

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

Decision No: [2012] NZIACDT 49

Reference No: IACDT 035/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Benoy Balakrishnan Nair

Complainant

AND

Glen William Standing

Adviser

DECISION

REPRESENTATION:

Complainant: In person

Adviser: In person

Date Issued: 30 August 2012

DECISION

Introduction

- [1] Mr Nair engaged Mr Standing to provide immigration services.
- [2] He paid money to him in advance for professional fees.
- [3] Mr Nair was induced to pay the fees by dishonest fabrications from Mr Standing that:
 - [3.1] he provided his professional services as “an immigration law firm”;
 - [3.2] Mr Nair was “100% guaranteed” residence; and
 - [3.3] if Mr Standing did not deliver residence to Mr Nair, Mr Standing could be prosecuted for the failure to do so.
- [4] After paying the money, Mr Standing did little or nothing to provide the services he had agreed to provide.
- [5] Mr Standing did not refund the payments Mr Nair made to him.
- [6] The evidence supporting the complaint, and the potential conclusion that Mr Standing was dishonest and procured fees in advance for services he would not deliver, was put to Mr Standing by the Tribunal. He has neither answered, nor explained that evidence.
- [7] 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

- [8] Mr Standing was a licensed immigration adviser. On 13 September 2010 he entered into two agreements with Mr Nair. Mr Nair was living in New Zealand and held a temporary visa.
- [9] Only parts of the agreements have been supplied to the Tribunal. Mr Nair says the agreements were with Mr Standing and a company named Living New Zealand Ltd. Mr Standing was identified as a licensed immigration adviser, with his licence number.
- [10] It appears one agreement focused on immigration services, and the other for services related to seeking a position of employment.
- [11] Mr Nair was induced to enter into the agreements, in part, by representations from Mr Standing. They included an email dated 8 September 2010, which represented that:
 - [11.1] Mr Standing’s practice was “an immigration law firm”.
 - [11.2] He was a licensed adviser, and able to provide legal advice.
 - [11.3] Mr Standing’s “success is your guarantee as per the code of conduct”
 - [11.4] The total fee was \$9,500, including fees payable to third parties and GST. The fee would be paid in instalments, with the “1st payment at the beginning as most of our work is done at this stage”.

[11.5] Mr Nair was guaranteed residence, and Mr Standing said:

“In order to proceed forward and on confirmation from yourself via reply email, we will forward you our **Terms of Business and first invoice**. This is mandatory in New Zealand Law and moreover, is your guarantee of success. In accordance with my IAA Licence & the New Zealand Government, this is 100% guaranteed (subject to viewing your medicals and police clearances), therefore if I fail to achieve residency of New Zealand for you, you not only get your money back, but I can also be prosecuted.”

- [12] The agreements provided for Mr Nair to pay \$8,437.50 as the initial instalment, and contained terms that if Mr Nair was not able to gain a residence visa, his money would be refunded. Mr Nair paid the instalment after receiving a tax invoice for that amount dated 10 September 2010. The tax invoice stated that the professional fee was \$5,500 for “Immigration” and \$2,000 for “Employment”, which amounted to \$8,437.50 after GST of \$937.50 was added.
- [13] Mr Nair understood he needed to find appropriate work, and apply for residence after finding work. Providing assistance with this was part of the service Mr Standing was to provide for the fees paid to him.
- [14] Mr Nair was given the contact details for a person in the United Kingdom who was to assist him in gaining employment, and he was expected to contact that person at his own expense. There is no explanation as to why a person outside New Zealand would be providing that service.
- [15] Mr Nair attempted to make contact with the person who was to assist with seeking employment, but could get no response from them. He contacted Mr Standing’s office in New Zealand, and had no response from there either.
- [16] Mr Nair made repeated and persistent attempts to contact Mr Standing, and received no response.
- [17] Mr Nair received no professional service from Mr Standing, or anyone associated with him, other than receiving a brochure and two forms which Mr Nair could have readily downloaded himself without cost, using the internet.
- [18] On 17 May 2011, Mr Nair wrote to Mr Standing’s office saying his temporary visa would expire on 6 July 2011 and he was leaving New Zealand, and he sought the return of his money. There was no response from Mr Standing.
- [19] Mr Standing had his licence cancelled by this Tribunal with effect from 15 August 2011, due to an unrelated complaint, and Living New Zealand Ltd was put into liquidation.
- [20] On 26 August 2011 the liquidator of Living New Zealand Ltd wrote to Mr Nair and provided him with a report relating to the liquidation. The report contained the following information:
- [20.1] The liquidation was an insolvent liquidation.
- [20.2] As to liabilities for professional services paid for and not delivered:
- “Overseas clients have paid deposits totalling \$NZD635,768.49 (as per the enclosed spreadsheet) for application packs and work to be performed with respect to Stage 1 of the immigration process. It is estimated that overall 70% of this work has been performed.”
- [20.3] The report does treat Mr Nair as a client owed money, though using one of his forenames as his surname.
- [21] Mr Nair seeks the refund of the fees he paid, compensation for the consequences of Mr Standing failing to deliver the professional services he promised, and his out of pocket expenses from making telephone calls, copying and other similar expenses.

The response

- [22] Mr Standing's response to the complaint was by letter dated 2 November 2011 addressed to the Authority. The key elements were:
- [22.1] Living New Zealand Ltd was in liquidation, and Mr Standing no longer had Mr Nair's file.
- [23] From recollection without his file, he claimed:
- [23.1] Communication had been timely and appropriate.
- [23.2] The contractual agreement was fulfilled by providing documents, and Mr Nair was required to obtain employment.
- [23.3] Section 14 of the agreement for employment services gave "no guarantees".
- [23.4] The only reason for the complaint was the Authority's decision to cancel Mr Standing's full licence, making it impossible for him to provide the services contracted for.
- [23.5] Mr Standing offered to assist Mr Nair in an "administrative/clerical capacity", and that was rejected.
- [23.6] Mr Standing did not provide any "misleading information", and was not dishonest.

The Issues to be Determined

- [24] The allegation against Mr Standing is to the effect that:
- [24.1] He induced Mr Nair to enter into an agreement for the provision of professional services, for a substantial fee.
- [24.2] He did so using his status as a licensed professional and misrepresentations regarding professional service delivery.
- [24.3] He also misrepresented that his practice was a specialist "law firm".
- [24.4] He further misrepresented that his status as a licensed immigration adviser and the New Zealand Government provided a "100% guarantee" of residence.
- [24.5] Having secured the fees he did not intend to provide the services, or he failed to deliver them.
- [24.6] He then relied on the terms of the agreement to disclaim liability for his own dishonest and unprofessional conduct.
- [25] Mr Standing was a licensed professional, who is bound by the Immigration Advisers Licensing Act 2007, and the Licensed Immigration Advisers Code of Conduct.
- [26] 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.
- [27] 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.
- [28] 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.

- [29] Clause 8 of the Code prohibits a licensed immigration adviser setting a fee that is not “fair and reasonable”.
- [30] 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.
- [31] 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 against Mr Standing

- [32] 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.
- [33] The Minute made it clear to the parties they could provide further information, and that would be considered by the Tribunal.
- [34] 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.
- [35] The Minute explained to Mr Standing:
 - [35.1] 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.
 - [35.2] This Tribunal was currently 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 in reliance on the terms of the contract.
 - [35.3] In the present complaint the evidence before the Tribunal included a liquidator's report that indicates that in excess of \$600,000 in professional fees had been received from clients who have not been delivered all the professional services they were entitled to.
 - [35.4] The approach this Tribunal would take was 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 is 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.
 - [35.5] 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:
 - [35.5.1] Demanding and receiving fees in advance amounting to several thousands of dollars.
 - [35.5.2] Failing to deliver the professional services promised, or negligently providing sub-standard services.
 - [35.5.3] Refusing to refund the fees paid in advance in reliance on contractual terms.

- [35.6] Accordingly, Mr Standing was requested 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 services in the context of a practice that was otherwise meeting the minimum professional standards, if this was the Tribunal's finding when other complaints have been determined.
- [35.7] If the Tribunal does find a series of complaints have established that Mr Standing has repeatedly taken fees and not provided services, that will potentially be regarded as material when determining the present complaint, subject to any submissions on the point.
- [36] As it has transpired, Mr Standing has not provided any explanation, beyond the response to the Authority identified above.
- [37] 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.
- [38] 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.
- [39] 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 para [35.5], above), and those complaints have been upheld.
- [40] 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 deliver the professional services he promised to induce payment of fees in advance, and he subsequently refused to refund fees.
- [41] 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".
- [42] As Mr Standing has provided no explanation, I have simply found the complaint established on the evidence presented in support of it.

Request for further information from Mr Standing

- [43] Mr Standing said he says he does not have his client record in relation to the complaint, and referred to the liquidation of the company Living New Zealand Ltd.
- [44] Pursuant to section 49(4)(a), the Tribunal's Minute requested Mr Standing respond to each of the issues raised in Mr Nair's complaint, with reference to his client record.
- [45] 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.
- [46] The Code has the force of law (sections 37–39 and 44 of the Act).
- [47] It is implausible that the liquidator, who is a chartered accountant, would impede Mr Standing from obtaining a copy of his client record to respond to a complaint, given the legal duties on Mr Standing.
- [48] Mr Standing has produced no evidence that he has attempted to produce the record.

- [49] The Tribunal's Minute 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.
- [50] 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.
- [51] Mr Standing has not responded to this aspect of the Tribunal's Minute either.

Decision

- [52] 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.
- [53] Mr Standing was personally responsible for professional service delivery in relation to this complaint.
- [54] 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 Nair. 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

- [55] Mr Standing's email of 8 September 2010 contained the representations that:
 - [55.1] Mr Standing conducted his practice as "an immigration law firm", where he was a licensed immigration adviser.
 - [55.2] On entering into a contract and paying the fees demanded, Mr Nair was "100% guaranteed" residence, and that Mr Standing's status as a licensed immigration adviser and the New Zealand Government ensured that.
 - [55.3] Further, Mr Standing could be prosecuted if the guarantee was not fulfilled.
- [56] I am satisfied Mr Standing knew each of those representations was false and he made them with the intention of dishonestly procuring the payment of \$8,437.50, which he received.
- [57] If Mr Standing was acting honestly, professionally, had set fees that were fair and reasonable, and accurately represented Mr Nair's immigration opportunities, he should hold a written record (Code of Conduct, clause 3) documenting that he:
 - [57.1] Evaluated Mr Nair's eligibility for a residence visa.
 - [57.2] Informed Mr Nair of any reasonably material risks associated with his entitlement to gain a residence visa.
 - [57.3] Adequately informed Mr Nair of the process for applying for a residence visa.
 - [57.4] Made an evaluation of the proper cost of the professional services required, and satisfied himself the figure of \$9,500 (the total fee) was fair and reasonable (taking account of it not being refundable, as he now claims).
 - [57.5] Disclosed and obtained Mr Nair's informed consent to an agreement to charge a fee that was non-refundable on certain contingencies.

- [58] Mr Standing was put on notice from the Tribunal's Minute that unless he produced such records, or explained their absence, and demonstrated he did act properly, the Tribunal would potentially find the service delivery agreement and demand for fees was part of a dishonest and unprofessional enterprise that commenced with the misrepresentations identified.
- [59] Mr Standing has not responded, and inevitably the Tribunal must reach the conclusions the material before it requires; there is no evidence that suggests Mr Standing attempted to conduct himself in a professional manner. On the contrary, the record shows he freely fabricated whatever information he supposed would induce Mr Nair to pay him fees for services he made no attempt to deliver.
- [60] I am satisfied that Mr Standing failed to deliver professional services reflecting the fees he demanded and accepted, and he did not attempt to deliver those professional services. A licensed immigration adviser in such circumstances would be expected to be actively communicating with their client, and the evidence is that Mr Standing did not respond to his client's communications over an extended period, and was not taking active steps reflecting his professional engagement after the fee was paid.
- [61] I am satisfied:
- [61.1] 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.
- [61.2] Mr Standing did not intend to deliver the professional services he agreed to provide in the service delivery agreement.
- [62] 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

- [63] I am satisfied Mr Standing did not provide professional services that reflected the fees and disbursements of \$8,437.50 he demanded and retained.
- [64] Mr Standing was on notice that:
- [64.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.
- [64.2] The fee was not fair and reasonable either at inception, or when his engagement terminated.
- [64.3] Clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.
- [64.4] The fees were wholly repayable as they were not fair or reasonable.
- [64.5] He breached the Code by failing to refund fees.
- [65] Mr Standing has not answered the evidence, which indicated he should have refunded fees.
- [66] 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 \$8,437.50.
- [67] 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

[68] 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.”

[69] The Authority and Mr Nair 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 Nair.

[70] 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.

[71] 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

[72] 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.

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

[74] 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.

- [75] 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 Ltd – now struck off, as liquidation has been completed).
- [76] 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:
- [76.1] 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.
- [76.2] 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.
- [76.3] Overseas clients had paid \$635,769.49 in deposits for work that had not been completed.
- [77] 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 \$635,769.49 are less than the total fees Mr Standing received.
- [78] 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.
- [79] This information is sufficient to raise a concern that Mr Standing has received a substantial body of fees which have not been accounted for.
- [80] Accordingly, the Tribunal puts Mr Standing on notice that if he claims he does not have the means to pay penalties, and compensation:
- [80.1] He is expected to explain to the Tribunal the circumstances identified in the liquidator's reports.
- [80.2] 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.
- [80.3] He will be expected to fully explain his personal financial circumstances, including providing a statement of assets and liabilities.
- [81] 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.
- [82] The timetable for submissions will be as follows:
- [82.1] The Authority and Mr Nair are to make any submissions within 10 working days of the issue of this decision; and
- [82.2] Mr Standing is to make any further submissions (whether or not the Authority or Mr Nair make submissions) within 15 working days of the issue of this decision.
- [83] 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.

- [84] 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