

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

Decision No: [2012] NZIACDT 52

Reference No: IACDT 041/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Leanne Liddle and David Liddle

Complainants

AND

Glen William Standing

Adviser

DECISION

REPRESENTATION:

Complainants: In person

Adviser: In person

Date Issued: 30 August 2012

DECISION

Introduction

- [1] Ms and Mr Liddle engaged Mr Standing to provide immigration services.
- [2] They paid money to him in advance for professional fees.
- [3] They were induced to pay the fees by Mr Standing dishonestly misrepresenting the services he would provide. Mr Standing gave them incorrect advice in relation to the requirements for permanent residence, he failed to comply with the Code of Conduct in relation to establishing his professional relationship, and he did not provide the services he agreed to provide.
- [4] Mr Standing was obliged to refund the fees paid in advance and has not done so.
- [5] The evidence supporting the complaint, and the potential conclusion that he was dishonest, was put to Mr Standing by the Tribunal. He has neither answered, nor explained, that evidence.
- [6] The Tribunal has upheld the complaint. The evidence supporting the complaint requires that the Tribunal conclude the complaint was justified, including finding Mr Standing was dishonest.

The Complaint and the Response

The complaint

- [7] On 6 July 2011, Mr Standing promoted his services as a licensed immigration adviser at a seminar in the United Kingdom. Ms and Mr Liddle attended the seminar, as they wished to migrate to New Zealand, and planned to apply under the Skilled Migrant category.
- [8] Mr Standing represented to Ms and Mr Liddle that they would qualify for residence in New Zealand, and encouraged them to pay \$6,500 as an initial payment for Mr Standing's professional services.
- [9] They paid that amount on 7 July 2011. The same day, Ms and Mr Liddle were sent an email with a copy of an agreement for the delivery of professional services. It is not evident from the material presently before the Tribunal whether the agreement was sent before or after the payment was made. It appears the agreement was not signed by either party.
- [10] The unsigned agreement indicates the total fee was \$12,000, of which \$9,970 was professional fees, and the balance fees to be paid to Immigration New Zealand. The fee was to be paid in two instalments: \$6,500 initially, and \$5,500 "prior to lodging the application for residency".
- [11] The second instalment was not paid.
- [12] Mr Standing did not comply with the Code of Conduct in soliciting the payment of \$6,500, as:
 - [12.1] He misrepresented Ms and Mr Liddle's immigration prospects, and promised standards of service he would not deliver.
 - [12.2] He did not provide Ms and Mr Liddle with a copy of the Licensed Immigration Advisers Code of Conduct, or the complaints procedure, as required by the Code.
 - [12.3] He did not enter into a written agreement for the provision of professional services (and the related disclosure process), which the Code also requires.
- [13] Mr Standing procured the payment with the intention of not dealing with the funds in accordance with his professional obligations, and has failed to account for them.

- [14] Ms and Mr Liddle, after making the payment, found Mr Standing's conduct was not consistent with his professional obligations. In particular:
- [14.1] They had been told at the seminar that Mr Liddle's experience in self-employment would count towards work experience "points" for the purpose of qualifying for residence in New Zealand. Their own research on Immigration New Zealand's website disclosed that was not correct.
 - [14.2] Mr Standing failed to provide the professional services he promised, and his communications were neither timely nor consistent. The extent of the service provided was some editing of Mr Liddle's CV, which was of minimal value.
 - [14.3] On 18 July 2011, Mr Liddle first expressed concern regarding Mr Standing's lack of service delivery, in an email of that date. Ms and Mr Liddle continued to communicate regularly seeking a response from that point forward. They made it clear the issue was, for them, urgent. That was because Mr Liddle's entitlement was about to change due to his age.
 - [14.4] Mr Standing failed to lodge a visa application, and has not explained or justified this failure.
 - [14.5] Mr Standing had his licence cancelled by this Tribunal with effect from 15 August 2011. He has not refunded the fees that were not earned, and has failed to account for client funds.
 - [14.6] On 17 August 2011, Mr Standing wrote a generic letter which was received by, but not personally addressed to, Ms and Mr Liddle. This letter said Mr Standing had his licence cancelled by this Tribunal. He proposed to continue providing immigration services in an "administrative capacity", but did not explain how he could lawfully deliver the professional services he agreed to supply and that had been paid for.
 - [14.7] Mr Standing has not repaid any of the money he received from Ms and Mr Liddle.

The response

- [15] Mr Standing's response to the complaint was a letter dated 22 November 2011, addressed to the Authority. This letter is written in the context of multiple independent complaints to the Authority. The letter states:

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

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

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

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

Other complaints against Mr Standing

- [16] The Tribunal issued a Minute dated 19 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.
- [17] The Minute made it clear to the parties they could provide further information, which would be considered by the Tribunal.

- [18] 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.
- [19] The Minute explained to Mr Standing:
- [19.1] 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.
 - [19.2] This Tribunal is currently dealing with other complaints against Mr Standing, as his response to this complaint indicated. Further, this complaint was not unique in presenting an allegation that substantial fees have been paid in advance, followed by a total or substantial failure to deliver the professional services promised, a failure to refund fees, and the failure to account for client funds.
 - [19.3] The approach this Tribunal would take is that it will not unnecessarily use evidence in one complaint to support another complaint. However, multiple complaints which involve strikingly similar features may be probative evidence when the Tribunal determines whether there was systematic dishonesty, incompetence, or a set of circumstances amounting to an innocent explanation.
 - [19.4] 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:
 - [19.4.1] Misrepresenting both his clients' immigration prospects, and his own standards of professional service delivery.
 - [19.4.2] Demanding and receiving fees in advance amounting to several thousands of dollars (using the misrepresentations to facilitate that).
 - [19.4.3] Failing to account for client funds.
 - [19.4.4] Failing to deliver the professional services promised.
 - [19.4.5] Refusing to refund the fees paid in advance when he did not deliver the professional services he promised.
 - [19.5] Accordingly, Mr Standing was invited to consider informing the Tribunal of any general circumstances that may have affected professional service delivery in his practice. Further, he could not expect the Tribunal to approach this complaint as though it was an isolated lapse in the context of a practice that was otherwise meeting the minimum professional standards, if this was the Tribunal's finding when other complaints have been determined.
 - [19.6] If the Tribunal did find a series of complaints have established that Mr Standing has repeatedly taken fees after misrepresentations, failed to account for client funds, failed to perform professional services, and not refunded fees when services have not been provided, that would potentially be regarded as material when determining the present complaint, subject to any submissions on the point.

Request for further information from Mr Standing

- [20] 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. He had not produced that material to the Authority or the Tribunal.

- [21] Accordingly, pursuant to section 49(4)(a) of the Act, the Tribunal requested Mr Standing to:
- [21.1] Provide a full and complete copy of his client records relating to his professional engagement with Ms and Mr Liddle.
 - [21.2] Explain and document how he dealt with the fees paid to him, and how he took into account his apparent obligation to deal with the receipts in whole or in part as client funds held on trust, and keep them in a separate bank account in accordance with clause 4 of the Code.
 - [21.3] Respond to each of the issues raised by this complaint, with reference to his client record.
- [22] The Minute recognised that Mr Standing had indicated he did not have client records, as they were in the hands of the liquidator of Living New Zealand Ltd.
- [23] However, Mr Standing was required to maintain client records for seven years, and be in a position to make them available. The Code has the force of law (see sections 37–39 and 44 of the Act). It was implausible that any responsible liquidator would impede Mr Standing from obtaining a copy of his client record to respond to a complaint, given the legal duties on Mr Standing.
- [24] Mr Standing had produced no evidence of his attempts to produce the record.
- [25] The Tribunal gave Mr Standing notice that if any person was withholding his client record, he should notify the Tribunal of the circumstances and the Tribunal would consider issuing a summons to that person, to secure the production of the client record.
- [26] 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 that he had chosen to withhold his record, and reach conclusions adverse to him on that basis.
- [27] Mr Standing did not provide the information requested or otherwise respond to the Minute.

The Issues to be Determined

- [28] Mr Standing 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 requires:
- [29.1] A licensed immigration adviser to act with professionalism. In doing so, they must ensure that the terms of professional engagements are fair and appropriate.
 - [29.2] That a client engagement be established with an agreement that is in writing, and accepted in writing; and only after providing a copy of the Code to the client.
 - [29.3] That a licensed immigration adviser discharge professional engagements with due care, diligence and respect. That requires them to ensure that their professional service delivery meets proper standards.
- [30] Clause 4 of the Code treats receipts, to the extent that they are held on behalf of clients, as trust funds, and a licensed immigration adviser must bank them separately.
- [31] Clause 5 of the Code requires that a licensed immigration adviser must not misrepresent his business or a client's immigration opportunities, or New Zealand's immigration requirements.
- [32] Clause 8 of the Code prohibits a licensed immigration adviser setting a fee that is not "fair and reasonable".

- [33] Clause 9 requires that complaints procedures are disclosed.
- [34] Section 44 of the Act provides that breaches of the Code, negligence, incompetence, dishonesty and misleading behaviour are all grounds for complaint.
- [35] The issue for the Tribunal to determine is whether it is satisfied Mr Standing breached any of these professional standards.
- [36] 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). The complaint includes elements which are at the highest end of the scale, including dishonesty. Accordingly, the findings will be made with regard to the effect on the standard of proof.

Decision

Preliminary

- [37] The Tribunal observes that 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 it is individual licensed immigration advisers who are the subject of complaints, and personally face disciplinary sanctions and orders for compensation.
- [38] The Tribunal will regard Mr Standing as personally responsible both for professional service delivery, and accounting for receipts in relation to this matter.

Failure to establish a client relationship in compliance with the Code

- [39] I am satisfied the material before the Tribunal proves Mr Standing failed to establish a client relationship in accordance with the Code. He:
 - [39.1] did not provide a copy of the Code and complaints procedures to Ms and Mr Liddle; and
 - [39.2] did not have a written agreement for the provision of services.
- [40] Mr Standing has been asked for an explanation in relation to this evidence, and for a copy of his records. He has not responded. Accordingly, I must conclude on the evidence before me that Mr Standing commenced this professional engagement without an agreement in writing, and failed to comply with the Code in relation to commencing his engagement.
- [41] It follows this aspect of the complaint must be upheld, as a breach of the Code (clauses 1.4, 1.5, and 9). Section 44(2)(e) of the Act provides that is a ground for complaint.

Failure to account for client funds

- [42] It appears possible some of the money paid to Mr Standing was in respect of fees to be paid to Immigration New Zealand. The amount is not apparent from the documents presently before the Tribunal. That is because only the first instalment was paid, and it was potentially for work that preceded lodging any application with Immigration New Zealand.
- [43] It also appears the view may be open that the whole payment of \$6,500 was client funds, as Mr Standing had no right to the fees, having solicited them in breach of the Act, and without complying with the Code.
- [44] Mr Standing was invited to explain how he banked the payment, and address the portion that was treated as client funds. He has not done so.
- [45] However, I will not elevate Mr Standing's silence to an admission.

- [46] I am left in doubt as to whether any of the payment was for fees to be paid to Immigration New Zealand. If it had been, then Mr Standing obviously knew the money had to be banked as client funds.
- [47] In relation to unearned fees, I cannot be sure on the evidence before me that Mr Standing would have appreciated they were client funds, and had to be banked as client funds. To find Mr Standing has misappropriated the funds by not banking them, and using them for his own purposes, I must be satisfied he believed they were client funds. The evidence does not go that far, and it is possible they were fees for work in the pre-lodgement phase.
- [48] Accordingly, I take the view that I cannot find on the facts supporting this complaint that Mr Standing intentionally took client funds rather than banked them.
- [49] However, I am satisfied Mr Standing breached his duty to repay the fees when his engagement ended, as he was not entitled to the fees.

Dishonest or misleading behaviour

- [50] Mr Standing faces a complaint that he misled Ms and Mr Liddle by saying:
- [50.1] Mr Liddle's self-employed experience counted for "points"; and
- [50.2] that Mr Standing would provide immigration services in a timely and efficient way, given the urgency his clients had identified.
- [51] The complaint alleges this misrepresentation was part of a series of dishonest actions, through which Mr Standing intended to induce them to make a payment for professional services when he did not intend to meet his professional obligations.
- [52] The Tribunal will not lightly conclude Mr Standing's actions were dishonest in this respect. As noted, the Tribunal must be satisfied that the grounds for a complaint are made out on the balance of probabilities, but reflecting the gravity of the finding (sometimes, perhaps not wholly accurately, referred to as "a sliding scale"). In the present case, the potential finding of dishonesty is at the most serious end of the scale. I must be sure the evidence requires the finding before making that determination.
- [53] While the period of non-performance was relatively short, it is in a context where Mr Standing apparently disregarded his professional obligations in relation to establishing a professional relationship. Further, Ms and Mr Liddle had identified compelling reasons why they required Mr Standing to proceed with a residence application as a matter of urgency, and Mr Standing appeared to have little regard to his clients' requests for him to deliver the services they had paid for.
- [54] When issuing the Minute, the Tribunal explored the evidence of Mr Standing's non-compliance with the Code of Conduct and failure to deliver professional services.
- [55] The Code of Conduct is very clear in terms of the requirements on a licensed immigration adviser, and the preceding findings demonstrate Mr Standing was not complying with the Code of Conduct. The evidence held pointed to an absence of regard for the Code of Conduct.
- [56] Mr Standing was required to keep proper records of all advice (clause 3), act on **informed** instructions (clause 1.1), he had to accurately represent his clients' immigration opportunities (clause 5). It follows that a licensed immigration adviser in Mr Standing's situation in relation to this instruction should be able to produce client records showing he:
- [56.1] Evaluated his clients' eligibility for a residence visa.
- [56.2] Informed them of any reasonably material risks associated with their entitlement to gain a residence visa.
- [56.3] Adequately informed them of the process for applying for a residence visa.

- [56.4] Made an evaluation of the proper cost of the professional services required, and satisfied himself the fees charged were fair and reasonable.
- [56.5] Disclosed and obtained his clients' informed instructions to pursue an appropriate course.
- [57] Accordingly, the Tribunal's Minute gave Mr Standing notice that unless he produced such records or explained their absence, the Tribunal would potentially find that he conducted a dishonest and unprofessional enterprise, in which he:
- [57.1] Procured the payment of fees through misrepresentation.
- [57.2] Disregarded the Act and the Code of Conduct.
- [57.3] Provided little or no professional services after receipt of the fees, and failed to communicate with his client regarding the delivery of professional services.
- [57.4] Did not intend to deliver the professional services he agreed to provide.
- [58] Mr Standing has not responded, and accordingly the Tribunal can have little reluctance to draw the adverse implications from the evidence before it.
- [59] Finally, I also give some weight to the series of complaints against Mr Standing which have been upheld by the Tribunal. They have already been referred to above (para [19.4]).
- [60] I emphasise that 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 do accept there is probative value, as the other complaints evidence a distinctive *modus operandi* (*R v Tukuafu* [2003] 1 NZLR 659 (CA)).
- [61] The key feature in a number of the complaints 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 perception of what his prospective client may believe, and take as assurance. In some cases, grossly extravagant promises were made in writing and provided to the Tribunal in support of complaints.
- [62] 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. So too is the failure to deliver professional services that were promised, as the Code of Conduct mandates (clause 1.1).
- [63] The present complaint is consistent with others where Mr Standing's dishonesty has been established, in very similar circumstances to the present case.
- [64] Giving weight to the all of the factors, I am sure the only proper finding is that Mr Standing was dishonest, that he misrepresented his clients' immigration opportunities for the purpose of his own financial gain, and that he did not intend to provide the services he promised. His primary goal was to receive money from his clients, which he has not returned, and not accounted for it.
- [65] 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

- [66] I am satisfied that Mr Standing did not provide professional services that reflected the fees he demanded and retained. Mr Standing was put on notice by the Tribunal's Minute that the Tribunal may conclude:
- [66.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.

- [66.2] The fee was not fair and reasonable, either at inception or when his engagement terminated.
- [66.3] That clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.
- [66.4] That the fees were repayable as they were not fair or reasonable, and he could no longer lawfully provide the professional services he agreed to supply.
- [66.5] He breached the Code by failing to refund fees.
- [67] Mr Standing has not responded.
- [68] I am satisfied on the material before the Tribunal that Mr Standing was not entitled to retain any of the money he received, and he should have returned it in full. That was a direct consequence of the dishonesty that induced the fees to be paid in the first place, and his dishonest failure to provide any, or any substantial, services.
- [69] 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

- [70] 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.”
- [71] The Authority and Ms and Mr Liddle 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 other parties.

- [72] 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.
- [73] 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

- [74] 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.
- [75] This Tribunal is currently dealing with other complaints against Mr Standing, and has previously dealt with complaints against Mr Standing.
- [76] 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.
- [77] Mr Standing has 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).
- [78] 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:
 - [78.1] 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.
 - [78.2] 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.
 - [78.3] Overseas clients had paid \$635,769.49 in deposits for work that had not been completed.
- [79] 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.
- [80] 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.
- [81] This information is sufficient to raise a concern that Mr Standing has received a substantial body of fees which have not been accounted for.
- [82] Accordingly, the Tribunal puts Mr Standing on notice that if he claims he does not have the means to pay penalties and compensation:
 - [82.1] He is expected to explain to the Tribunal the circumstances identified in the liquidator's reports.
 - [82.2] 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.
 - [82.3] He will be expected to fully explain his personal financial circumstances, including providing a statement of assets and liabilities.
- [83] If Mr Standing does not respond, the Tribunal may proceed on the basis that Mr Standing has the means to meet financial sanctions that fully reflect the findings against him.

Timetable

[84] The timetable for submissions will be as follows:

[84.1] The Authority and Ms and Mr Liddle are to make any submissions within 10 working days of the issue of this decision; and

[84.2] Mr Standing is to make any further submissions (whether or not the Authority or Ms and Mr Liddle make submissions) within 15 working days of the issue of this decision.

[85] 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.

[86] 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