

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

Decision No: [2013] NZIACDT 54

Reference No: IACDT 022/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Edwin Thomas (Ted) Midlane

Complainant

AND

Simona Emilia Marica (Woodberg)

Adviser

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Complainant: In person

Adviser: Mr P McPherson, Hesketh Henry, Lawyers, Auckland.

Date Issued: 22 August 2013

DECISION

Introduction

- [1] The Tribunal upheld this complaint in a decision issued on 27 May 2013.
- [2] Ms Woodberg received \$3,500 to pay a fee to Immigration New Zealand. Immigration New Zealand refunded the fee, and Ms Woodberg used the money to settle her own fees. She had no authority to do so.
- [3] The Tribunal expressly noted there was no finding of dishonesty; rather Ms Woodberg failed to appreciate the obligations on her.

The Parties' Positions on Sanctions

- [4] Through her counsel, Ms Woodberg essentially contended:
 - [4.1] She was entitled to fees.
 - [4.2] The terms of engagement did not give authority to take the refund of a disbursement for fees, but different terms could have allowed that.
 - [4.3] Alternatively, express authority could have been sought.
 - [4.4] The inappropriate conduct was technical in nature. The payment of fees could have been procured by enforcing payment.
 - [4.5] The complaint included a substantial range of serious matters. Ms Woodberg had been put to considerable expense responding to them.
 - [4.6] In the circumstances, a caution is an adequate and appropriate response.
- [5] Mr Midlane and the Registrar did not make any submissions on sanctions.

Discussion

- [6] I accept it is neither necessary nor appropriate to make any orders relating to fees and the disbursement retained. I have not found that the fees to which the reimbursement was allocated were not outstanding. Ordering repayment, and followed by recovery would be pointless, and Mr Midlane has not sought such an order.
- [7] Failing to deal with client funds other than in accordance with instructions is an inherently serious complaint. I accept as mitigating factors that Ms Woodberg misunderstood her obligations, and the money was applied to settle a genuine obligation. I also give weight to the reality that failure to understand the full impact of the obligations surrounding client funds has been widespread in the profession.
- [8] I also give weight to the fact Ms Woodberg had to respond to a much more extensive complaint than the grounds upheld. The cost of doing was likely considerably higher than the appropriate financial penalty for this complaint.
- [9] In all the circumstances, I accept the submission of her counsel that this is a case where a financial penalty is not required. Mr Midlane and the Registrar did not oppose the submission.

Decision

[10] The Tribunal orders that Ms Woodberg is censured; no other sanction will apply.

DATED at WELLINGTON this 22nd day of August 2013

G D Pearson
Chairperson