

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

Decision No: [2012] NZIACDT 48

Reference No: IACDT 030/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

**Andrew McGeorge and Nicola
McGeorge**

Complainants

AND

Glen William Standing

Adviser

DECISION

REPRESENTATION:

Complainants: In person

Adviser: In person

Date Issued: 30 August 2012

DECISION

Introduction

- [1] Mr McGeorge engaged Mr Standing to provide immigration services.
- [2] He paid money to him in advance for professional fees.
- [3] Mr Standing represented to Mr McGeorge 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 Standing's licence was cancelled by this Tribunal on an independent complaint, and he was no longer able to provide the services. He has not refunded the fees paid in advance.
- [6] The evidence supporting the complaint provided grounds for potentially taking the view that Mr Standing dishonestly misrepresented to Mr McGeorge 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.
- [7] Mr Standing was notified by the Tribunal of the potential finding based on the evidence in support of the complaint. He has neither answered, nor explained, that evidence.
- [8] 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

- [9] On 17 June 2011, Mr Standing signed two agreements with Mr McGeorge, who had signed them on 22 May 2011.
- [10] One agreement (the immigration services agreement) stated it was:

“to formalise a request by [Mr McGeorge] for [Living New Zealand Ltd] to act on his/her behalf with regard to [Mr McGeorge's] application for **Permanent Residency of New Zealand**.”
- [11] The other agreement (the employment services agreement) stated it was:

“to formalise a request by [Mr McGeorge] for [Living New Zealand Ltd] to act on his/her behalf with regard to [Mr McGeorge's] application for **Permanent Employment in New Zealand**.”
- [12] The immigration services agreement identifies Mr Standing as a party to the agreement on the front page, but is executed by the company only.
- [13] The employment services agreement identifies Living New Zealand Ltd as a party on the front page, but not Mr Standing, and only the company has executed it. However, immediately above the place where the parties have executed the agreement, Mr Standing is identified as “Director of Immigration, Licensed Immigration Adviser 200800361”.
- [14] It is only the immigration services agreement that provides for fees to be paid.
- [15] The professional fee for immigration services was identified as \$9,255, with further fees to be paid to third parties giving a total of \$12,000. Of that, \$6,500 was to be paid initially as a “sign on fee”, and the balance in instalments.

- [16] The immigration services agreement provides that the adviser, Mr Standing, will assess Mr McGeorge's circumstances with reference to immigration requirements, but also provides that employment services will be provided, such as "supporting you through the entire job search and application process".
- [17] Mr McGeorge was induced to enter into the agreements, in part, by a course of email communication, in which Mr Standing had, in a helpful and responsive manner, addressed various questions.
- [18] The immigration and employment services appeared interrelated. The agreements and communications gave the impression that to gain residence, a position of employment would first be obtained. After a position of employment was obtained, the immigration application could be made.
- [19] On 8 June 2011, Mr McGeorge paid \$6,500 in fees, which were invoiced on 27 April 2011 (prior to the agreement being signed).
- [20] On 5 July 2011, Mr Standing was in Manchester, England. Ms and Mr McGeorge lived in England, and met with him to discuss the services Mr Standing was to provide. At that meeting, Ms and Mr McGeorge explained to Mr Standing they wished to migrate as soon as practicable, and he agreed that could be done.
- [21] Mr Standing said he needed to have an expression of interest form completed to commence the residence process as soon as possible, and a recruitment adviser from his office would be in contact in the next few days.
- [22] Following that meeting, Ms and Mr McGeorge endeavoured to progress their migration with Mr Standing's office, without a satisfactory response. By mid-August 2011 they notified Mr Standing's office that they were considering making a complaint to the Authority regarding the lack of service.
- [23] On 17 August 2011, Mr Standing wrote to Ms and Mr McGeorge using a standard letter which appeared to have been sent to clients generally, as it was not personalised. The letter said Living New Zealand Ltd had gone into liquidation as a result of this Tribunal cancelling Mr Standing's licence. The letter indicated that some unidentified colleague of Mr Standing would review his client's files and proceed on Mr Standing's behalf, with Mr Standing carrying on in an "administrative role".
- [24] On 19 August 2011, Ms and Mr McGeorge asked in an email whether they could get their money back, and the name and licence number of the licensed adviser he planned to use.
- [25] On 22 August 2011, Mr Standing said in an email that any refund would be the responsibility of the liquidator of Living New Zealand Ltd. He would not divulge the identity of the adviser unless Ms and Mr McGeorge "wish to continue with your application with me".

The response

- [26] Mr Standing's response to the complaint was contained in an email and a letter, both dated 30 September 2011.
- [27] In the email he referred to the loss of his licence, and the consequent termination of his practice.
- [28] He also referred to an expectation that there would be further complaints lodged with the Authority.
- [29] In the letter, Mr Standing said he no longer had the file, but from his recollection claimed:
 - [29.1] Communication had been timely and appropriate, subject to explicable minor delays.
 - [29.2] The contractual agreement related to residency.

[29.3] Section 14 of the agreement for employment services gave “no guarantees”.

[29.4] The only reason for the complaint was the Authority's decision to cancel Mr Standing's full licence.

[29.5] Mr Standing offered to assist Mr McGeorge in an “administrative capacity”, and that was rejected.

[29.6] Mr Standing did not provide any “misleading information”, and was not dishonest.

The Issues to be Determined

[30] The allegation against Mr Standing is to the effect that:

[30.1] He induced Mr McGeorge to enter into an agreement for the provision of professional services, for a substantial fee.

[30.2] He did so using his status as a licensed professional, and misrepresentations regarding professional service delivery.

[30.3] Having secured the fees, he did not intend to provide the services, or he failed to deliver them.

[30.4] He then relied on the terms of the agreement to disclaim liability for his own unprofessional conduct.

[31] Mr Standing was a licensed professional, who is bound by the Immigration Advisers Licensing Act 2007, and the Licensed Immigration Advisers Code of Conduct.

[32] 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.

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

[34] 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.

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

[36] 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.

[37] 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.

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

Other complaints

[38] The Tribunal issued a Minute dated 10 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.

- [39] The Minute made it clear to the parties that they could provide further information which would be considered by the Tribunal.
- [40] 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.
- [41] The Minute explained to Mr Standing:
- [41.1] 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.
 - [41.2] Mr Standing's anticipation that there would be other complaints has proved to be correct. The Tribunal was dealing with other complaints against Mr Standing. 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, and a refusal to refund fees.
 - [41.3] The approach this Tribunal would take was that it would 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.
 - [41.4] In the present case, the period during which Mr Standing failed to deliver professional services was relatively short. Nonetheless, Ms and Mr McGeorge had put Mr Standing on notice that they were contemplating lodging a complaint with the Authority prior to his licence being cancelled. Other complaints involve allegations of non-delivery of professional services over longer periods. If taking fees and not delivering services was a pattern of conduct, Mr Standing's non-performance in the present case inevitably becomes more difficult to explain satisfactorily, despite its relatively short duration.
 - [41.5] 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:
 - [41.5.1] Demanding and receiving fees in advance amounting to several thousands of dollars from clients.
 - [41.5.2] Failing to deliver the professional services promised, or negligently providing sub-standard services.
 - [41.5.3] Refusing to refund the fees paid in advance in reliance on contractual terms.
 - [41.6] Accordingly, Mr Standing was told he should 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 that was the Tribunal's finding when other complaints were determined.
 - [41.7] If the Tribunal did find a series of complaints established that Mr Standing had repeatedly taken fees and not provided services, this would potentially be regarded as material when determining the present complaint, subject to any submissions on the point.
- [42] As it has transpired, Mr Standing has not provided any explanation, beyond the response to the Authority identified above.

- [43] 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.
- [44] 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.
- [45] 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 which appear in this complaint (outlined in para [41.5] above), and those complaints have been upheld.
- [46] The complaints, when viewed together, show Mr Standing was systematically using similar strategies to have multiple clients pay him money in advance, whereby he failed to deliver the professional services he promised to induce payment of fees in advance, and subsequently refused to refund fees.
- [47] 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".
- [48] 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.

Information requested from Mr Standing

- [49] Mr Standing said he did not have his client record in relation to the complaint, and referred to the liquidation of the company Living New Zealand Ltd. He claimed the liquidator had his records.
- [50] In the Minute, pursuant to section 49(4)(a), the Tribunal requested Mr Standing to respond to each of the issues raised in Ms and Mr McGeorge's complaint, with reference to his client record.
- [51] 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 have been in a position to present a fully documented record of the professional engagement which is subject to the complaint.
- [52] The Code has the force of law (section 37–39 and 44 of the Act).
- [53] It was implausible any responsible liquidator would impede Mr Standing from obtaining a copy of his client record to respond to a complaint, given the legal duties on Mr Standing.
- [54] Mr Standing had produced no evidence he attempted to produce the record.
- [55] The Minute 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.
- [56] 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 he has chosen to withhold his record, and reach conclusions adverse to him on that basis.
- [57] Mr Standing did not respond to the Minute.

Decision

- [58] 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.
- [59] Mr Standing was personally responsible for professional service delivery in relation to this complaint.
- [60] 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.

Dishonest or misleading behaviour

- [61] Mr Standing created the impression that Mr McGeorge and his family could reasonably expect to gain residence in New Zealand.
- [62] To pursue that prospect, Mr McGeorge had to pay \$6,500 immediately, and a total of \$12,000.
- [63] If Mr Standing was acting honestly, professionally, had set fees that were fair and reasonable, and accurately represented Mr McGeorge's immigration opportunities, he should hold a written record (Code clause 3), recording that he:
 - [63.1] Evaluated Mr McGeorge's eligibility for a residence visa.
 - [63.2] Informed Mr McGeorge of any reasonably material risks associated with his entitlement to gain a residence visa.
 - [63.3] Adequately informed Mr McGeorge of the process for applying for a residence visa.
 - [63.4] Made an evaluation of the proper cost of the professional services required, and satisfied himself the figure of \$12,000 was fair and reasonable.
- [64] Given the absence of a response from Mr Standing, his conduct must be determined on the basis of the record before the Tribunal.
- [65] The evidence gives no indication that Mr Standing did attempt a professional evaluation and disclosure process of that kind; rather it indicates that unqualified promises were made without inquiry or evaluation, and an absence of any attempt to gain informed instructions from Mr McGeorge.
- [66] 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.
- [67] Further the material before the Tribunal shows Mr Standing failed to deliver professional services that reflected the fees he demanded and accepted.
- [68] The Minute also put Mr Standing on notice that unless he produced records, or explained their absence, and demonstrated he did act properly, the Tribunal would potentially rely on the record that indicated:
 - [68.1] 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.
 - [68.2] His conduct stands in contrast to his active engagement with Ms and Mr McGeorge when he was inducing them to make the payment of \$6,500.

- [68.3] Mr Standing did not intend to deliver the professional services he agreed to provide in the service delivery agreement.
- [69] The Tribunal must reach the conclusions the evidence and the record requires, given the absence of any evidence or sensible explanation from Mr Standing.
- [70] Accordingly, I find on the evidence before the Tribunal:
- [70.1] Mr Standing represented that Mr McGeorge 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.
- [70.2] 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.
- [70.3] Mr Standing did not intend to deliver the professional services he agreed to provide in the service delivery agreement.
- [70.4] Mr Standing's professional relationship with Mr McGeorge 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.
- [71] I have carefully considered the relatively short time over which the failure to deliver services occurred, and been cautious before making a finding that evidenced dishonesty. However, as noted, Mr Standing persisted with that course despite active intervention by Mr McGeorge. The issue has been put to Mr Standing using the Tribunal's statutory processes, and he has not responded.
- [72] If I had been left in doubt, I would also have taken account of the fact that this complaint is one of several examples where Mr Standing has actively engaged in the process of soliciting fees, and then become uncommunicative as soon as he received money. I am satisfied this complaint is one of many where Mr Standing dishonestly took fees with no intention of providing services. It was a routine practice he adopted, and very substantial amounts of money are involved.
- [73] Accordingly, 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

- [74] I am satisfied Mr Standing did not provide professional services that reflected the fees he demanded and retained.
- [75] Mr Standing was put on notice that the evidence was a basis for the view that:
- [75.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.
- [75.2] The fee was not fair and reasonable, either at inception or when his engagement terminated.
- [75.3] Clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.
- [75.4] The fees were wholly repayable as they were not fair or reasonable.
- [75.5] He breached the Code by failing to refund fees.
- [76] Mr Standing has not answered the evidence, which indicated he should have refunded fees.

- [77] 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 \$6,500.
- [78] 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

- [79] 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.”

- [80] The Authority and Mr McGeorge 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.
- [81] 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.
- [82] 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

- [83] 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.
- [84] This Tribunal is currently dealing with other complaints against Mr Standing, and has previously dealt with complaints against Mr Standing.
- [85] Mr Standing is not presently a licensed immigration adviser; his licence was cancelled by this Tribunal, and limitations placed on him seeking another licence.
- [86] Mr Standing also informed the Tribunal that the company through which he most recently conducted his practice had gone into liquidation (Living New Zealand Ltd – now struck off, as liquidation has been completed).
- [87] 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:
 - [87.1] 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.
 - [87.2] 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.
 - [87.3] Overseas clients had paid \$635,769.49 in deposits for work that had not been completed.
- [88] 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.
- [89] 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.
- [90] This information is sufficient to raise a concern that Mr Standing has received a substantial body of fees which have not been accounted for.
- [91] Accordingly, the Tribunal puts Mr Standing on notice that if he claims he does not have the means to pay penalties and compensation:
 - [91.1] He is expected to explain to the Tribunal the circumstances identified in the liquidator's reports.
 - [91.2] 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.
 - [91.3] He will be expected to fully explain his personal financial circumstances, including providing a statement of assets and liabilities.
- [92] 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.
- [93] The timetable for submissions will be as follows:
 - [93.1] The Authority and Ms and Mr McGeorge are to make any submissions within 10 working days of the issue of this decision.

- [93.2] Mr Standing is to make any further submissions (whether or not the Authority or the McGeorges make submissions) within 15 working days of the issue of this decision.
- [94] 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.
- [95] 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 30th day of August 2012.

G D Pearson
Chair