

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

Decision No: [2013] NZIACDT 25

Reference No: IACDT 025/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

TTC

Complainant

AND

BL

Adviser

DECISION

REPRESENTATION:

Complainant: In person

Adviser: In person

Date Issued: 4 April 2013

MINUTE

Introduction

- [1] Mr TTC engaged Ms BL to provide immigration assistance.
- [2] In essence, he has complained Ms BL failed to lodge an application when she said she would.
- [3] Ms BL said she progressed her instructions as quickly as Mr TTC provided the information and documentation she required for that to happen; and he paid the fees.
- [4] The Tribunal has to determine whether the material before the Tribunal establishes the factual basis for the complaint.
- [5] It became evident Mr TTC did not have an accurate appreciation of the various steps, and his complaint was not supported by the facts ascertained from the record.
- [6] The Tribunal has dismissed the complaint.

The Complaint

- [7] The complaint Mr TTC made against Ms BL is as follows.
- [8] Ms BL is a licensed immigration adviser. Mr TTC wished to apply for an extension of his limited purpose student visa. He signed an agreement dated 6 July 2010 to procure Ms BL's services. The fee was \$1,687.50 (including GST), and there was a further fee that would have to be paid to Immigration New Zealand for lodging the application.
- [9] Mr TTC's visa was due to expire on 31 July 2010, so prompt action was required after the agreement was signed.
- [10] Mr TTC contacted Ms BL prior to 31 July 2010, and was told that she had submitted the application and it was being determined by Immigration New Zealand. In fact, there had been no application lodged and Ms BL had misrepresented the position.
- [11] About 18 October 2010 Mr TTC again contacted Ms BL and gave her a letter from the Institute where he was studying. Mr TTC has produced a copy of this letter. The letter indicated Mr TTC required a visa through to the end of March 2011. It was due to him having made successful progress with a qualification, but due to personal difficulties he required an additional semester of study.
- [12] Ms BL lodged an application for a visa on 2 December 2010. However, it was not the application she had been instructed to make. Mr TTC's visa had expired on 31 July 2010 so the only application that could be made was under section 35A of the (then) Immigration Act 1987. Mr TTC has produced a copy of a letter dated 2 December 2010 from Immigration New Zealand that states an application for a limited purpose visa was received on 2 December 2010 (the same day), and it was approved under section 35A.
- [13] The Authority obtained documentation from Immigration New Zealand to confirm the factual background. Immigration New Zealand provided a copy of a letter dated 30 July 2010 from Ms BL. The letter provided a student permit application form and various supporting documents. The application appears to be signed and dated 6 July 2010. The application has a lodgement stamp of 30 July 2010, which has been crossed out and a new date of 17 August 2010 stamped on it. In addition, the application has a stamp showing section 35A which indicates the application was processed under that section.
- [14] On 22 March 2011, Mr TTC paid the balance of the fee owing being \$447.50. At that point Ms BL returned his passport, which had a visa through to the end of January 2011. Mr TTC complained, and Ms BL said she would get a letter from Immigration New Zealand, and that he would need to reapply for a visa from outside New Zealand.

- [15] Mr TTC got advice from another adviser, received a further visa and successfully completed his course of study.
- [16] Mr TTC's complaint is essentially that Ms BL delayed acting on his instructions and misled him.

The Response

- [17] Ms BL wrote to the Authority on 3 August 2011 and disputed Mr TTC's claims.
- [18] Ms BL's letter said that various documents were produced to support the statements in her letter. However, they have not been produced to the Tribunal and it is not evident whether they were produced to the Authority.
- [19] The key points made by Ms BL were:
- [19.1] Mr TTC completed the agreement and application on 6 July 2010. It was clear that he needed to lodge the application before his visa expired at the end of the month.
- [19.2] At the time of engagement there were two things to complete. First, payment of fees and second, evidence of holding sufficient funds or sponsorship.
- [19.3] On 19 July 2010 Mr TTC provided evidence of holding funds.
- [19.4] During the period to the end of July there was regular communication regarding the need for payment. This was treated as urgent on 29 July 2010, and Ms BL told Mr TTC he was only one day away from being unlawfully in New Zealand as his visa was to expire. Mr TTC said his friend had deposited \$1,000 into Ms BL's bank account.
- [19.5] Ms BL could not verify the payment. Accordingly, at her own expense she paid the application fee and lodged the application on 30 July 2010, the last working day before Mr TTC's visa expired.
- [19.6] Ms BL's office continued to contact Mr TTC on 2, 5 and 10 August 2010. He could not be contacted.
- [19.7] Immigration New Zealand rejected the application, as two further documents were required from the institute where Mr TTC was studying, namely progress/attendance records, and receipts for fees paid. Immigration New Zealand returned the documents to Mr TTC personally rather than to Ms BL.
- [19.8] On 16 August 2010 Mr TTC came to Ms BL's office and spoke to Ms BL. She was told Mr TTC's friend had paid the fee. There had been an unexplained deposit of \$1,500 which did not match the timing or amount that had been reported to Ms BL by Mr TTC in relation to fees he paid. Eventually, this payment was linked to Mr TTC, though it was after the time his visa expired.
- [19.9] Immediately upon receiving the information from Mr TTC, Ms BL lodged the application again with the additional information.

The Tribunal's Minute

- [20] On 14 November 2012 the Tribunal issued a Minute which explained that the Tribunal had conducted a review of the material then before the Tribunal. The Minute identified apparent issues, potential factual findings, and emphasised that the parties would have the opportunity to respond, and that the Tribunal had reached no conclusions at that point.
- [21] The key elements of the complaint, and the response identified in the Minute, were as outlined above.

- [22] The Authority and the complainant do not lay charges, and are not responsible to prove them. The Tribunal is an expert inquisitorial body, which receives complaints, and determines whether the proof before it is adequate to uphold the complaint, and if so in what respects. Accordingly, the Minute identified issues and potential conclusions on the material presented before the Tribunal in order to give the parties the opportunity to consider their positions and provide submissions and further proof if they wish.

The issues to be determined

- [23] The Minute identified the relevant professional standards.
- [24] Clause 1 of the Code of Conduct requires:
- [24.1] A licensed immigration adviser to act with professionalism.
- [24.2] They must carry out the lawful informed instructions of clients.
- [24.3] That a licensed immigration adviser must discharge professional engagements with due care, diligence and respect. That requires them to ensure their professional service delivery meets proper standards.
- [25] Clause 3 requires that full records must be maintained of all engagements, including reporting to clients, and confirming in writing the details of material discussions.
- [26] Section 44 of the Act provides breaches of the Code, negligence, or incompetence are all grounds for complaint.
- [27] The Minute indicated the issue for the Tribunal to determine is whether it is satisfied Ms BL breached any of these professional standards.

Potential conclusions

- [28] The Minute emphasised its purpose was to identify potential findings on the basis of material presently before it. Quite different conclusions may follow if further information was presented, or submissions made, as to the effect of the material presently held.
- [29] The Minute related the potential factual findings to the professional standards required under the Code and the Act.
- [30] The Minute stated, on the papers before the Tribunal at the time, the following findings below appeared to be open.
- [31] However, the papers were not complete, and Ms BL was required to provide the full record of her dealings with this engagement.

Apparently regular processing of initial application

- [32] The material before the Tribunal included copies of the application and supporting material Immigration New Zealand supplied to the Authority. That material indicated:
- [32.1] Mr TTC's application was prepared promptly when he engaged Ms BL.
- [32.2] The information was not wholly complete; however prompt lodgement would have allowed that to be resolved with minimum difficulty.
- [32.3] Mr TTC did not respond with the urgency the situation required. He was slow to gather additional information and did not pay any fees (including the lodgement fee) until after his visa expired.
- [32.4] Ms BL lodged the application in time, regardless of Mr TTC not paying.

[32.5] She re-lodged the application promptly with the additional material when Mr TTC gave her the information required on 16 August 2010.

[33] Mr TTC's view of the matter is not consistent with the documents supplied by Immigration New Zealand. If he paid the fees earlier than 6 August 2010, he was requested to provide a copy of the bank records.

[34] Accordingly, the view was open on the material then before the Tribunal that until the lodgement on 17 August 2010, Ms BL's conduct was appropriate, and the complaint should not be upheld in relation to those events.

Insufficient information to determine events after lodgement on 17 August 2010

[35] On the material held initially the Tribunal could not determine what occurred after 17 August 2010 without speculation.

[36] The Tribunal did not have a copy of a letter dated 2 December 2010 from Immigration New Zealand that refers to an application for a limited purpose visa being lodged on that date.

[37] The Tribunal did not know what the outcome was of the application lodged on 17 August 2010. Similarly, what Ms BL did with the 18 October 2010 letter indicating Mr TTC required more time in New Zealand to complete his studies was not clear.

[38] The letter dated 2 December 2010 implied that there was a further process, but whether it was a new application or some other intervention was not evident on the material then held.

[39] The Minute indicated that unless the Tribunal was satisfied Ms BL had instructions, and did not discharge them properly, this aspect of the complaint would potentially not be upheld.

Request for Further Information from Ms BL

[40] The Minute, pursuant to section 49(4)(a), requested that Ms BL produce all of her records relating to Mr TTC.

[41] The Code (clause 3) requires Ms BL to maintain complete client records for seven years, and confirm in writing the details of material discussions with clients. Accordingly, she was expected to be in a position to present a fully documented record of the professional engagement which is subject to the complaint.

[42] Following the comments above, relating to potential findings, Ms BL was requested to provide a full explanation of what occurred after 17 August 2010 in relation to Mr TTC's immigration affairs as far as she is aware.

Response to the Minute

[43] Mr TTC did not respond to the Minute, and was not required to do so.

[44] Ms BL responded. She provided an explanation and supporting material. While the material may not be comprehensive, Ms BL has provided a cogent explanation of having provided professional services in an appropriate manner after 17 August 2010. Mr TTC and the Authority have not challenged that explanation.

Discussion

[45] The material before the Tribunal neither provides justification for further inquiry, nor establishes any breach of professional standards on the part of Ms BL in the period following 17 August 2010.

[46] There is no change to the material before the Tribunal bearing upon the processing of the initial application. Accordingly, the reasoning in the Minute must be adopted as the Tribunal's conclusion.

[47] It follows the Tribunal must dismiss the complaint as it is not made out by the facts before the Tribunal.

Decision

[48] The Tribunal dismisses the complaint pursuant to section 50 of the Act.

DATED at WELLINGTON this 4th day of April 2013

G D Pearson
Chair