

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

Decision No: [2013] NZIACDT 50

Reference No: IACDT 021/13

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Priscilla Busisiwe Dekker

Complainant

AND

Glen William Standing

Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: In person

Date Issued: 12 August 2013

Introduction

- [1] The Registrar has referred a complaint brought by Ms Dekker about the adviser, who was at the time a licensed immigration adviser.
- [2] The Registrar has identified two grounds for referral, namely:
 - [2.1] Dishonest or misleading behaviour; and
 - [2.2] Breaches of the Code of Conduct.
- [3] However, the material facts on which the complaint was referred were in essence that Ms Dekker and her husband paid for immigration services through to applying for residence visas.
- [4] The initial work was completed, and then Mr Standing could not be contacted. Ms Dekker then discovered that Mr Standing had lost his licence.
- [5] It is a matter of record that Mr Standing has had multiple complaints of dishonesty upheld by the Tribunal and lost his licence as a result of disciplinary action.
- [6] The Registrar and the complainant have not advanced any facts that suggest Mr Standing failed to perform his work to a satisfactory standard, other than that he lost his licence and did not do any more work. Mr Standing could not lawfully do the immigration work without a licence.
- [7] However, Mr Standing failed to take any steps to complete his instructions when he lost his licence. He should have taken step to ensure his clients were aware he lost his licence, were represented, and had the unearned fees paid to Mr Standing refunded.
- [8] The material facts include no elements of misleading or dishonest behaviour. Accordingly the complaint is upheld in relation to the failure to properly inform and account to his clients when he lost his licence.

The Statement of Complaint

- [9] The Registrar identified the following material facts as founding the complaint:
 - "1. In 2008 the complainant and her husband met the adviser at a migration expo run by the adviser's company Golden Sands Migration in South Africa.
 - 2. A few days later they contacted the adviser regarding assistance in obtaining New Zealand residency.
 - 3. The adviser told them it would cost 30,000.00 rand (to be paid in advance) for the residency, plus NZD \$3,500.00 to obtain a work visa.
 - 4. On 13 August 2008, the adviser wrote to the complainant outlining the total fee for a residence application would be 45,000.00 rand.
 - 5. On 12 September 2008 the complainant paid 29,913.45 rand to Golden Sands Migration.
 - 6. On 24 May 2010 the complainant received a tax invoice from the adviser trading as Living New Zealand for a sum of \$2,500.00 NZD with a further \$1,500.00 NZD payable when employment was secured.
 - 7. On 29 May 2010 she paid \$2000.00 NZD then a further \$500.00 NZD on 2 June 2010.
 - 8. When her work visa expired after one year, she was unable to contact the adviser.
 - 9. She contacted Immigration New Zealand and was advised to apply on her own. She was then granted a six month visa.
 - 10. In September 2011 her husband tried to apply for a work visa. It was at this point that he was advised by the New Zealand High Commission in Pretoria that the adviser was no longer licensed.

Grounds on which the Registrar referred the complaint

- [10] The Registrar referred the complaint pursuant to section 45(2) of the Immigration Advisers Licensing Act 2007 ("the Act"), and identified the grounds for referral as:
- [10.1] Whether the adviser engaged in dishonest or misleading behaviour under section 44(2)(d) of the Act; and
 - [10.2] Whether the adviser breached clauses 1, 2 and 3 of the Licensed Immigration Advisers Code of Conduct 2010 ("the Code"), which cover obligations to clients, authorities and business management.

The complainant's arguments in support of the complaint

- [11] The complainant provided no factual or legal arguments in support of the complaint.

The adviser's response to the complaint

- [12] The adviser did not respond to the complaint.

Information gathered by the Registrar

- [13] The Registrar has investigative powers and is permitted to gather information in relation to the complaint when thought fit (ss 47 and 57 of the Act).
- [14] The Registrar has not gathered any further information.

Response to the Statement of Complaint

- [15] The complainant and the adviser had the opportunity of responding to the Statement of Complaint and identifying any facts or analysis that they disagree with. Neither took issue with the Statement of Complaint.

Discussion

- [16] The material facts identified by the Registrar after exercising his statutory powers essentially identify an unexceptional professional instruction, which was not completed after Mr Standing lost his licence.
- [17] Mr Standing failed to inform his clients when he lost his licence, did not account to them for outstanding fees, or ensure they were aware as to how they could access professional support.
- [18] It is appropriate to address the findings in terms of the issues identified in the statement of complaint:
- [18.1] **Issue 1:** Whether the adviser has been dishonest or engaged in misleading behaviour.

Conclusion: The papers disclose no basis for concluding there has been dishonest or misleading behaviour.

- [18.2] **Issue 2:** Whether the adviser has met his professional obligations under clause 1.1(a) of the Code of Conduct to perform his services with due care, diligence, respect and professionalism.

Conclusion: The papers disclose no basis for concluding Mr Standing failed to deal appropriately with his clients until he lost his licence. His conduct in relation to termination of his instructions is specifically addressed in the following issues.

- [18.3] **Issue 3:** Whether the adviser has met his professional obligations under clause 1.1(c) of the Code of Conduct to take reasonable steps to ensure his clients' interests were represented once he could no longer act for them.

Conclusion: The papers are sufficient to satisfy me Mr Standing did not taken any steps when he could no longer act and was in breach of the Code in that respect.

- [18.4] **Issue 4:** Whether the adviser has met his professional obligations under clause 2.1(i) of the Code of Conduct to submit applications in a timely manner to ensure that clients maintain lawful immigration status.

Conclusion: The material facts do not suggest Mr Standing failed to take any steps until he lost his licence, and accordingly any failings relate to the termination of his instructions, not to carrying them out.

- [18.5] **Issue 5:** Whether the adviser has met his professional obligations under clause 3(b) of the Code of Conduct to confirm in writing when work ceases part way through the immigration process.

Conclusion: The papers are sufficient to satisfy me Mr Standing did not take any steps when he could no longer act, and was in breach of the Code in this respect.

- [18.6] **Issue 6:** Whether the adviser has met his professional obligations under clause 3(c) of the Code of Conduct to obtain agreement in writing to any material increase in costs as soon as the increase is known.

Conclusion: The material facts identify documents that outline changes in fees for work to be done; there is no allegation of, or papers supporting, completing work and then charging more than agreed. Accordingly the papers do not support a finding that the Code was breached in this respect.

- [18.7] **Issue 7:** Whether the adviser has met his professional obligations under clause 3(d) of the Code of Conduct to provide any refunds upon ceasing a contract for services.

Conclusion: The papers are sufficient to satisfy me Mr Standing did not taken any steps when he could no longer act and was in breach of the Code in that respect.

Decision

- [19] Pursuant to section 50 of the Act, the complaint is upheld, as Mr Standing has breached the Code of Conduct in the respects identified, which are grounds for complaint pursuant to section 44(2)(e) of the Act.
- [20] The specific conduct being that which was discussed above, in particular he breached:
- [20.1] Clause 1.1(c) of the Code of Conduct in failing to take reasonable steps to ensure his clients' interests were represented once he could no longer act for them;
- [20.2] Clause 3(b) of the Code of Conduct in failing to confirm in writing when work ceased part way through the immigration process; and
- [20.3] Clause 3(d) of the Code of Conduct in failing to provide refunds upon ceasing a contract for services.

Submissions on Sanctions

- [21] As the complaint has been upheld, section 51 allows the Tribunal to impose sanctions.
- [22] 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 Standing is entitled to make submissions and respond to any submissions from the other parties.

- [23] The parties will be aware Mr Standing is an undischarged bankrupt.
- [24] 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.

Timetable

- [25] The timetable for submissions will be as follows:
- [25.1] The Authority and the complainant to make any submissions within 10 working days of the issue of this decision.
- [25.2] Mr Standing to make any further submissions (whether or not the Authority or Ms Dekker make submissions) within 15 working days of the issue of this decision.
- [25.3] The Authority and the complainant may reply to any submissions made by Mr Standing within 5 working days of him filing and serving those submissions.
- [26] The parties are notified that this decision will be published with the names of the parties after five working days, unless any party applies for orders not to publish any aspect.

DATED at WELLINGTON this 12th day of August 2013

G D Pearson
Chairperson