

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

Decision No: [2013] NZIACDT 51

Reference No: IACDT 022/13

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

BN and MN

Complainants

AND

Hakaoro Hakaoro

Adviser

THE COMPLAINANTS' NAMES ARE NOT TO BE PUBLISHED

DECISION

REPRESENTATION:

Registrar: In person.

Complainants: Mr R Small, Pacific Legal Ltd., Wellington.

Adviser: Mr J Sutton, counsel, instructed by Sinisa Law Ltd, Auckland.

Date Issued: 12 September 2013

DECISION

INTRODUCTION

- [1] The Registrar has referred a complaint brought by the complainants who are a married couple with a family. The complaint relates to Mr Hakaoro, who is a licensed immigration adviser.
- [2] The Registrar has identified four grounds for referral, namely:
 - [2.1] incompetence,
 - [2.2] negligence,
 - [2.3] dishonest or misleading behaviour, and
 - [2.4] breaches of the Code of Conduct.
- [3] The essential facts arise from a situation where Mr Hakaoro was engaged to apply for visas under a discretion that applies when a person is in New Zealand unlawfully.
- [4] Mr Hakaoro accepts his clients, the complainants, told him they had a pending complaint with the Office of the Ombudsmen. That had the effect of preventing any further immigration steps until it was resolved.
- [5] The complainants say Mr Hakaoro failed to make proper inquiries, and charged them \$6,000 when he could do nothing for them but led them to believe he would provide effective, professional services. He then lodged applications that were hopeless both due to the effect of the pending complaint, and because the application did not contain cogent grounds.
- [6] Mr Hakaoro, they say, provided no services of value, and then failed to refund the money when his instructions were terminated.
- [7] Mr Hakaoro says that that he could not be expected to know of, or understand, the effect of the complaint to the Office of the Ombudsmen, and he charged a fair and reasonable fee for professional services that were properly provided.
- [8] The Tribunal has found Mr Hakaoro failed wholly to provide the professional services he charged for; he was dishonest and misleading, and failed to meet minimum professional standards.
- [9] The complaint has been upheld.

THE STATEMENT OF COMPLAINT

- [10] The complaint has been filed by the Registrar, in the form of a Statement of Complaint.

Material facts

- [11] The Registrar identified the material facts that founded the complaint in his Statement of Complaint.
- [12] The Statement of Complaint refers to a letter from the lawyer acting for the complainants, dated 14 November 2012, which contains a concise statement of the complaint.
- [13] The key elements are:
 - [13.1] Mr Hakaoro is a licensed immigration adviser.
 - [13.2] The complainants had instructed their lawyer to assist with their immigration issues, and he had taken steps, which involved lodging a complaint with the Office of the Ombudsmen. Accordingly, their immigration status:

- [13.2.1] Was being addressed;
- [13.2.2] They had a preserved status; and
- [13.2.3] It was not possible to advance their immigration issues until the Ombudsmen completed their investigation.
- [13.3] The complainants told Mr Hakaoro of the fact there had been an approach to the Office of the Ombudsmen, lodged by their lawyer.
- [13.4] While they had the preserved status and their complaint was being investigated, the complainants consulted Mr Hakaoro. He told them he could assist them by lodging an application under section 61 of the Immigration Act. He required a fee of \$6,000 for this service, to be paid in instalments.
- [13.5] Mr Hakaoro said the fee was \$3,000 for the male complainant (the husband), and \$3,000 for the female complainant (the wife).
- [13.6] The complainants agreed to the fee in an agreement dated 26 July 2011, and made payments by instalments.
- [13.7] Mr Hakaoro told them to await the outcome.
- [13.8] On 30 November 2011, Mr Hakaoro lodged an application for a visa for the husband, which Immigration New Zealand promptly rejected.
- [13.9] He approached Immigration New Zealand again on 14 December 2011, still seeking a visa for the complainants.
- [13.10] Immigration New Zealand made it clear that the complainants had a preserved immigration status as there was a complaint before the Office of the Ombudsmen and, accordingly, it was impossible to change the husband's immigration status under section 61 of the Immigration Act.
- [13.11] Mr Hakaoro did not inform the complainants of the situation and admitted he found it quite confusing, not easy to read, or understand.
- [13.12] Mr Hakaoro's communications with Immigration New Zealand exhibited incompetence as he relied on irrelevant legal principles and "good person wants better life" reasoning rather than addressing the relevant immigration law and policy.
- [13.13] Mr Hakaoro never made any application for the wife.
- [14] In short, the complainants say they did not understand their immigration issues. They went to Mr Hakaoro and he told them to pay him \$6,000 for professional services they needed. In reality, he could do nothing due to the effect of the complaint to the Office of the Ombudsmen. He tried to lodge an application that could not be lodged. He retained the fees of \$6,000 when the whole professional engagement was ill-founded and after he did no work at all for the wife.

Grounds on which the Registrar referred the complaint

- [15] 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 of the complaint as it disclosed there was a case that Mr Hakaoro:
 - [15.1] Was negligent (section 44(2)(a) of the Act).
 - [15.2] Was incompetent (section 44(2)(b) of the Act).
 - [15.3] Engaged in dishonest or misleading behaviour (section 44(2)(a) of the Act).
 - [15.4] Breached clauses 1, 2, 3 and 8 of the Licensed Immigration Advisers Code of Conduct 2010 ("the Code of Conduct").

The complainants' arguments in support of the complaint

- [16] The Statement of Complaint identified the complainants' key arguments in support of the complaint as:
- [16.1] Mr Hakaoro was aware from the outset that a complaint had been laid with the Office of the Ombudsman.
- [16.2] No requests for visas could be made in those circumstances, and their immigration status was preserved.
- [16.3] Mr Hakaoro charged them large amounts of money, without any results, or the possibility of results.
- [16.4] Mr Hakaoro lied to the complainants saying he had submitted applications when he had not taken any action on the wife's file.
- [16.5] The application made was ineffective, and not of an acceptable standard.

Mr Hakaoro's response to the complaint

- [17] The Statement of Complaint identified the key elements of Mr Hakaoro's response to the complaint in the following way.

Mr Hakaoro's response to the material facts

- [18] Mr Hakaoro claimed Immigration New Zealand did not disclose the complaint to the Office of the Ombudsmen.
- [19] He accepted the complainants did mention something to him about the Ombudsman, but could not elaborate and did not bring the issue up again.
- [20] The first time he knew that the complainants' status had been preserved was on 14 December 2011; he was not advised of this during earlier conversations with the Immigration New Zealand contact centre.
- [21] When he did find out about the complainants' preserved status, he called them and the husband came to see Mr Hakaoro at his offices. He explained to the husband that they would need to wait until the Ombudsman investigation was completed before he could make any further requests for visas, and the husband agreed.
- [22] Mr Hakaoro flew to Tonga on the complainants' request and helped their son apply for a visa, and that he did this work free of charge to them.
- [23] He had an agreement with the complainants to pay the wife's mother's medical costs if the complainants brought him more clients. He did not pay the costs as they did not bring him further clients.
- [24] The husband had claimed that he had told Mr Hakaoro that his authority to act for the complainants had been terminated, when in fact the husband had not told him this prior to lodging the second request in November 2012.

The written material provided by Mr Hakaoro

- [25] Mr Hakaoro has provided a written response to the complaint, as outlined above, and various documents from his file.

Mr Hakaoro's response to the grounds of complaint:

- [26] Mr Hakaoro rejected the complainants' accusation of "serious fraudulent behaviour", and stated that the complaint filed against him had no substance, was trivial, defamatory, and damaging to his professional reputation.

- [27] He rejects the allegation he charged the complainants large amounts of money and did not deliver any results.
- [28] Mr Hakaoro rejected the allegation that he lied to the complainants and did not take any action regarding the wife's file.
- [29] Accordingly, all elements of the complaint were disputed.

Mr Hakaoro's legal and factual arguments:

- [30] Mr Hakaoro said he was concerned that the complaints process in the Act is being abused as a tool to access visas and other ulterior motives.
- [31] He believes the complainants' solicitor's financial interests in, and personal connections with, an ethnic community had compromised the objectivity of the complaint.
- [32] Members of an ethnic community had laid complaints against him. The complainants' solicitor had laid this complaint in an attempt to reduce the competition from others working within the same community in order to increase his client base.
- [33] It had never been a requirement of the Authority that a licensed adviser must know or ought to know that complaints to the Ombudsman could result in immigration status being preserved.
- [34] The fee he charged the complainants was what he always charged for this type of immigration matter, and his fee was known to, and approved by, the Authority.
- [35] The husband was the principal applicant and that was the reason why the application depended heavily on his circumstances rather than those of his wife. Mr Hakaoro states that the husband has a father who is a New Zealand citizen this gave the complainants a "pathway to residence".

Information gathered by the Registrar

- [36] 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).
- [37] The Registrar obtained notes from the Immigration New Zealand Application Management System dated 30 November 2011 to 7 January 2013.

RESPONSES TO THE STATEMENT OF COMPLAINT

- [38] The complainants and Mr Hakaoro had the opportunity of responding to the Statement of Complaint, and identifying any facts or analysis that they disagree with and indicating whether they sought an oral hearing.

The complainants' response

- [39] The complainants lodged a statement of reply. They accepted the grounds of complaint, but took issue with the material facts and arguments contained in the Statement of Complaint. They did not seek an oral hearing.
- [40] There was some further factual material beyond that in the Statement of Complaint, particularly in reply to what Mr Hakaoro as said in response to the complaint namely:
 - [40.1] They reiterated at the outset Mr Hakaoro was informed of the role of the Ombudsmen.
 - [40.2] When Mr Hakaoro eventually understood the Ombudsmen's investigation affected what could be done, the communication was not from Mr Hakaoro to the complainants; it was from Mr Hakaoro's wife. It was a text, and not explained adequately.
 - [40.3] The complainants paid for Mr Hakaoro to fly to Tonga to assist their son, and he did not advance the matter. This was not documented, as it needed to be under the Code of Conduct.

- [40.4] The issue relating to medical cost was the wife's father, not her mother. This arrangement was not in writing and not advanced.
- [40.5] The complainants did not terminate Mr Hakaoro's instructions; he stopped acting for them. They found out through their lawyer, not Mr Hakaoro.
- [40.6] Mr Hakaoro charged \$6,000 and in addition solicited further payments, and supplies of cigarettes (demanded by texts from his wife).
- [40.7] They were lied to (in relation to charging a separate fee for the wife, without any work being done) and overcharged.
- [41] With specific reference to Mr Hakaoro's statement in response to the complaint:
 - [41.1] Mr Hakaoro claimed he could not have known of the complaint with the Ombudsmen, and had no reason to inquire. That was wrong, as he should have requested the disclosure of the file from Immigration New Zealand. The electronic file that was readily available would have been "flagged" with the status due to the pending Ombudsmen's complaint.
 - [41.2] Mr Hakaoro was required to understand the protocols relating to Ombudsmen's complaints, as they are in Immigration New Zealand's Operational Manual.
 - [41.3] Mr Hakaoro claimed that after a year he could assume that he could apply for a visa as the complaint must have been resolved. That demonstrated incompetence, as when the complaint was resolved preserved status was lost, and the event was both important and readily ascertainable. He inconsistently claimed he had made inquiries on other occasions.
 - [41.4] The complainants were not dealt with transparently in relation to fees, and the arrangements were not recorded fully.

Mr Hakaoro's response

- [42] For Mr Hakaoro, no statement of reply in the prescribed form was filed, and was not required as it is only necessary when a party is seeking to take issue with the Statement of Complaint or seeking an oral hearing.
- [43] There was a written submission addressing the various issues.
- [44] The key elements in the written submission were as follows.

Background

- [45] There was a family relationship between Mr Hakaoro's wife and the wife.
- [46] The timeline was:
 - [46.1] Mr Hakaoro first met with the complainants in March 2011.
 - [46.2] The complaint with the Office of the Ombudsmen was lodged on 13 June 2011 (without Mr Hakaoro being aware);
 - [46.3] On 25 November 2011, Mr Hakaoro submitted a request for a visa under section 61 of the Immigration Act for the husband; it was declined on 1 December 2011.
 - [46.4] On 8 December 2011, Mr Hakaoro made inquiries regarding the decline of the application, and did not ascertain why it had been declined (no reasons need be provided for a decline under section 61).
 - [46.5] On 14 December 2011, Mr Hakaoro requested Immigration New Zealand to reconsider the application; and for the first time Mr Hakaoro became aware of the complaint with the Ombudsmen for the first time due to information from Immigration New Zealand.

- [46.6] On 28 November 2012, Mr Hakaoro submitted a further application under section 61.
- [46.7] On 4 December 2012, Mr Hakaoro called Immigration New Zealand to inquire whether the complainants had “preserved status”.
- [46.8] On 7 January 2013, Mr Hakaoro made further inquiries with Immigration New Zealand and was told he was no longer acting for the complainants.
- [47] Mr Hakaoro says in response to the allegation of incompetence:
- [47.1] He did not know of, or have reason to know of, or report to the complainants, regarding the complaint to the Office of the Ombudsmen.
- [47.2] The complainants had mentioned the complaint without elaboration or providing documentation.
- [47.3] He first became aware of the complaint in an effective way on 14 December 2011; having previously lodged an application under section 61 and made inquiries without being informed of the complaint to the Office of the Ombudsmen.
- [47.4] Mr Hakaoro has never ascertained the grounds of the complaint to the Office of the Ombudsmen.
- [47.5] The only way Mr Hakaoro could ascertain necessary information about the complaint was by lodging an application for a visa under section 61, which is what he did.
- [47.6] He was not required to understand the issues arising from a complaint to the Office of the Ombudsmen.
- [47.7] It was reasonable to suppose after a year that the complaint had been resolved and proceed on that assumption without further information; though he had made inquiries on two prior occasions.
- [47.8] Mr Hakaoro lacked information, was competent, and undertook the work to the best of his ability.
- [48] Mr Hakaoro says in response to the allegation of negligence:
- [48.1] He reiterated the grounds responding to the allegation of incompetence.
- [48.2] When he became aware of the issue regarding the complaint, he met with the husband. He explained the situation to the complainants, and he agreed to wait for further developments.
- [49] Mr Hakaoro says in response to the allegation he engaged in dishonest or misleading behaviour:
- [49.1] The Authority has approved Mr Hakaoro charging a fee of \$3,000 per client for an application under section 61.
- [49.2] Mr Hakaoro explained the fees.
- [49.3] He did work without charge in addition to the work he agreed.
- [49.4] He could not achieve results due to the complaint, but did the work to the best of his ability.
- [50] In response to the allegation he lied regarding the work done for the complainants, he says:
- [50.1] The husband was the “principal applicant”.
- [50.2] There was a good basis to expect that the complainants would gain residence.
- [51] In response to the allegation the application under section 61 was deficient he says:

[51.1] The rejection was not due to the content, and

[51.2] For that reason, the second request appropriately had the same material supporting it.

[52] In response to the allegations of breaches of the Code of Conduct:

[52.1] He complied with clause 2.1, submitting timely applications.

[52.1.1] There was a few months delay in making the first application as he had to get immigration records, and enter an agreement for the provision of services.

[52.1.2] The difficulty was the complaint to the Office of the Ombudsmen, not the timeliness.

[52.1.3] The delay between the first and second application was due to the need to gain information.

[52.1.4] The husband was informed of, and accepted, the second delay.

[52.2] He complied with clause 3 in relation to business records, as arrangements regarding medical expenses were never fully resolved.

[52.3] He says clause 8 was complied with as the fees were fair and reasonable.

DISCUSSION

[53] The background facts are uncomplicated.

[54] Mr Hakaoro does not dispute that on 13 June 2011 there was a complaint lodged with the Office of the Ombudsmen. Under immigration policy, the result was that the complainants had a "preserved status".

[55] On 20 July 2011, Mr Hakaoro entered into an agreement to provide immigration services. The extent of the narration identifying the fee and the service to be provided was "S.61: \$6,000".

[56] At the time he signed the agreement it was futile to lodge an application under section 61 due to the complaint lodged with the Office of the Ombudsmen.

[57] Mr Hakaoro proceeded to lodge an application, and lodged further applications while the complaint remained unresolved.

[58] Mr Hakaoro says:

[58.1] He could not know of the complaint with the Office of the Ombudsmen and was not required to understand the consequences when he found out.

[58.2] He lodged the applications properly, in terms of content and timeliness.

[58.3] His pre-set fee of \$6,000 was fair and reasonable.

[59] The issue for the Tribunal is to determine is whether Mr Hakaoro did act appropriately, and if not, in what respects.

[60] I am satisfied Mr Hakaoro wholly failed to address the issues arising when a complaint is lodged with the Office of the Ombudsmen, and his initial evaluation of the circumstances was unacceptable.

[61] When lodging an application under section 61 it is essential to understand the immigration history of a person applying. If that history is not known from the adviser acting in the past, or a "hand over" of a file from another adviser, then the information is available on request from Immigration New Zealand. It is necessary to make the request, and understand the information received.

- [62] Counsel for the complainants rightly points out that had Mr Hakaoro requested his client's immigration history he would have received a electronic record flagged and should have understood he could not file an application under section 61.
- [63] It appears Mr Hakaoro at some point obtained a record of some, or part of, the complainants' immigration history. It is not clear when he got the information or how he got it.
- [64] Regardless, Mr Hakaoro admits his clients told him there was a complaint made to the Office of the Ombudsmen. He was accordingly on notice when he commenced the instructions and entered an agreement to provide immigration services.
- [65] However, he says he could ignore the information, and was not required to understand the significance of a complaint being under investigation. He says it is significant that his clients did not highlight the matter for him.
- [66] I do not accept that explanation. Mr Hakaoro was required to understand fully the immigration policy and procedures that apply to the work he was undertaking. He was on notice of a significant matter, and any competent immigration adviser should have been alerted to the fact that:
- [66.1] Immigration New Zealand would have addressed the issue of immigration status while the complaint was investigated; and
- [66.2] Some other professional was already addressing immigration issues for the potential clients, and inquiries were necessary.
- [67] As such, I am satisfied that Mr Hakaoro was negligent when he agreed to provide the services. He could do nothing of value, as any application under section 61 was futile at the time. If the complaint was successful then no application may be necessary. If the complaint was not successful the complaint and the circumstances would need to be addressed in any section 61 application. The only option may well have been to leave New Zealand if the complaint was not upheld.
- [68] I am satisfied this was not simply negligence in the sense of an isolated failure. Mr Hakaoro was incompetent. This was simply the first step in a course of conduct that exhibited a failure to initiate and perform professional services at the minimum standard required of a licensed immigration adviser.
- [69] The fees charged were not fair and reasonable:
- [69.1] First, Mr Hakaoro could not accept instructions to undertake work that was futile at the time, and further any future action required (if any) would depend on the outcome of the Ombudsmen's investigation.
- [69.2] Second, using a large fixed fee, regardless of the issues and complexity, is not fair and reasonable. There is no evidence the Authority approved Mr Hakaoro charging fees on that basis regardless of the complexity or value of the work. Section 61 applications vary greatly.
- [69.3] Third, it was not reasonable to charge both the complainants the same fee. Mr Hakaoro admits the matter primarily turned on the husband's circumstances, and little or nothing was done in relation to the wife.
- [69.4] Fourth, the standard of the work was deficient to a point where no fee could reasonably be charged as it fell well short of minimum standards. The steps he took were inappropriate, and the documents he produced were not of a standard any licensed immigration adviser should produce to Immigration New Zealand.
- [70] I do not consider the fairness or reasonableness of the fee can be altered by work done for the complainants' son. Mr Hakaoro was required to initiate that instruction in accordance with the Code of Conduct and document any effect on the fee in the present matter. That did not occur.
- [71] There is a question as to whether Mr Hakaoro procured the fees using dishonest or misleading conduct. The Tribunal is required to determine facts 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). As this issue is at the most serious end of the spectrum, I must be sure before making a finding of dishonesty.

- [72] I am satisfied Mr Hakaoro embarked on, and executed, a dishonest scheme in which he charged an excessive fee, without regard to whether he could provide the immigration outcome his clients were led to expect, and then he filed documents which were simply “going through the motions”, which were not professional services of any substance.
- [73] The reasons for concluding Mr Hakaoro was dishonest rather than merely incompetent are:
- [73.1] Mr Hakaoro failed to make obvious and important inquiries regarding his clients’ immigration prospects. While that in itself may be explained in terms of incompetence, other elements cannot.
- [73.2] Mr Hakaoro charged a fee of \$6,000; he could not have honestly believed that was fair and reasonable as:
- [73.2.1] It was excessive for the work he in fact did.
- [73.2.2] He determined the fee on the basis of \$3,000 for each client, when as he admits, the outcome essentially turned on the circumstances of one of them. He accordingly doubled the fee unreasonably.
- [73.2.3] Mr Hakaoro did eventually have to confront the reality that there was nothing of value he could have ever done, and what he did was entirely misguided. He has retained the fee despite his obligation to refund unearned fees (Code clause 3).
- [74] I am satisfied that Mr Hakaoro dishonestly sought to have his clients pay fees, and he had no interest in whether he could provide professional services of value to them.
- [75] The work Mr Hakaoro undertook was far short of acceptable standards. Examples are:
- [75.1] The failure to make proper inquiries and evaluation before accepting the instructions and lodging an application under section 61;
- [75.2] The letter he wrote to apply under section 61 failed to provide a sensible basis for an application under section 61. Counsel for the complainants rightly identifies it as containing legal propositions that were absurd in the context, such as “[e]quity looks on that as done which ought to be done” and “good person wants better life” reasoning, rather than addressing material immigration law and policy;
- [75.3] On 14 December 2011, Immigration New Zealand wrote to Mr Hakaoro and referred to the complaint, and the effect of A9.20 of the Operating Instructions. At that point Mr Hakaoro was inescapably fully on notice regarding the complainants’ immigration status, and the impossibility of lodging an application under section 61; and
- [75.4] Without any change in the situation, Mr Hakaoro lodged another section 61 application on 28 November 2012, assuming that the complaint would have been resolved. The action failed to meet minimum standards, as:
- [75.4.1] When the complaint was resolved his clients’ immigration status would not be preserved, or the complaint would have been resolved in a favourable way.
- [75.4.2] If not preserved, immediate action would have been required to apply under section 61, or to leave New Zealand.
- [75.4.3] If resolved favourably no action would be required.
- [75.4.4] It was not rational to lodge a further application without knowing that the Ombudsmen had completed their inquiries, and reported.

[76] I now address the findings in terms of the issues identified in the Statement of Complaint:

[76.1] **Issue 1:** Whether Mr Hakaoro was incompetent.

Conclusion: Mr Hakaoro was incompetent, and that involved multiple actions, which fell far short of minimum standards. He failed to act on notice that his clients had a live complaint with the Office of the Ombudsmen. He failed to ensure he understood the significance, and research the effects. The applications he filed were far below the standards required of a licensed immigration adviser, containing misconceived and irrelevant material, and lacking a cogent argument for exercise of the discretion under section 61. He lodged the application again after a lapse of a year without first ascertaining the status of his clients and the complaint.

[76.2] **Issue 2:** Whether Mr Hakaoro was negligent.

Conclusion: Mr Hakaoro was negligent. He failed to act on notice that his clients had a live complaint with the Office of the Ombudsmen. He failed to ensure he understood the significance, and research the effects. The applications he filed were far below the standards required of a licensed immigration adviser, containing misconceived and irrelevant material, and lacking a cogent argument for exercise of the discretion under section 61. He lodged the application again after a lapse of a year without ascertaining the status of his clients, and the complaint first.

[76.3] **Issue 3:** Whether Mr Hakaoro engaged in dishonest or misleading behaviour:

Conclusion: Mr Hakaoro engaged in dishonest and misleading behaviour as he induced his client to pay a fee of \$6,000 without being concerned or satisfied that he could provide the immigration outcome he led his clients to expect. He knew the fee did not fairly reflected the work or potential work and its value, and when his instructions ended he failed to account for the fees he had wholly failed to earn.

[76.4] **Issue 4:** Whether Mr Hakaoro 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 conclusions in relation to Issues 1, 2, and 3 all amount to lack of care, respect and professionalism. The findings do not relate to diligence.

[76.5] **Issue 5:** Whether Mr Hakaoro 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: This issue is theoretical in nature. Mr Hakaoro was not in a position to advance his clients' immigration status during the course of his instructions; he should not have made any applications on their behalf. There is no evidence of a breach of clause 2.1(i) of the Code of Conduct.

[76.6] **Issue 6:** Whether Mr Hakaoro has met his professional obligations under clause 3 of the Code of Conduct to maintain professional business practices relating to finances and contracts in light of his agreement to pay the complainants' mother's medical expenses if they bought him more clients.

Conclusion: The evidence does not establish this matter went beyond the exploration of a potential that was not realised, accordingly it did not reach the point where documentation was appropriate. There will be no finding of a breach under clause 3 of the Code of Conduct.

[76.7] **Issue 7:** Whether Mr Hakaoro 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: Mr Hakaoro failed to earn any of the \$6,000 he was paid; he was required to repay it in full, and failed to do so. He breached clause 3(d) of the Code of Conduct.

- [76.8] **Issue 8:** Whether Mr Hakaoro has met his professional obligations under clause 8(a) of the Code of Conduct to set fees that are fair and reasonable.

Conclusion: Mr Hakaoro provided no services of value, and performed no services that reached a minimum level of competence. He was not entitled to any fee, accordingly none of the fee of \$6,000 was fair and reasonable.

DECISION

- [77] Pursuant to section 50 of the Act, the complaint is upheld as Mr Hakaoro has been negligent, incompetent and engaged in dishonest and misleading behaviour which are grounds for complaint under sections 44(2)(a), (b) and (d) of the Act. He also breached the Code of Conduct in the respects identified, which are grounds for complaint pursuant to section 44(2)(e) of the Act.

SUBMISSIONS ON SANCTIONS

- [78] As the complaint has been upheld, section 51 allows the Tribunal to impose sanctions.
- [79] The Authority and the complainants 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 and respond to any submissions from the other parties.
- [80] 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

- [81] The timetable for submissions will be as follows:
- [81.1] The Authority and the complainants are to make any submissions within 10 working days of the issue of this decision.
- [81.2] Mr Hakaoro is to make any further submissions (whether or not the Authority or the complainants make submissions) within 15 working days of the issue of this decision.
- [81.3] The Authority and the complainants may reply to any submissions made by Mr Hakaoro within 5 working days of him filing and serving those submissions.
- [82] The parties are notified that this decision will be published with the names of the parties (apart from the names of the complainants; see paragraph [83] below) after five working days, unless any party applies for orders not to publish any aspect.

Suppression of name

- [83] The names and other information that identifies the complainants is not to be published, at anytime, in relation to this complaint.

DATED at WELLINGTON this 15th day of August 2013

G D Pearson
Chairperson