

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

Decision No: [2013] NZIACDT 48

Reference No: IACDT 009/12

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**

Authority

**BETWEEN**

**PQ**

Complainant

**AND**

**Hakaoro Hakaoro**

Adviser

**THE COMPLAINANT'S NAME IS NOT TO BE PUBLISHED**

Hearing: 26 and 27 June, and 10 July 2013

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**DECISION**

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**REPRESENTATION:**

**Authority:** Ms T Thompson, Ministry of Business, Innovation and Employment, Auckland.

**Complainant:** Mr N T Tupou, Barrister, Auckland.

**Adviser:** Mr J A Sutton and Mr R Rajiv, Barristers, Auckland.

Date Issued: 8 August 2013

## DECISION

### Introduction

- [1] Mr Hakaoro is a licensed immigration adviser.
- [2] The complainant was in New Zealand unlawfully and had heard that Mr Hakaoro was an immigration adviser who could potentially assist.
- [3] She says she came to Mr Hakaoro's home with a relative to seek advice. Mr Hakaoro and his wife offered to assist her. The arrangement was that she would live in the home occupied by Mr Hakaoro and his wife and work in the home in exchange for immigration services. This, she was told, had a value of up to some \$5,000.
- [4] In fact, Mr Hakaoro took no steps to assist her with immigration issues. She worked in his home, and Mr Hakaoro attempted to exploit her sexually.
- [5] However, Mr Hakaoro says the complaint is fabricated, as does his wife. They say the complainant came to their home with no family support and was effectively homeless. They say they took her into their home, treated her as a family member, and had no expectations of her. The complaint of attempted sexual exploitation is, they say, fabricated.
- [6] The issues for the Tribunal are first to determine the disputed facts, and then determine whether Mr Hakaoro breach his professional obligations.
- [7] I have been satisfied the evidence given by the complainant is true; Mr Hakaoro used his status as a licensed immigration adviser to exploit the complainant.
- [8] The Tribunal has found:
  - [8.1] Mr Hakaoro attempted to sexually exploit the complainant;
  - [8.2] He did not initiate his client relationship in accordance with the Licensed Immigration Advisers Code of Conduct 2010 ("the Code of Conduct"); and
  - [8.3] He dishonestly promised to provide professional services in exchange for domestic services and did not deliver or intend to deliver those services.

### The complaint

- [9] The complaint against Mr Hakaoro was in the following terms.
- [10] The complainant came to New Zealand on 3 February 2010, and her visa expired on 4 December 2010.
- [11] In July 2011, when 19 years of age, she was approached by a cousin who told her there was a couple living in Mangere who were immigration consultants. They would provide assistance with immigration issues in exchange for domestic duties.
- [12] The couple were Mr Hakaoro and his wife.
- [13] The complainant had been seeking to undertake study in New Zealand and had family support. However, she was not well supported financially, and found herself in a situation where she was unlawfully in New Zealand and under financial stress.
- [14] The complainant contacted Mr Hakaoro and his wife, and found her cousin's reports were correct. She agreed to be a servant to Mr Hakaoro and his wife. She was exploited and expected to undertake inappropriate tasks. This included massaging Mr Hakaoro's wife in the early hours of the morning in the bedroom Mr Hakaoro shared with his wife. It also involved heavy lifting. She was not paid any wage.

- [15] Mr Hakaoro and his wife told the complainant shortly after she undertook these duties she had been issued with a work permit, and it had cost them \$5,000. The complainant believed the claim which, in fact, was false.
- [16] Mr Hakaoro, on an occasion when he was alone with the complainant, said words to the effect that he would get her a residence permit if she would have sexual intercourse with him. The complainant rejected this advance and told him she would return to her country of origin.
- [17] The complainant was frightened, fearful, and confused. She subsequently confided in a person she trusted (Ms BFZ), and at the end of August 2011 she moved to stay with that person in her home. When informed that she was leaving, Mr Hakaoro's wife verbally abused the complainant in person, by text, and by telephone.
- [18] On 12 October 2011, the complainant was arrested, as she was unlawfully in New Zealand. Her visa had expired. She was informed that Mr Hakaoro had told Immigration New Zealand of her unlawful status. She was later deported.
- [19] The complaint was supported by affidavits from the complainant and Ms BFZ. The latter, as far as her knowledge extended.
- [20] The lawyer assisting with the preparation of the complainant's complaint said that there had been three or four prior occasions where Mr Hakaoro and his wife had exploited young women in a similar manner. However, as no further evidence of that has been provided, this complaint has been determined solely in relation to the complainant and her circumstances.

### **The response**

- [21] Mr Hakaoro, in an email of 16 March 2012, said the complaint was false and manufactured, and designed to obstruct the deportation of the complainant.
- [22] The agent acting for Mr Hakaoro at the time was Mr Ka; he provided a memorandum saying the complaint was not a complaint, and it was "a fraud/forgery and trivial".

### **The Tribunal's Minute**

#### *Purpose of Minute*

- [23] On 16 November 2012, the Tribunal issued a Minute which explained 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.
- [24] The key elements of the complaint, and the response identified in the Minute, were as outlined above.
- [25] The Authority and the complainant do not lay charges, and are not responsible to prove them. The Tribunal is an expert body with inquisitorial and adjudicative functions, 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.
- [26] The Minute stated, on the papers before the Tribunal at the time, the following findings below appeared to be open.

#### *Potential Conclusions*

*Exploitation of a vulnerable migrant by a licensed immigration adviser*

- [27] The Minute identified the allegation against Mr Hakaoro as being that he exploited a vulnerable migrant, and did so using his status as a licensed immigration adviser. The material before the Tribunal at the time of issuing the Minute left open the potential conclusion that may be upheld on the following basis.
- [28] There was an allegation that there had been exploitation and unprofessional conduct by:
- [28.1] demanding unpaid and onerous work; and
- [28.2] attempted sexual exploitation.
- [29] That exploitation it was said had been effected by Mr Hakaoro dishonestly misrepresenting he would provide immigration services, and claiming that the complainant had been issued a permit to work in New Zealand.
- [30] Sworn testimony supported the allegations.
- [31] The Minute indicated the view was open that the response provided by the adviser at that point gave no adequate answer to the complaint.
- [32] The Minute pointed out an unsupported claim that the complaint was dishonestly made was unlikely to be as convincing as a response to the evidence supporting the complaint. Mr Hakaoro appeared not to have engaged with the facts alleged in the complaint; he had not said whether he accepted any of the facts alleged.
- [33] The Minute pointed out the complaint was a coherent account, sworn on oath and supported in significant respects by a third person. The Tribunal accordingly indicated it may accept that account on the basis of the material then before the Tribunal.
- [34] The Minute noted it followed that the Tribunal, on the material then before it, would potentially conclude:
- [34.1] The facts alleged in the complaint would be found to be correct;
- [34.2] Mr Hakaoro breached clause 1 of the Code of Conduct, as his conduct was unprofessional, and he ignored the requirements that apply to a professional engagement;
- [34.3] Mr Hakaoro engaged in dishonest and misleading behaviour; and
- [34.4] The complaint would be upheld pursuant to section 44(2)(d) and (e) of the Immigration Advisers Licensing Act 2007 ("the Act").

### **Oral Hearing**

- [35] In the course of a series of interlocutory steps, the Tribunal determined that there should be an oral hearing. Mr Hakaoro had provided an affidavit from himself, and also affidavits from his wife Ms Manuna Paletu'a, and Pastor Teinapi Tauri. For the complainant, Ms BFZ also filed an affidavit, which was additional to the affidavit filed with the complaint.
- [36] The Tribunal is required to hear complaints on the papers, unless it is necessary to require attendances before the Tribunal. The Tribunal deals with matters with inquisitorial and adjudicative powers as complainants and the Registrar are not required to prosecute complaints. Accordingly, the purpose of the oral hearing was for the Tribunal to review the evidence, and importantly to allow Mr Hakaoro to challenge the evidence and present his defence to the complaint. He was provided the opportunity to challenge the complainant by cross-examination and call his own evidence.
- [37] The complainant gave evidence (by a telephone link, as she was deported and living in her country of origin), and affirmed the complaint, which has been outlined previously.

- [38] In addition Ms BFZ gave evidence in support of the complaint.
- [39] Mr Hakaoro, his wife, and also Pastor Teinapi Tauri gave evidence for Mr Hakaoro.
- [40] The focus of the oral hearing was the issue of whether the complaint was true, or as Mr Hakaoro claims, fabricated.

## Discussion

### Overview

- [41] Mr Hakaoro and his wife say that the complainant presented herself as a person needing a home, as she was effectively alone in New Zealand without the support of friends or family. They say that as she was young they invited her into their home, treated her like a daughter, and expected nothing in return.
- [42] They became aware the complainant was in New Zealand unlawfully, but Mr Hakaoro never suggested he would become engaged in that issue. They say the circumstances were uneventful.
- [43] If correct, then there could be no question of a client relationship with the complainant, and the complaint was fabricated.
- [44] The complainant confirmed her complaint on the basis on which it was originally advanced.
- [45] The key elements of that complaint are:
  - [45.1] She did not come to live in Mr Hakaoro's home because she needed a home. She had been living with her uncle, could remain there, and had other alternatives. Her sole motivation to live in Mr Hakaoro's home was to get assistance with her immigration status.
  - [45.2] Mr Hakaoro expressly offered her immigration services in exchange for domestic work.
  - [45.3] The complainant accepted the requirement to perform work. Her complaint is that Mr Hakaoro failed to provide the immigration services he promised to provide in exchange for domestic work.
  - [45.4] Mr Hakaoro attempted to exploit the complainant sexually, promising to achieve her immigration goals, if she would provide sexual availability.
- [46] The issue to determine is whether the allegations made by the complainant are true.
- [47] I must be satisfied the evidence does prove the complaint. 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). The complaint includes elements that are at the highest end of the scale, and in particular a finding that Mr Hakaoro attempted to sexually exploit the complainant. I must be sure that the complainant's evidence must be accepted.
- [48] I am satisfied all the grounds of complaint have been established to that level of proof.

### *The claim the complainant had no home and presented in search of shelter*

- [49] The complainant's evidence is that she had other alternatives in terms of accommodation. That evidence has not been challenged effectively. She had two relatives in Auckland, and lived in their respective homes before moving into Mr Hakaoro's home.
- [50] Mr Hakaoro did not dispute the complainant's evidence she deliberately came to Mr Hakaoro's home and this was the first point of contact. There was no chance or social encounter preceding her presenting herself at Mr Hakaoro's home.

- [51] It is a necessary part of Mr Hakaoro's claim that the complainant simply presented herself at his home/office seeking shelter, and that had no connection to him being an immigration adviser.
- [52] It is beyond belief the complainant would simply happen upon Mr Hakaoro's home seeking accommodation by random chance.
- [53] The only credible account that explains the complainant presenting herself at Mr Hakaoro's home is the complainant's evidence that she was there to seek immigration advice.
- [54] This point is important. Mr Hakaoro's account relies heavily on saying the complainant presented to him on a random basis unrelated to immigration advice. If that were not so, he had professional obligations to her, and cannot produce evidence of meeting any of them. He was required to complete documentation if he was providing immigration advice.

*The terms on which the complainant came to reside in Mr Hakaoro's home*

- [55] The complainant says that she entered Mr Hakaoro's home on the terms that she would provide domestic services in exchange for Mr Hakaoro providing immigration services.
- [56] In contrast Mr Hakaoro and his wife say they invited her into their home with no expectations, treating her like a daughter.
- [57] I attach no great significance to the nature of the duties performed. There were issues over the extent of the duties, and whether they were too onerous for a person of the complainant's stature. The issue is subjective and has little or no bearing on the central issues.
- [58] The real issue is whether Mr Hakaoro agreed to provide immigration services in exchange for domestic duties and then subsequently breached his professional obligations. It matters little whether the duties were light or onerous.
- [59] I am satisfied the complainant's account is correct, and there was an agreement to exchange immigration services for domestic services.
- [60] First, for the reasons discussed, it is not plausible that the complainant came into contact with Mr Hakaoro for reasons other than seeking immigration assistance.
- [61] Further, the complainant had accommodation available. She had no reason to enter Mr Hakaoro's home unless it was to gain immigration assistance.
- [62] There is a further factor that makes Mr Hakaoro's explanation implausible.
- [63] Mr Hakaoro admits that after a relatively short period he did become aware the complainant was in New Zealand unlawfully.
- [64] At that point he was faced, even on his own account, with the difficulty that as a licensed immigration adviser he had someone in his own home who was in New Zealand unlawfully.
- [65] The Code of Conduct required him to uphold the integrity of New Zealand's immigration system, and it was a criminal offence to "aid, abet, incite, counsel, or procure" the complainant to remain unlawfully in New Zealand.
- [66] Mr Hakaoro could not ignore the complainant's immigration status. Mr Hakaoro was not in a position to, as he says, take no professional interest in the complainant's situation.
- [67] As soon as he was aware that the complainant was in New Zealand unlawfully he was obliged to give her advice, and he needed to engage with Immigration New Zealand if she was in his home while in New Zealand unlawfully.
- [68] The only sensible course for Mr Hakaoro would have been to advise the complainant that she should authorise him to approach Immigration New Zealand and apply for any available concession. The complainant says that is what Mr Hakaoro said he would do, and she asked

him to do. I do not accept Mr Hakaoro's claim he took no interest in the complainant's immigration status and treated her as a guest.

*Whether Mr Hakaoro misrepresented the professional services he would provide*

- [69] Mr Hakaoro accepts he provided no immigration services. I am also satisfied Mr Hakaoro did not intend to provide immigration services, even though he promised to provide those services in exchange for domestic work.
- [70] There was ample time to seek records from Immigration New Zealand, inform Immigration New Zealand of the complainant's circumstances, and apply for any potential discretionary relief.
- [71] In reality, there was nothing that could be done to get a new visa issued for the complainant, and she was later deported.
- [72] I have concluded that when Mr Hakaoro promised immigration services in exchange for domestic service, he knew the complainant would not be able to get a visa. Accordingly, he provided no professional assistance, and eventually he and his wife reported her to Immigration New Zealand when she was no longer useful to them.

*Whether Mr Hakaoro attempted to sexually exploit the complainant*

- [73] I accept the complainant's account that Mr Hakaoro attempted to secure sexual availability in exchange for immigration services.
- [74] Mr Hakaoro denied he behaved in this way, and his wife claimed he did not have any opportunity. She said the complainant never travelled in the car alone with Mr Hakaoro, where the conduct was alleged to have occurred.
- [75] Through his counsel Mr Hakaoro challenged the complainant's evidence. In particular it was suggested that she had invented the account.
- [76] This challenge claimed:
  - [76.1] The complainant's affidavit in support of the complaint referred to an oral request only; whereas in her evidence to the Tribunal she also referred to Mr Hakaoro placing his hand on her leg while making the oral request. There were also some other details in the extent of the narrative which were suggested as amounting to inconsistency. Further, the complaint had referred to more than one approach by Mr Hakaoro in the affidavit, while only one incident was referred to in the oral evidence.
  - [76.2] In addition, it was suggested the motive for the complaint was to improve the complainant's situation after she was arrested and about to be deported.
  - [76.3] Pastor Teinapi Tauri's gave evidence to the effect that the complainant appeared to him to be satisfied with her circumstances in Mr Hakaoro's home, where he observed her.
- [77] I am satisfied that in all significant respects the complaint to Ms BFZ, the affidavit, and the complainant's evidence before the Tribunal were consistent.
- [78] I do not find there is significance in the complainant not referring to Mr Hakaoro placing a hand on her leg in her affidavit. It was a matter of detail not a major aspect of the complaint. It would be different if there was a new allegation of a serious physical indecent act. This was no more than a minor element of narrative that may or may not be included in an account.
- [79] There was a challenge that the original statement referred to multiple attempts at abuse. However that proposition was far from clear, I am satisfied the written complaint was, as the complainant understood the matter, materially the same as her oral evidence. The complainant had some limitation as the affidavit was in English which was not her first language.

- [80] While I accept the Pastor's evidence, he was only able to say that in casual contact in the home the complainant appeared to be comfortable. This, it was suggested, was not consistent with sexual and other exploitation. However, the Pastor was not in a relationship of confidence with the complainant and did not discuss issues of this kind with her.
- [81] People visiting a home where a person is subject to sexual and domestic exploitation will likely not know of that situation. I can put little weight on the Pastor's evidence as he was not in a position to know what was going on between the complainant and Mr Hakaoro.
- [82] The complaint made to Ms BFZ is material to Mr Hakaoro's claim the complainant invented the allegations when she was in prison awaiting deportation. Mr Hakaoro says the allegations were invented to assist the complainant to get bail, or another advantage.
- [83] However, the complaint was made to Ms BFZ before the complainant was arrested, or any event occurred that would plausibly cause the complainant to believe the allegation could assist her in that way.
- [84] Making the complaint and moving from Mr Hakaoro's home to Ms BFZ's home, are consistent with Mr Hakaoro having acted in the way alleged, not with the complaint being invented later to seek some advantage.
- [85] For the reasons discussed, I have found in a number of respects that Mr Hakaoro and his wife have given evidence regarding their dealings with the complainant that I cannot accept. Accordingly, I have reached the view that they are not reliable witnesses, whereas the complainant is.
- [86] I am satisfied I must accept the complainant's evidence regarding the attempted sexual abuse as accurate.

### *Conclusions*

- [87] I am satisfied that from the first time Mr Hakaoro came into contact with the complainant he was aware she was seeking assistance with her immigration status and consulting him as a licensed immigration adviser.
- [88] I am also satisfied Mr Hakaoro offered his professional services in exchange for domestic services. He neither intended to provide the professional services, nor did he provide them.
- [89] I am satisfied Mr Hakaoro subsequently offered to rapidly advance the complainant's immigration status if she would grant him sexual access; he did so with the intent that the complainant would rely on his professional status to believe he could achieve that outcome. She was in a vulnerable position due to being in New Zealand unlawfully, and he attempted to exploit that using his professional status as a person licensed under the Act.
- [90] The parties accepted that the issues were essentially factual.
- [91] Having reached those factual conclusions it inevitably follows that the complaint must be upheld.
- [92] The most serious aspect of the complaint is that Mr Hakaoro used his status as a licensed immigration adviser in an attempt to sexually exploit his client. That conduct was in the context of a professional relationship, and the conduct was unprofessional and accordingly in breach of clause 1 of the Code of Conduct. The behaviour was unprofessional and lacked respect for his client.
- [93] In addition Mr Hakaoro took no steps to initiate the professional relationship in accordance with the Code of Conduct, and accordingly breached clauses 1.4, 1.5, 8 and 9.
- [94] Mr Hakaoro also failed to provide the professional services he agreed to provide, and otherwise provide the professional advice to which the complainant was entitled, and did so with that intention from the outset. That amounted to a breach of clause 1.1 of the Code of



Conduct (which is a ground for complaint under section 44(2)(e) of the Act), and was dishonest and misleading conduct pursuant to section 44(2)(d) of the Act.

### **Decision**

- [95] Pursuant to section 50 of the Act, the complaint is upheld, as Mr Hakaoro has breached the Code of Conduct in the respects identified, which are grounds for complaint pursuant to section 44(2)(d) and (e) of the Act.
- [96] The specific conduct being that discussed above, in particular:
- [96.1] Attempted sexual exploitation of a client.
  - [96.2] Failure to initiate the client relationship in accordance with the Code of Conduct.
  - [96.3] Dishonestly promising, and not providing professional services in exchange for the domestic services he received.

### **Submissions on sanctions**

- [97] As the complaint has been upheld, section 51 allows the Tribunal to impose sanctions.
- [98] The Authority and the complainant 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 Hakaoro is entitled to make submissions.
- [99] 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.
- [100] If Mr Hakaoro claims his financial circumstances are relevant to any element of the potential sanctions, he should provide submissions in support of that position. Furthermore, he is expected to:
- [100.1] Provide a statement of assets and liabilities, and income, both verified on oath; and
  - [100.2] A similarly verified and full disclosure of any interest as a beneficiary or potential beneficiary in any trust (or other material financial interest).
- [101] If the complainant seeks compensation for the professional services that were not delivered in exchange for the domestic services she provided, the Tribunal will proceed on the basis the undelivered professional services had a value of \$5,000. The value appears to be appropriately related to Mr Hakaoro's promise of the value of the services. If the parties challenge this view, they should make submissions on the issue.
- [102] The Tribunal notes Mr Hakaoro is in receipt of legal aid. The parties are invited to address the relationship between section 51(1)(g) of the Act and section 45 of the Legal Services Act 2011 if the parties seek an order under section 51(1)(g).

### *Timetable*

- [103] The timetable for submissions will be as follows:
- [103.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.
  - [103.2] Mr Hakaoro is to make any further submissions (whether or not the Authority or the complainant make submissions) within 15 working days of the issue of this decision.

[103.3] The Authority and the complainant may reply to any submissions made by Mr Hakaoro within 5 working days of him filing and serving those submissions.

[104] The parties are notified that this decision will be published with the names of the parties (apart from the name of the complainant; see paragraph [105] below) after five working days, unless any party applies for orders not to publish any aspect.

*Suppression of name*

[105] The name, and other information that identifies the complainant (including the name or identity of Ms BFZ), is not to be published at anytime in relation to this complaint.

**DATED** at WELLINGTON this 8<sup>th</sup> day of August 2013

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**G D Pearson**  
Chairperson