

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

Decision No: [2012] NZIACDT 58

Reference No: IACDT 018/12

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Paul Harvey

Complainant

AND

Glen William Standing

Adviser

DECISION

REPRESENTATION:

Complainant: In person

Adviser: In person

Date Issued: 30 August 2012

DECISION

Introduction

- [1] Mr Harvey engaged Mr Standing to provide immigration services.
- [2] He paid money to him in advance for professional fees.
- [3] There was a draft agreement to provide professional services, but it was not signed or confirmed in writing.
- [4] The agreement provided that Mr Harvey was “guaranteed” residence, on certain terms, and if that did not happen he would get a refund of fees.
- [5] The payment was made in June 2011, and in August 2011 Mr Standing had his licence cancelled by this Tribunal. He had provided no services to Mr Harvey.
- [6] Mr Harvey made inquiries and ascertained he was not likely to qualify for residence in New Zealand, and believes that Mr Standing misrepresented his ability to migrate to New Zealand to dishonestly procure fees, and then provided no services.
- [7] Mr Standing has not repaid any of the fees.

The Complaint and the Response

The complaint

- [8] Mr Standing represented to Mr Harvey that he and his family would qualify for residence in New Zealand, and encouraged them to pay \$6,500 as an initial payment for Mr Standing’s professional services which would total \$12,000 (excluding GST).
- [9] Mr Harvey received an agreement which confirmed the total fee was \$12,000, of which \$7,780 was professional fees, and the balance was for fees to be paid to Immigration New Zealand. The fee was to be paid in three instalments: \$6,500 initially, \$4,000 prior to lodging an expression of interest, and \$1,500 prior to lodging an application for residence. It appears this agreement was sent to Mr Harvey in or about mid-June 2011.
- [10] The only copy of the agreement presented to the Tribunal is not signed, and there is no evidence a copy was ever signed. Mr Standing was dealing with Mr Harvey in the United Kingdom, and he was in New Zealand. Communication appeared to be primarily by email. There is no indication either party confirmed it in writing by email or otherwise.
- [11] The draft agreement was between a company named Living New Zealand Ltd and Mr Harvey. Mr Standing apparently conducted his practice through this company. Mr Standing was identified in the agreement as the “Director of Immigration” and stated he was a licensed immigration adviser.
- [12] The agreement included a “Performance Guarantee” which stated that when Mr Harvey had a “suitable offer of full employment”, he was guaranteed residence, or a refund of the professional fees paid. Email correspondence encouraged Mr Harvey to believe employment opportunities were readily available. In an email dated 14 June 2011 Mr Standing said “There are 19 Truck Driving vacancies in Christchurch and 6 in Nelson”.
- [13] Mr Standing issued an invoice dated 10 June 2011 for \$6,500 being the first instalment, which was identified as: “Professional fee”. It was paid on 21 July 2011.
- [14] Mr Standing took no significant steps to fulfil his professional engagement.
- [15] On 17 August 2011 Mr Standing wrote to Mr Harvey in a standard letter which appears to have been sent to his clients generally, as it was not personalised. It said Mr Standing had his licence cancelled by this Tribunal on 15 August 2011, and Living New Zealand Ltd had gone

into liquidation. The letter suggested Mr Standing would continue to provide immigration services in conjunction with an unnamed licensed immigration adviser. It is not evident how Mr Standing could lawfully perform his professional engagement with Mr Harvey.

- [16] Mr Harvey made further inquiries and ascertained it appeared unlikely he would qualify for residence in New Zealand and now suspects Mr Standing misrepresented the position and took fees from him dishonestly.
- [17] Mr Harvey has produced the final report of the liquidator of Living New Zealand Ltd. This report records that the liquidator suspected offences had been committed by Mr Standing in relation to the conduct of the company's affairs, and he has referred the issues to the National Enforcement Unit of the Ministry of Business, Innovation and Enterprise.
- [18] This report showed the company had assets of \$8,078, and when realised there was a deficit of \$489,344 owed to creditors. A list appears to show that clients were owed \$321,874; however the basis for determining the amounts owed is not disclosed in the report. The report does not include a source and disposition of funds analysis; accordingly it is not evident how much money was received from Mr Standing's clients and where that money went (either globally, or in relation to Mr Harvey in particular).
- [19] Mr Standing has not refunded any of the fees paid by Mr Harvey.

The response

- [20] The Authority put Mr Harvey's allegations to Mr Standing, to give him the opportunity to respond, but he did not respond.

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

Other complaints against Mr Standing

- [21] The Tribunal issued a Minute dated 31 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 dealing with other complaints against Mr Standing. Further, this complaint was not unique in presenting an allegation that substantial fees had been paid in advance; they were procured by misrepresentations, followed by a total or substantial failure to deliver the professional services promised, a failure to refund fees and a failure to account for client funds.
- [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 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] 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 faced multiple complaints that included the features of:
- [24.4.1] Misrepresenting clients' immigration prospects, and his own standards of professional service delivery.
 - [24.4.2] Demanding and receiving fees in advance amounting to several thousands of dollars (using the misrepresentations to facilitate that).
 - [24.4.3] Failing to account for client funds.
 - [24.4.4] Failing to deliver the professional services promised.
 - [24.4.5] Refusing to refund the fees paid in advance when he did not deliver the professional services he promised.
- [24.5] Accordingly, Mr Standing was invited to inform 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 lapse in the context of a practice that was otherwise meeting the minimum professional standards, if the Tribunal found the other complaints established.
- [24.6] If the Tribunal did find a series of complaints established that Mr Standing had 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

- [25] 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. He has not produced that material to the Authority or the Tribunal.
- [26] Pursuant to section 49(4)(a) of the Act, the Tribunal requested Mr Standing to:
- [26.1] Provide a full and complete copy of his client records relating to his professional engagement with Mr Harvey.
 - [26.2] 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.
 - [26.3] Respond to each of the issues raised by this complaint, with reference to his client record.
- [27] Mr Standing had indicated in relation to other complaints that he does not have client records, as they are in the hands of the liquidator of Living New Zealand Ltd.
- [28] The Code has the force of law (see sections 37–39 and 44 of the Act). It is 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 in relation to records.
- [29] Mr Standing had produced no evidence he has attempted to produce the record.
- [30] 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.

- [31] 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 had chosen to withhold his record, and reach conclusions adverse to him on that basis.

No response to the Minute from Mr Standing

- [32] As it has transpired, Mr Standing has not responded to the Minute, either by providing the information requested, or addressing the potential findings and the evidence supporting them.
- [33] The Tribunal is required to determine this 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.
- [34] 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 similar characteristics to this complaint (outlined in para [24.4] above), and those complaints have been upheld.
- [35] The complaints when viewed together show Mr Standing was systematically using misrepresentations to have multiple clients pay him money in advance, and he was dishonestly failing to account for the funds. He provided neither the professional service required by the Code, nor a refund of the fees.
- [36] The issue is discussed below in relation to the finding of dishonesty.

The Issues to be Determined

- [37] Mr Standing is bound by the Immigration Advisers Licensing Act 2007, and the Licensed Immigration Advisers Code of Conduct.
- [38] Clause 1 of the Code of Conduct requires:
- [38.1] A licensed immigration adviser to act with professionalism. In doing so, they must ensure that the terms of professional engagements are fair and appropriate.
- [38.2] 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.
- [38.3] 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.
- [39] 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.
- [40] 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.
- [41] Clause 8 of the Code prohibits a licensed immigration adviser setting a fee that is not "fair and reasonable".
- [42] Clause 9 requires that complaints procedures are disclosed.
- [43] Section 44 of the Act provides breaches of the Code, negligence, incompetence, dishonesty and misleading behaviour are all grounds for complaint.
- [44] The issue for the Tribunal to determine is whether it is satisfied Mr Standing breached any of these professional standards.

Decision

Preliminary

- [45] 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.
- [46] 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

- [47] I am satisfied the material before the Tribunal proves Mr Standing failed to establish a client relationship in accordance with the Code. He:
- [47.1] did not provide a copy of the Code and complaints procedures to Mr Harvey; and
- [47.2] did not have a written agreement for the provision of services (neither signed nor acceptance confirmed in writing).
- [48] 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.
- [49] 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

- [50] 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.
- [51] 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.
- [52] 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.
- [53] However, I will not elevate Mr Standing's silence to an admission.
- [54] 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.
- [55] 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 the fees were only for work in the pre-lodgement phase.
- [56] 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.
- [57] 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

- [58] Mr Standing faces a complaint that he misled Mr Harvey by leading him to believe that he and his family would be able to migrate to New Zealand, when it was unlikely they would meet the relevant criteria.
- [59] The complaint alleges this misrepresentation was part of a series of dishonest actions through which Mr Standing intended to induce Mr Harvey to make a payment for professional services, when he knew he could not deliver what he promised.
- [60] The Tribunal will not lightly conclude Mr Standing's actions were dishonest.
- [61] The Code of Conduct is very clear in terms of the requirements on a licensed immigration adviser. The adviser is required to keep proper records of all advice (clause 3), act on **informed** instructions (clause 1.1), and must accurately represent their client's 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 a client record showing that he:
- [61.1] Evaluated Mr Harvey and his family of their eligibility for a residence visa.
- [61.2] Informed them of any reasonably material risks associated with their entitlement to gain a residence visa.
- [61.3] Adequately informed them of the process for applying for a residence visa.
- [61.4] Made an evaluation of the proper cost of the professional services required, and satisfied himself the figure of \$12,000 (in total) was fair and reasonable.
- [61.5] Disclosed and obtained his clients' informed consent to pursue an appropriate course.
- [62] The Tribunal gave Mr Standing notice that unless he produced such records, or explained their absence, and explains the material presently held, the Tribunal would potentially find he conducted a dishonest and unprofessional enterprise, in which he:
- [62.1] Procured the payment of fees through misrepresentation.
- [62.2] Disregarded the Act and the Code of Conduct.
- [62.3] Provided little or no professional services after receipt of the fees, and failed to communicate with his client regarding the delivery of professional services.
- [62.4] Did not intend to deliver the professional services he agreed to provide.
- [63] Mr Standing has not produced any record, and the material before the Tribunal is sufficient to conclude that Mr Standing made no attempt to take informed instructions from his client; rather he gave advice which was wrong, and he did nothing to ensure it was right. This disregard for professional standards points to Mr Standing having abandoned integrity in the course of dealing with Mr Harvey.
- [64] I also give some weight to the fact Mr Standing did little or nothing to deliver the professional service he promised. That is indicative of Mr Standing not being engaged in the genuine delivery of the professional services he claimed to offer.
- [65] In addition, I am satisfied I must give some weight to the series of complaints the Tribunal has upheld against Mr Standing. The series of complaints where those findings have been made have already been referred to above (para [34]).
- [66] 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 accept there is probative value, as the other complaints evidence a distinctive *modus operandi* (*R v Tukuafu* [2003] 1 NZLR 659 (CA)).

- [67] The key features of these complaints evidence a willingness to make whatever false representations were required to secure the payment of fees, regardless of the potential client's immigration prospects. The representations were tailored to fit Mr Standing's perceptions of what his prospective clients 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.
- [68] For example, among the fabrications he presented to prospective clients in writing were that:
- [68.1] he provided his professional services as "an immigration law firm";
- [68.2] prospective clients were "100% guaranteed" a residence visa; and
- [68.3] if Mr Standing did not deliver a residence visa to a client, he could be prosecuted for the failure to do so.
- [69] In other cases, such as this matter, a simple assurance of qualifying for residence was enough, even though it was not correct.
- [70] This conduct of making ill-founded promises of entitlement to a visa is distinctive. 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.
- [71] The present case is materially identical to many of the other complaints. The key features being fabricated promises of migration opportunities, followed by the payment of fees and non-delivery of promised services. Mr Standing subsequently failed to account for fees he was not entitled to.
- [72] Giving weight to these factors, I am sure the only proper finding is that Mr Standing was dishonest and he misrepresented his clients' immigration opportunities for the purpose of his own financial gain.
- [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 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] What he has in fact done is procure the fees dishonestly and not perform the work he promised.
- [76] Mr Standing was put on notice by the Tribunal's Minute that the Tribunal may conclude:
- [76.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.
- [76.2] The fee was not fair and reasonable, either at inception or when his engagement terminated.
- [76.3] That clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.
- [76.4] 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.
- [76.5] He breached the Code by failing to refund fees.
- [77] Mr Standing has not responded.

- [78] 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 payment of fees, and the failure to earn them.
- [79] 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

- [80] 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."

- [81] The Authority and Mr Harvey 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.
- [82] 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.
- [83] 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

- [84] 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.
- [85] This Tribunal is currently dealing with other complaints against Mr Standing and has previously dealt with complaints against Mr Standing.

- [86] 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.
- [87] 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).
- [88] 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:
- [88.1] 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.
- [88.2] 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.
- [88.3] Overseas clients had paid \$635,769.49 in deposits for work that had not been completed.
- [89] 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.
- [90] 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.
- [91] This information is sufficient to raise a concern that Mr Standing has received a substantial body of fees which have not been accounted for.
- [92] Accordingly, the Tribunal puts Mr Standing on notice that if he claims he does not have the means to pay penalties, and compensation:
- [92.1] He is expected to explain to the Tribunal the circumstances identified in the liquidator's reports.
- [92.2] 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.
- [92.3] He will be expected to fully explain his personal financial circumstances, including providing a statement of assets and liabilities.
- [93] 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

- [94] The timetable for submissions will be as follows:
- [94.1] The Authority and Mr Harvey are to make any submissions within 10 working days of the issue of this decision; and
- [94.2] Mr Standing is to make any further submissions (whether or not the Authority or Mr Harvey make submissions) within 15 working days of the issue of this decision.
- [95] 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.

[96] 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