing did not

respond to his client's emails and was not taking active steps reflecting his professional engagement after the fee was paid.

[58] Accordingly, I must make the findings required on the evidence before the Tribunal. I am satisfied:

[58.1] Mr Standing represented that Mr Retto could readily migrate to New Zealand, and was indifferent to the truth of that representation, as it was simply intended to have him pay fees on that expectation.

[58.2] Mr Standing provided little or no professional services after receipt of the fees, and failed to communicate with his client regarding the delivery of those services.

[58.3] Mr Standing did not intend to deliver the professional services he agreed to provide in the service delivery agreement.

[58.4] Mr Standing's professional relationship with Mr Retto was a dishonest enterprise. He procured the payment of fees with the promise of providing services he did not intend to provide, and did not provide.

[59] 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. It was also in breach of the Code of Conduct (clauses 1 and 5), which is also grounds for complaint pursuant to section 44(2)(e) of the Act.

Demanding and retaining excess fees

[60] I am satisfied Mr Standing did not provide professional services that reflected the fees he demanded and retained.

[61] Mr Standing was put on notice:

[61.1] On the material before the Tribunal, the view was open that Mr Standing did not provide any professional service that was of substantial value, and he demanded and retained fees and disbursements of \$6,665.

[61.2] Clause 8 of the Code obliged him to set fees that were fair and reasonable.

[61.3] The fee was not fair and reasonable, either at inception or when his engagement terminated.

[61.4] That clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.

[61.5] That the fees were wholly repayable as they were not fair or reasonable.

[61.6] He breached the Code by failing to refund fees.

[62] Mr Standing has not answered the evidence, which indicated he should have refunded fees.

[63] 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 \$6,665 (which includes the fees he was to pay to the New Zealand Qualifications Authority).

[64] 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.

Submissions on Sanctions

Issues

[65] 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.”

[66] The Authority and Mr Retto 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 Mr Retto.

[67] Mr Retto has already provided a submission in which he seeks a refund of fees, and compensation amounting to \$20,148.46. That submission will be taken into account.

[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] 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

[70] 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.

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

- [72] Mr Standing is not presently a licensed immigration adviser as his licence was cancelled by this Tribunal, and limitations placed on him seeking another licence.
- [73] 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 Limited – now struck off, as liquidation has been completed).
- [74] 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:
- [74.1] 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.
- [74.2] 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.
- [74.3] Overseas clients had paid \$635,769.49 in deposits for work that had not been completed.
- [75] 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.
- [76] 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.
- [77] This information is sufficient to raise a concern that Mr Standing has received a substantial body of fees which have not been accounted for.
- [78] Accordingly, the Tribunal puts Mr Standing on notice that if he claims he does not have the means to pay penalties, and compensation:
- [78.1] He is expected to explain to the Tribunal the circumstances identified in the liquidator's reports.
- [78.2] 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.
- [78.3] He will be expected to fully explain his personal financial circumstances, including providing a statement of assets and liabilities.
- [79] 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.
- [80] The timetable for submissions will be as follows:
- [80.1] The Authority and Mr Retto are to make any submissions within 10 working days of the issue of this decision.
- [80.2] Mr Standing is to make any further submissions (whether or not the Authority or Mr Retto 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 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