

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

Decision No: [2012] NZIACDT 83

Reference No: IACDT 020/10

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Vishal Saraswat

Complainant

AND

Marion Chase-Seymour

Adviser

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Adviser

In person

Complainant

In person

Date Issued: 18 October 2012

DECISION

Introduction

- [1] This complaint was upheld in a decision issued on 29 May 2012.
- [2] The key elements of the findings were:
- [2.1] Ms Chase-Seymour and Mr Saraswat disagreed regarding whether there was to be a fee for an initial consultation.
 - [2.2] Mr Saraswat says they had a preliminary discussion regarding a potential application for residence and Ms Chase-Seymour told him there would be no fee, but he was charged \$250.
 - [2.3] Ms Chase-Seymour says she charges an initial consultation fee, as some potential clients otherwise get free advice and then undertake the work themselves. She said she told Mr Saraswat the fee would be \$250 before the consultation, and that was routine in her practice.
 - [2.4] However, the Tribunal did not consider it was necessary to resolve the different claims regarding communications between Mr Saraswat and Ms Chase-Seymour. The real issue was whether Ms Chase-Seymour went through the correct procedure to charge a fee. That procedure is intended to avoid disputes of this kind.
 - [2.5] The Tribunal found Ms Chase-Seymour did not go through the correct procedure to charge a fee, as the Code of Conduct clearly required a written agreement, and there was none.

The Parties' Positions on Sanctions

- [3] Ms Chase-Seymour indicated in an email dated 30 May 2012 that she accepted the reasoning in the decision as it explained the Code of Conduct.
- [4] She also indicated she was concerned the decision would be interpreted as a finding of dishonesty, when published. She did not apply for a restriction on publication, and gave no reason for such an order, other than assuming the decision would be misinterpreted.
- [5] Ms Chase-Seymour referred to her high standards and successful practice.
- [6] Mr Saraswat indicated in an email dated 3 June 2012 that he considered Ms Chase-Seymour's conduct unethical, and he sought compensation and publicity of Ms Chase-Seymour's actions.
- [7] Ms Chase-Seymour responded with an attack on Mr Saraswat which does her no credit, and put in question the sincerity of her claim that she accepted the Tribunal's decision applying the Code of Conduct to the facts.

The Sanctions Imposed on this Complaint

- [8] The Tribunal has been left with concerns regarding Ms Chase-Seymour's attitude to clients, and her professional duties to them. She will receive a caution, and censure.
- [9] In terms of the gravity of the complaint, Ms Chase-Seymour's failure to have a written agreement is a fundamental failing in terms of client engagement.
- [10] Ms Chase-Seymour misunderstood that regardless of the relationship she intended to have in place, and regardless of whether Mr Saraswat was willing/agreeable to pay, the relationship was not put on the correct footing.

- [11] However, I am willing to accept Ms Chase-Seymour may have failed to appreciate the way in which the Code applied to initial consultations. That is not due to any lack of clarity in the Code. There have been some misperceptions in relation to the application of the Code in particular circumstances, and the Tribunal's decision on the issue may lead to a more consistent understanding in the profession.
- [12] It follows that the penalty should be a financial one, and at the lower end of the scale. Nonetheless, it is an elementary principle that Ms Chase-Seymour was required to have a written agreement, as Mr Saraswat was demonstrably a client, and Ms Chase-Seymour did not comply with the Code.
- [13] The Tribunal is not satisfied Mr Saraswat is entitled to any compensation. This dispute concerns the issue of whether a fee was negotiated, and the decision is that no fee can be claimed, due to non-compliance with the Code.

Order

- [14] The Tribunal orders that Ms Chase-Seymour:
- [14.1] Is censured.
- [14.2] Will pay a penalty of \$1,500 pursuant to section 51(1)(f) of the Act, in respect of this complaint.

Caution

- [15] The Tribunal cautions Ms Chase-Seymour pursuant to section 51(1)(a) that her attitude to her client exhibited in her response to this complaint does not meet the standards expected of a professional person.
- [16] Ms Chase-Seymour has a dispute with her client as she did not comply with the Code. Had she done so, there would have been no room for the dispute to have arisen.
- [17] Ms Chase-Seymour's own actions have led to the consequences of which she now complains.
- [18] This lack of insight, and failure to seek an understanding of her client's perspective, will inevitably lead to professional difficulty, if not addressed and exhibited in her professional relationships.
- [19] As Ms Chase-Seymour did not comply with the Code, the Tribunal further cautions Ms Chase-Seymour that any attempt to recover the fee from Mr Saraswat would be unprofessional conduct. She is not entitled to the fee.

DATED at WELLINGTON this 18th day of October 2012

G D Pearson
Chair