

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

Decision No: [2012] NZIACDT 50

Reference No: IACDT 036/11

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**

Authority

**BETWEEN**

**Joan Hewitt**

Complainant

**AND**

**Glen William Standing**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Complainant:** In person

**Adviser:** In person

Date Issued: 30 August 2012

## DECISION

### Introduction

- [1] Mr Hewitt engaged Mr Standing to provide immigration services for himself and his wife Ms Hewitt.
- [2] They paid money to him in advance for professional fees.
- [3] They were induced to pay the fees by Mr Standing dishonestly claiming he could immediately lodge an application for residence for them, when in fact he knew that was not possible. They had to wait until family members qualified as sponsors. He said he could make the application early, to induce Ms Hewitt and Mr Hewitt to pay fees in advance.
- [4] After paying the fees, Mr Standing did little or nothing to provide the services he had agreed to provide.
- [5] Mr Standing did not refund the payments Ms Hewitt and Mr Hewitt 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 that he 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 3 May 2011 he entered into an agreement with Mr Hewitt. Ms and Mr Hewitt wished to obtain residence visas, under the Family (Parent) category.
- [9] The agreement stated it was:
 

“to formalise a request by [Mr Hewitt] for [Living New Zealand Limited] to act on his/her behalf with regard to [Mr Hewitt’s] application for **Permanent Residency of New Zealand**.”
- [10] Mr Standing was a party to the agreement, and identified as a licensed immigration adviser, with his licence number.
- [11] The agreement said there would be total fees, including fees to be paid to third parties, of \$7,900 (excluding GST). The fee was to be paid in two instalments of \$3,950. The first instalment was paid on 5 May 2011, following an invoice dated 2 May 2011.
- [12] The agreement contained what it described as a “Performance Guarantee”. The terms stated:
 

“If Living New Zealand fails to achieve the Client’s goal of Permanent Residency of New Zealand, Living New Zealand will issue a full refund of its professional fees to the Client ...”
- [13] There were various qualifications relating to the performance guarantee.
- [14] Ms Hewitt’s complaint has two elements:
  - [14.1] Mr Hewitt was induced to enter the agreement and pay the fees by a misrepresentation that the residence visa application could be lodged six months before their sponsor qualified as a sponsor; and

[14.2] Mr Standing did not lodge an application for residence, either as he delinquently failed to deliver the professional service, or because he was aware no application could be lodged until the sponsor qualified.

[15] Ms Hewitt produced an email she sent to Mr Standing which confirmed the earlier oral representation that the application could be lodged six months in advance of the sponsor qualifying. It was dated 16 May 2011, and asked:

“If the application for the visa is sent off 6 months before the three year residency period, does that mean they will actually start to consider it then or will it be put by until the November when the three year time is up?”

[16] Mr Standing replied saying:

“In answer to your questions, technically yes, they will consider the application from lodgement date.”

#### *The response*

[17] Mr Standing’s response to the complaint was a letter dated 30 September 2011.

[18] Mr Standing said the company Living New Zealand Ltd had gone into liquidation. Apparently as a result of these events he no longer held his file relating to Mr Hewitt, and could only respond on the basis of recollection.

[19] Mr Standing claimed in the letter:

“At no stage was Mr & Mrs Hewitt ever misled on immigration advice. Mrs Hewitt refers in her email dated 5th September 2011[addressed to info@iaa] that her visa application could be lodged 6 months prior to the 3 year requirement. This may have been the case, but as clearly stressed to Mr & Mrs Hewitt, it will very much depend on the lodgements officer as to whether it will be accepted for consideration and I could not guarantee this decision. The fact that all her children were residents of New Zealand and they were close to the requirement of 3 years, it maybe accepted.”

[20] He went on to say that he had proposed that in “an administrative/clerical manner” he could “lodge the family application”. He apparently expected that Ms and Mr Hewitt would allow him to continue with the application despite his licence being cancelled by this Tribunal, and criticised them for not supporting him doing so. He did not explain how he could lodge the application in compliance with the Act, which would make such conduct a criminal offence.

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

#### *Other complaints*

[21] 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.

[22] The Minute made it clear to the parties they could provide further information, which would be considered by the Tribunal.

[23] 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.

[24] The Minute explained to Mr Standing:

[24.1] 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.

- [24.2] This Tribunal was currently dealing with other complaints against Mr Standing. Further, this complaint was not unique in presenting an allegation that:
- [24.2.1] substantial fees have been paid in advance by a misrepresentation calculated to procure the payment of fees; and
  - [24.2.2] following the payment of fees there has been a total or substantial failure to deliver the professional services promised, and a refusal to refund fees.
- [24.3] 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 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.
- [24.4] In the present case, the period during which Mr Standing failed to deliver professional services was relatively short. The misrepresentation that an application which did not qualify could be lodged in advance was difficult to explain, given that any licensed adviser would be expected to know that was not possible, and further, that Mr Standing when asked to commit the advice to writing diluted it using the word “technically”. If a series of complaints were found to establish a pattern of conduct, and that was taken into account, inevitably it becomes more difficult for Mr Standing to provide an innocent explanation.
- [24.5] 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:
- [24.5.1] Demanding and receiving fees in advance amounting to several thousands of dollars.
  - [24.5.2] Having used misrepresentations to procure the payment of those fees.
  - [24.5.3] Failing to deliver the professional services promised.
  - [24.5.4] Refusing to refund the fees paid in advance.
- [24.6] 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.
- [24.7] If the Tribunal did find a series of complaints established Mr Standing had repeatedly made misrepresentations to clients, taken fees and not provided services, and then refused refunds that should be paid; that would potentially be regarded as material when determining the present complaint.
- [25] As it has transpired, Mr Standing has not provided any explanation, beyond the response to the Authority identified above.
- [26] 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.
- [27] 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. However, that evidence is probative and can be given some weight.

- [28] 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 [24.5] above), and those complaints have been upheld.
- [29] The complaints when viewed together show Mr Standing was systematically using similar strategies to have multiple clients pay him money in advance, then failed to deliver the professional services he promised to induce payment of fees in advance, and subsequently refused to refund fees.

*Request for further information from Mr Standing*

- [30] The Tribunal understands that Mr Standing has indicated he does not have client records because they are in the hands of the liquidator of Living New Zealand Ltd.
- [31] 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, and was requested to do so.
- [32] The Code has the force of law (sections 37–39 and 44 of the Act).
- [33] Pursuant to section 49(4)(a) of the Act, the Tribunal's Minute requested Mr Standing to respond to each of the issues raised in Ms Hewitt's complaint, with reference to his client record.
- [34] 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.
- [35] Mr Standing has produced no evidence he has attempted to produce the record.
- [36] 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.
- [37] 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 he has chosen to withhold his record, and reach conclusions adverse to him on that basis.
- [38] Mr Standing has not responded to this aspect of the Tribunal's Minute either.

**The Issues to be Determined**

- [39] Mr Standing is bound by the Immigration Advisers Licensing Act 2007, and the Licensed Immigration Advisers Code of Conduct.
- [40] 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.
- [41] Professionalism requires Mr Standing to honour agreements, such as refunding fees, where applicable.
- [42] Clause 1 of the Code also 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.

- [43] Clause 5 of the Code requires that a licensed immigration adviser must not in a false, fraudulent or deceptive manner, misrepresent their client's immigration opportunities.
- [44] Clause 8 of the Code prohibits a licensed immigration adviser setting a fee that is not "fair and reasonable".
- [45] Section 44 of the Act provides that breaches of the Code, dishonesty, and misleading conduct are all grounds for complaint.
- [46] The issue for determination by the Tribunal 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**

- [47] The regime in the Act is one where individuals are licensed as immigration advisers; 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.
- [48] Mr Standing was personally responsible for professional service delivery in relation to this complaint.

#### *Dishonest or misleading behaviour*

- [49] In considering the complaint of dishonest or misleading behaviour, there is a factual dispute where Mr Standing makes a claim in his response to the Authority, which Ms Hewitt disagrees with.
- [50] Ms Hewitt responded to the Tribunal's Minute, and referred to Mr Standing's letter of 30 September 2011 (refer para [19] above). In relation to the suggestion that Ms Hewitt and Mr Hewitt were told by Mr Standing that they could apply for residence six months before their daughter qualified as a sponsor, Mr Standing said:

"This may have been the case, but as clearly stressed to Mr & Mrs Hewitt, it will very much depend on the lodgements officer as to whether it will be accepted for consideration and I could not guarantee this decision."

- [51] Ms Hewitt says that Mr Standing at no time made that qualification, orally or in writing. I accept Ms Hewitt's claim, as she has been careful and precise in relation to Mr Standing's claims. In fact, little turns on the precise point, as Mr Standing had no proper basis for suggesting that an application could be lodged early, and he admits he did say it could; and further, he had an obligation under the Code of Conduct (clause 3) to record such advice in writing. There is no record of him giving the advice, as there should be.
- [52] The Tribunal's Minute notified Mr Standing that:
  - [52.1] Ms and Mr Hewitt reject Mr Standing's claim he advised them there was a risk regarding an early lodgement of an application.
  - [52.2] The Tribunal may consider that Mr Standing's claim he qualified his representation was implausible, given that immigration officers hold no such discretion; however, Mr Standing should have records if he gave such advice at the time.
- [53] Mr Standing has not responded to the Minute.
- [54] I prefer Ms Hewitt's recollection, as I am satisfied Mr Standing was prepared to make such representations as suited his purpose at the time. In reaching that view, I am prepared to give some weight to several complaints determined by this Tribunal where Mr Standing has made patently false representations to secure advance payment of fees, in dishonest enterprises

where he both knew the representations were fabrications, and neither intended to provide services, nor provided the services, he had been paid for.

- [55] The series of complaints where those findings have been made have already been referred to above (para [28]).
- [56] I emphasise, I give weight to the evidence in the other complaints with caution, and only to the extent they truly have probative value in this complaint. I accept there is probative value, as the other complaints evidence a distinctive *modus operandi* (*R v Tukuafu* [2003] 1 NZLR 659 (CA)).
- [57] The key feature is a willingness to make whatever false representations were required to secure the payment of fees in advance. The representations were tailored to fit Mr Standing's perceptions of what his prospective client may believe, and take as assurance. In some cases grossly extravagant promises were made in writing, and these were provided to the Tribunal in support of complaints.
- [58] For example, among the fabrications Mr Standing presented to prospective clients in writing were that:
- [58.1] he provided his professional services as "an immigration law firm";
- [58.2] prospective clients were "100% guaranteed" a residence visa; and
- [58.3] if Mr Standing did not deliver a residence visa to a client, he could be prosecuted for the failure to do so.
- [59] This conduct is distinctive, and it is only necessary to refer to the standards required in the Code of Conduct to see how aberrant such behaviour is for a licensed immigration adviser.
- [60] In the series of complaints, like in the present complaint, having secured the payment, Mr Standing then became unavailable and did not provide the services he promised.
- [61] I can give little credence to Mr Standing's claim he qualified his representations, when:
- [61.1] Ms Hewitt is clear he made no such qualification, and
- [61.2] There is incontrovertible evidence before the Tribunal in other complaints that Mr Standing systematically grossly misrepresented prospective clients' immigration prospects, in similar circumstances.
- [62] Accordingly, I am satisfied Mr Standing represented that he was in a position to immediately lodge an application with Immigration New Zealand, and he admits that. I am also satisfied he knew that was untrue and he made it without qualification.
- [63] In fact, an application could only be lodged after Ms and Mr Hewitt's family qualified to sponsor them. It is an elementary principle that immigration applications can only be lodged when people qualify, and not in the expectation they may qualify in the future.
- [64] I am also satisfied Mr Standing made the representation knowing it to be false, with the intent of procuring Ms and Mr Hewitt to make a payment of \$3,950 in fees. It is the only sensible explanation for Mr Standing's conduct, and he has advanced no competing motivation.
- [65] In addition, I am satisfied Mr Standing did not intend to provide the relevant professional services immediately, and likely not at all.
- [66] My view is further supported by the fact that if Mr Standing was acting honestly, professionally, had set fees that were fair and reasonable, and accurately represented Ms and Mr Hewitt's immigration opportunities, he would hold a written record documenting that he:
- [66.1] Evaluated Ms and Mr Hewitt's eligibility for a residence visa.

- [66.2] Informed Ms and Mr Hewitt of any reasonably material risks associated with their entitlement to gain a residence visa.
- [66.3] Adequately informed Ms and Mr Hewitt of the process for applying for a residence visa.
- [66.4] Made an evaluation of the proper cost of the professional services required, and satisfied himself the figure of \$7,900 including disbursements and excluding GST was fair and reasonable (taking account of it not being refundable, as he now claims).
- [66.5] Disclosed and obtained Ms and Mr Hewitt's informed consent to an agreement to charge a fee that was non-refundable on certain contingencies.
- [67] The Tribunal's Minute gave Mr Standing notice 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 commenced with the misrepresentations identified.
- [68] The material presently 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 is wrong, but he has not attempted to do so.
- [69] Mr Standing did not attempt to deliver the professional services he had been paid for. A licensed immigration adviser in such circumstances would be expected to be actively communicating with their client, and the evidence before the Tribunal indicates Mr Standing undertook no work after receiving the fee.
- [70] 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 of the Code), which is also grounds for complaint pursuant to section 44(2)(e) of the Act.

*Demanding and retaining excess fees*

- [71] I am satisfied Mr Standing did not provide professional services that reflected the fees and disbursements of \$3,950 he demanded and retained.
- [72] Mr Standing was put on notice in the Tribunal's Minute that:
  - [72.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.
  - [72.2] The fee was not fair and reasonable, either at inception or when his engagement terminated.
  - [72.3] Clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.
  - [72.4] The fees were wholly repayable as they were not fair or reasonable.
  - [72.5] He breached the Code by failing to refund fees.
- [73] Mr Standing has not answered the evidence which indicated he should have refunded fees.
- [74] 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 \$3,950.
- [75] 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*

[76] 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.”

[77] The Authority and Ms Hewitt 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 Ms Hewitt.

[78] 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.

[79] 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*

[80] 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.

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

[82] 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.

- [83] Mr Standing had also informed the Tribunal that the company through which he most recently conducted his practice had gone into liquidation (Living New Zealand Limited – now struck off, as liquidation has been completed).
- [84] 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:
- [84.1] 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.
- [84.2] 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.
- [84.3] Overseas clients had paid \$635,769.49 in deposits for work that had not been completed.
- [85] 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.
- [86] 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.
- [87] This information is sufficient to raise a concern that Mr Standing has received a substantial body of fees which have not been accounted for.
- [88] Accordingly, the Tribunal puts Mr Standing on notice that if he claims he does not have the means to pay penalties and compensation:
- [88.1] He is expected to explain to the Tribunal the circumstances identified in the liquidator's reports.
- [88.2] 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.
- [88.3] He will be expected to fully explain his personal financial circumstances, including providing a statement of assets and liabilities.
- [89] 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.

#### *Timetable*

- [90] The timetable for submissions will be as follows:
- [90.1] The Authority and Ms Hewitt are to make any submissions within 10 working days of the issue of this decision.
- [90.2] Mr Standing is to make any further submissions (whether or not the Authority or Ms Hewitt make submissions) within 15 working days of the issue of this decision.
- [91] 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.

- [92] 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 30<sup>th</sup> day of August 2012.

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**G D Pearson**  
**Chair**