

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

Decision No: [2013] NZIACDT 30

Reference No: IACDT 033/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

ST

Complainant

AND

AHX

Adviser

DECISION

REPRESENTATION:

Complainant: In person

Adviser: In person

Date Issued: 27 May 2013

DECISION

Introduction

- [1] This is a complaint regarding Mr AHX. There were irregularities in how Ms ST'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 ST'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 ST has made a complaint on the following basis.
- [5] She engaged Mr SNJ's company in November 2008 to assist her to gain residence in New Zealand.
- [6] The application was lodged in December 2008. In August 2009 an application for a work permit was lodged, so Ms ST could continue working after her then current permit expired.
- [7] In September or October 2009 Ms ST contacted Immigration New Zealand and was told that Mr AHX was her adviser according to Immigration New Zealand records. This was a surprise to Ms ST, as she had not given Mr AHX any authority to represent her.
- [8] On 25 March 2010 Ms ST contacted Immigration New Zealand and was told that some two weeks earlier, on 10 March 2010, Immigration New Zealand had decided to give her an opportunity to apply for a Work to Residence visa. She was not told of this by Mr AHX or Mr SNJ's company.
- [9] On 17 June 2010 Immigration New Zealand contacted Ms ST and told her that the application for a Work to Residence visa had to be applied for within 3 months from 10 March 2010, and her agent had been informed but no application had been submitted. An extension of time was granted to 8 July 2010.
- [10] Ms ST sent several emails to Mr AHX. Mr AHX contacted Immigration New Zealand at the end of June 2010, and told Immigration New Zealand he had reviewed the file and needed to supply information from Ms ST's employer who was overseas at the time.
- [11] On 7 July 2010, after several failed attempts to get in touch with Mr AHX, Ms ST terminated his services and engaged a new adviser who successfully applied for a residence visa.

The Response

- [12] Mr AHX responded to the complaint in a letter dated 20 September 2011 addressed to the Authority.
- [13] Mr AHX explained that he was involved in the practice of Mr SNJ's company on a part-time basis from 20 October 2009 to 11 April 2011. He says that it appears an authority was signed by Ms ST soon after Mr AHX commenced working for Mr SNJ's company.
- [14] In November 2009 Mr L started working for Mr SNJ's company, and took over the matter. Immigration New Zealand dealt with Mr L but did not update the identity of the licensed immigration adviser in its files.
- [15] Mr L and Ms ST disagreed, and Mr AHX became involved in the file again.

- [16] Mr AHX says that Mr SNJ's company did not receive the letter dated 10 March 2010 from Immigration New Zealand stating that there was a three-month period within which to submit an application for a Work to Residence visa.
- [17] Mr AHX did become involved in the file again in or about June 2010, at which time Ms ST insisted that Mr AHX try and gain a residence visa rather than a Work to Residence visa. Mr AHX considered that it was more sensible to take the path offered by Immigration New Zealand of a Work to Residence visa.

The Tribunal's Minute

- [18] On 21 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.
- [19] The key elements of the complaint, and the response identified in the Minute, were as outlined above.
- [20] 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.
- [21] 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.
- [22] The Minute related the potential factual findings to the professional standards required under the Code, and the Act.
- [23] 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

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

Background

- [28] The Tribunal is aware that in the practice of Mr SNJ's company there were irregularities. Accordingly, the Tribunal will not assume Mr AHX was responsible for matters unless it is established that was in fact the case.
- [29] Relevant to the present case there appears to be evidence that Mr AHX was not involved in much of the instruction, and Ms ST said in a email of 31 August 2011 to the Authority:
- “Regarding [Mr AHX], I am sure only his name was on my file as my immigration advisor and he knew nothing about the case. When I managed to speak with him in the final days, he was utterly clueless what I was talking about.”
- [30] It appears possible that Mr AHX knew nothing of what was occurring until late in the instruction, although he may well have been in Immigration New Zealand's records as Ms ST's licensed immigration adviser. I note that Ms ST's application for residence was presented in the name of Ms G, and Mr AHX was not involved with Mr SNJ's company at that time (2008).
- [31] In these circumstances, the Tribunal will look to the material before it to establish the extent to which Mr AHX was engaged and responsible.
- [32] Mr AHX has explained that he handed over responsibility to Mr L, who was a licensed immigration adviser. It appears he relied on Mr L to take the necessary steps to obtain Ms ST's authority for Mr L to act for her. The view appears open that Mr AHX reasonably handed over responsibility to Mr L, and did not have notice that there was any irregularity. There is in fact no evidence Mr AHX either did anything, or was required to do anything at that point in time.

What Mr AHX in fact did

- [33] The Tribunal has documentation showing Mr AHX was engaged in the following matters, toward the end of the instructions:
- [33.1] **5 and 7 June 2010 emails:** Ms ST and Mr AHX corresponded regarding information required by Immigration New Zealand.
- [33.2] **29 June 2010 emails:** Immigration New Zealand and Mr AHX exchanged emails regarding Ms ST's employment.
- [33.3] **7 July 2010 email:** Ms ST notifies Immigration New Zealand that Mr AHX is not authorised to represent her.
- [34] There is no evidence that Mr AHX either did or was responsible for anything else. The Tribunal may conclude that the only material actions were those of Mr AHX in the correspondence outlined in the preceding paragraph, which is consistent with Ms ST's claim that Mr AHX had little knowledge of her case.

Conclusion

- [35] Based on the information provided by Ms ST, and the written record before it, the Tribunal must conclude the complaint should be dismissed.
- [36] The grounds are:
- [36.1] There is no evidence Mr AHX acted or was required to act in the initial phase of the instruction.
- [36.2] The role Mr AHX had in June 2010 was limited, and there is no evidence he acted either improperly or with a lack of care and responsibility.

Decision

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

DATED at WELLINGTON this 27th day of May 2013

G D Pearson
Chairperson