

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

Decision No: [2013] NZIACDT 29

Reference No: IACDT 038/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

KIT

Complainant

AND

AHX

Adviser

DECISION

REPRESENTATION:

Complainant: Peter Moses, Barrister, Auckland

Adviser: In person

Date Issued: 27 May 2013

DECISION

Introduction

- [1] This is a complaint regarding Mr AHX. There were irregularities in how Ms KIT's affairs were handled in an immigration practice conducted by Mr SNJ's company.
- [2] The real issue that arises in this complaint is what role Mr AHX had in respect of Ms KIT's affairs. The evidence establishes he had only a limited role, and there is no evidence he breached any professional standards.
- [3] The complaint has been dismissed.

The Complaint

- [4] Ms KIT has made a complaint on the following basis.
- [5] In November 2008, Ms KIT engaged Mr SNJ's company to assist her to gain residence in New Zealand. She was living in New Zealand; and met with Mr SNJ, the principal of the company.
- [6] Mr SNJ submitted a residence application in August 2008.
- [7] On 25 January 2010 the application was declined, and Mr SNJ failed to notify Ms KIT.
- [8] Mr SNJ was acting unlawfully by providing immigration advice. He was formerly a lawyer who had been struck off with effect from 6 October 2008, and he was never a licensed immigration adviser. He continued to provide immigration advice after he was struck off.
- [9] A letter under Mr AHX's name was submitted to the Associate Minister of Immigration. It was dated 15 October 2010. However, someone other than Mr AHX signed it "pp" to identify that it was signed on Mr AHX's behalf.
- [10] Ms KIT was subsequently arrested and deported as she was in New Zealand unlawfully. It appears her immigration affairs were grossly mismanaged.
- [11] Ms KIT never saw or dealt with Mr AHX, or gave him any authority to act on her behalf.
- [12] Ms KIT was assisted by her counsel to lodge this complaint.
- [13] There were two aspects of the complaint in relation to Mr AHX identified by Ms KIT's counsel; namely:
 - [13.1] the submission to the Associate Minister was below the minimum standards of competence and Mr AHX was responsible for that; and/or
 - [13.2] Mr AHX was allowing his name to be used by an unlicensed person.
- [14] Ms KIT's counsel observed:
 - "It is at this stage somewhat unclear whether Mr AHX engaged in rubberstamping [i.e. letting an unlicensed person provide immigration advice under his name], or whether he was directly involved in providing negligent advice/representation to Ms KIT."
- [15] In terms of the evidence demonstrating that Mr AHX wrote the letter to the Associate Minister, Ms KIT's counsel noted the letter was consistent with "the writer not being a native speaker of English".

The Response

- [16] Mr AHX responded to the complaint in a letter dated 22 November 2011 addressed to the Authority, supported by an affidavit dated 23 November 2011.
- [17] Mr AHX explained that he was involved with Mr SNJ's company on a part-time basis from 20 October 2009 to 11 April 2011.
- [18] His only involvement with Ms KIT's file was about August or October 2010 when Mr SNJ brought Ms KIT's file to his desk. He wrote a note requesting that Mr SNJ contact Ms KIT for a meeting.
- [19] He had no other involvement. Specifically:
- [19.1] He did not sign the letter to the Associate Minister.
- [19.2] He did not submit the letter to the Associate Minister.
- [19.3] His first knowledge of the letter to the Associate Minister was when the Authority told him about the complaint.
- [20] In short, Mr AHX says he became aware of the file and asked Mr SNJ to arrange a meeting (which did not occur); however, he had no other involvement.
- [21] Mr AHX expressed concern regarding the way in which Ms KIT had been treated by Mr SNJ and his company.

The Tribunal's Minute

- [22] On 19 March 2013 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.
- [23] The key elements of the complaint, and the response identified in the Minute, were as outlined above.
- [24] 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 wished.
- [25] The Minute emphasised its purpose was to identify potential findings on the basis of material presently before it, and quite different conclusions may follow if further information was presented, or submissions made as to the effect of the material presently held.
- [26] The Minute related the potential factual findings to the professional standards required under the Code, and the Act.
- [27] The Minute identified potential conclusions on the papers before the Tribunal at the time, with a view to giving the parties the opportunity to respond. The parties were not required to respond, and did not do so.

Discussion

Professional obligations

- [28] The issues for determination arise from the Licensed Immigration Advisers Code of Conduct (“the Code”), and the Act.
- [29] Clause 1 of the Code requires a licensed immigration adviser to:
- [29.1] act with professionalism.
- [29.2] carry out the lawful informed instructions of clients.
- [29.3] Discharge professional engagements with due care, diligence and respect.
- [30] Section 44 of the Act provides that breaches of the Code, negligence and incompetence are all grounds for complaint.
- [31] The issue for the Tribunal to determine is whether it is satisfied Mr AHX breached any of these professional standards.

Background

- [32] 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).
- [33] The Tribunal is aware that in the business of Mr SNJ’s company there were irregularities. The evidence presented in support of the complaint indicates Mr SNJ was acting unlawfully in relation to Ms KIT’s affairs, and that is consistent with a range of other decisions relating to Mr SNJ and his company.
- [34] Mr AHX’s role in working with Mr SNJ while he unlawfully provided immigration services has been addressed in other disciplinary proceedings; as has that of another licensed immigration adviser in Mr SNJ’s company.
- [35] The Tribunal cannot assume the fact that Mr AHX’s name was used proves that he knew of the letter, or authorised it.
- [36] The Tribunal can place little weight on the qualities of the written expression in the letter. Mr AHX was not the only person in Mr SNJ’s company for whom English was not their first language. Mr AHX has identified one other person in that category who has also been the subject of disciplinary findings regarding the assisting of Mr SNJ to provide advice unlawfully.

Evidence of Mr AHX’s role

- [37] Mr AHX acknowledges he knew of Ms KIT’s file. His affidavit evidence acknowledges this, and that he wrote a note to say he wanted to meet with Ms KIT and her family.
- [38] That action in itself, or the failure to follow up, cannot be the basis of a disciplinary complaint. Mr AHX worked in Mr SNJ’s business part-time, and there was another licensed immigration adviser working there fulltime. Ms KIT agrees she never gave Mr AHX instructions to act for her.
- [39] The remaining evidence is Mr AHX’s name appearing on a letter that was clearly not signed by him. Mr AHX denies both that he knew of the letter and that he had any role in relation to it.
- [40] Nothing in the papers before the Tribunal is inconsistent with Mr AHX’s claim.
- [41] The fact a person’s name is on a document will usually provide *prima facie* evidence of that person’s involvement with the document. However, given the dishonest and unlawful practices

occurring in Mr SNJ's company at the time, it is not implausible for Mr AHX's name to have been falsely attached to a document; he has given affidavit evidence that that was the case.

Conclusion

- [42] Based on the information presently before it, the Tribunal concludes the complaint must be dismissed.
- [43] The grounds are that the Tribunal cannot be satisfied Mr AHX had any knowledge of or involvement with the letter dated 15 October 2010.
- [44] Further, there is no evidence on which the Tribunal can be satisfied that Mr AHX gave any express or implied general authority to others in Mr SNJ's company to attach his name to documents.

Decision

- [45] Pursuant to section 50 of the Act, the complaint is dismissed.

DATED at WELLINGTON this 27th day of May 2013

G D Pearson
Chairperson