

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

Decision No: [2013] NZIACDT 67

Reference No: IACDT 056/12

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**

Authority

**BETWEEN**

**TU**

Complainant

**AND**

**Hakaoro Hakaoro**

Adviser

**THE COMPLAINANT'S NAME IS NOT TO BE PUBLISHED**

Hearing: 26 September 2013

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**DECISION**

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**REPRESENTATION:**

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

**Complainant:** In person.

**Adviser:** Mr S Kilian & Mr F Hawkins, Shane Kilian & Associates, lawyers, Auckland.

Date Issued: 8 October 2013

## DECISION

### Introduction

- [1] Mr Hakaoro faces a complaint regarding his conduct. It dates back to the time before he was a licensed immigration adviser.
- [2] His client says he offered immigration advice and job search services. During that period he attempted to exploit her in various ways.
- [3] The Tribunal only deals with complaints relating to licensed immigration advisers. Accordingly, what happened in the time prior to Mr Hakaoro becoming licensed cannot be part of the grounds for this complaint.
- [4] However, the events prior to Mr Hakaoro being licensed are relevant. Mr Hakaoro says he was offering employment search services and no immigration service until he was licensed. In contrast the complainant says she paid fees for immigration and job search services, and was expecting to get them at the time he became licensed.
- [5] The difference is important. If Mr Hakaoro was holding fees for immigration services, and had not completed his instructions when he was first licensed, then he needed to put the fees into a client account, enter into a written agreement, and comply with disclosure requirements. They are all requirements of the professional Code of Conduct that applied to Mr Hakaoro as soon as he became licensed.
- [6] Mr Hakaoro says he never had any immigration instructions, and the instructions he did have were terminated soon after he became licensed. Accordingly, he had no obligations that can concern this Tribunal.
- [7] The Tribunal has determined that the complainant's evidence is correct. Mr Hakaoro offered her immigration and ancillary job search services from the outset. He took fees for those services, and failed to deliver them. After he was licensed, he failed to initiate his instructions in accordance with the Code of Conduct, failed to bank the fees as client funds, dishonestly misrepresented he was entitled to keep the fees, and failed to repay them when his instructions ended.
- [8] The Tribunal has upheld the complaint.

### The complaint

- [9] The complainant lodged her complaint on the following basis.
- [10] On Friday 29 April 2011, she met with Mr Hakaoro at his home. He told the complainant he would obtain a job offer and submit a work visa application for \$3,000.
- [11] Following that, Mr Hakaoro, in a telephone call, said that the complainant should have a partner and he had identified a man who was suitable.
- [12] On 2 May 2011, the complainant again went to Mr Hakaoro's home, and discussed her immigration issues. Mr Hakaoro said he wanted to talk to her in private, and took her into a bedroom in the home.
- [13] During the discussion in the bedroom Mr Hakaoro said:
  - [13.1] The complainant should move into the home with him and his wife; and
  - [13.2] Without his wife's knowledge he would get the complainant pregnant, as having a child was the fastest way to get a work permit.
- [14] The complainant agreed to the proposed course of action, without intending to go through with it. She paid Mr Hakaoro \$200 toward his fees for immigration services.

- [15] Mr Hakaoro regularly called the complainant asking her to go to a motel so he could have sexual intercourse with her to get her pregnant. Eventually, he stopped when he realised that the complainant had no intention of going along with Mr Hakaoro's propositions.
- [16] On 4 May 2011, the complainant paid a further \$2,200. Mr Hakaoro subsequently demanded the balance of the fee. On 1 June 2011 the complainant paid a further \$300 and a final payment of \$300 after that. The final payment was made on 21 July 2011, bringing the total paid to \$3,000.
- [17] On 23 July 2011, the complainant went with her parents to Mr Hakaoro's home. At this point Mr Hakaoro told the complainant to pay another \$5,000, but discounted the demand to \$3,000. He said that will enable him to bring her children from Tonga. He was aggressive, "telling her off" in front of her parents, and said words to the effect of: "Look me in the eye, do you think you can get a work permit anywhere in New Zealand for \$3,000." He went on to say that you cannot "buy" a work permit for \$3,000, and that when he got another \$3,000 he would start working on a work permit.
- [18] The complainant then said she wanted the money returned, and Mr Hakaoro said that was not possible as he had paid the money to someone to get a job offer. Following this, Mr Hakaoro met some of the complainant's family in her country of origin, purportedly in connection with her children coming to New Zealand.
- [19] There was no written agreement for the immigration services which Mr Hakaoro agreed to provide and no receipts for many of the payments.
- [20] It appeared Mr Hakaoro did not undertake any work for the complainant.

#### **Mr Hakaoro's response**

- [21] Mr Hakaoro responded to the complaint in correspondence dated 9 October 2012 and addressed to the Authority.
- [22] He produced articles he had written. One was contemptuous of persons of the complainant's nationality. The articles were not relevant to the complaint, except to the extent that they raised a concern regarding Mr Hakaoro's attitude to persons of the complainant's nationality.
- [23] The email containing the response was openly racist, where he identified the complainant's nationality and said persons of that nationality have a "corrupt and dishonest disposition". He complained that persons of that nationality lodging complaints placed "unnecessary stress on Advisers".
- [24] In the letter addressing the complaint Mr Hakaoro said:
- [24.1] The complainant had not prepared the complaint;
- [24.2] It was significant that the complainant had a particular nationality and that it was unfortunate that the Authority has "either limited or no knowledge at all in respect of [the] behaviour and conduct" of persons of that nationality.
- [24.3] The Authority was deliberately encouraging persons of that nationality to file "what are clearly trivial and damaging allegations on one's reputation, by accepting their allegations as complaints."
- [24.4] The Authority should reject this and similar complaints as trivial.
- [24.5] The complaint is not a complaint under the Immigration Advisers Licensing Act 2007 (the Act), for various reasons.
- [24.6] The payments Mr Hakaoro received were for job offers not immigration services, and were in the time before he became a licensed immigration adviser.

- [25] Mr Hakaoro sent a further email of 5 November 2012. It contained additional analysis contending that the complaint was not a complaint in terms of the Act.
- [26] On 6 November 2012, Mr Hakaoro again sent further correspondence to the Authority. He rejected the complainant's sexual allegation in its entirety and submitted that the Registrar should have dismissed the allegation as "frivolous, trivial and vexatious". Further, the complaint was in respect of an employment matter and was entered into before Mr Hakaoro became a licensed immigration adviser, both of which are matters over which the Tribunal has no jurisdiction.

## **The Tribunal's Minute**

### *Purpose of Minute*

- [27] On 26 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, emphasised that the parties would have the opportunity to respond, and that the Tribunal had reached no conclusions at that point.

### *Issues within and outside of the Tribunal's jurisdiction*

- [28] This Tribunal's jurisdiction applies only to licensed immigration advisers. Accordingly, the minute noted that work performed and fees expended for work prior to Mr Hakaoro becoming licensed are not within the Tribunal's jurisdiction.
- [29] Mr Hakaoro was first licensed on 24 June 2011. Accordingly, the initial process of agreeing to provide immigration services, the alleged sexual propositioning, and the taking of fees were not within the Tribunal's jurisdiction.
- [30] The allegations in the complaint, as they related to the time when Mr Hakaoro was a licensed immigration adviser, were:
- [30.1] Taking further fees, at least the final payment of \$300.
- [30.2] Not having a written agreement or otherwise complying with the Licensed Immigration Advisers Code of Conduct to initiate a professional engagement after he did become licensed.
- [30.3] Attempts to solicit further fees of \$5,000 (reduced to \$3,000) on 23 July 2011.
- [30.4] Failing to provide professional services, and then not refunding fees when requested.

### *Potential Conclusions*

- [31] The Minute reviewed the potential conclusions that may be reached on the material then before the Tribunal. They were as follows.

#### *Time when Mr Hakaoro was a licensed immigration adviser*

- [32] Mr Hakaoro was first licensed as an immigration adviser on 24 June 2011. Accordingly, conduct prior to that time is not within the Tribunal's jurisdiction.
- [33] However, when Mr Hakaoro became a licensed immigration adviser, regardless of what had occurred before, he was obliged to conduct his professional relationship in accordance with the Code from that point forward.
- [33.1] The Licensed Immigration Advisers Code of Conduct (the Code) (available at [www.iaa.govt.nz/code/code-conduct-2010.pdf](http://www.iaa.govt.nz/code/code-conduct-2010.pdf)) was developed pursuant to section 37 of the Act. The Code applied to Mr Hakaoro, and contains the conventional contemporary obligations on a professional person providing services to the public. The clauses of the Code which are relevant to the current complaint require that:

[33.1.1] A licensed immigration adviser must ensure that before any agreement is entered into, clients are made aware, in writing and in plain language, of the terms of the agreement and all significant matters relating to it, and that the agreements contain a full description of the services to be provided by the adviser (clause 1.5 of the Code). There are also accompanying disclosure requirements such as providing a copy of the Code to the client (clause 1.4 of the Code).

[33.1.2] The licensed immigration adviser must also maintain professional business practices relating to finances, records, documents and contracts; this includes confirming in writing to clients when applications have been lodged with ongoing timely updates, and a duty to provide any refunds payable on completing or ceasing a contract for services (clause 3 of the Code).

[34] The view was open that the complainant was Mr Hakaoro's client, and he had already received fees from her when he became a licensed immigration adviser on 24 June 2011.

[35] The Tribunal was aware of Mr Hakaoro's claim that he was paid \$3,000 for "job search" fees. The complainant said that the fees were wholly or primarily for immigration services. The view was open that Mr Hakaoro's claim was implausible as:

[35.1] The amount of \$3,000 is more than would be expected for such a service.

[35.2] Usually employers pay recruitment fees, unless a person is located outside New Zealand and seeking guidance as to how to find employment in New Zealand or they are seeking specific services such as CV drafting assistance and the like.

[35.3] The complainant needed a work permit before she could work (she did not have one), so a job offer and gaining a work permit would necessarily be linked to the extent that there had to be a strategy for getting a work permit at the time of seeking employment (unless Mr Hakaoro was assisting the complainant to seek to work unlawfully).

[36] Further, Mr Hakaoro had not produced records that demonstrate he provided job search services, such as correspondence with prospective employers, evidence that he holds a CV from the complainant, and correspondence regarding qualifications and job opportunities, or the other records that would be created were he undertaking that work.

[37] Accordingly, the view was open that as Mr Hakaoro was wholly or primarily providing immigration services and that from 24 June 2011 Mr Hakaoro should in all respects have conducted himself as a licensed immigration adviser in relation to the complainant.

*Failure to establish a professional relationship*

[38] As soon as reasonably practicable after 24 June 2011, Mr Hakaoro was obliged to:

[38.1] establish the professional relationship by entering into a written agreement and undertaking the disclosure process; and

[38.2] bank the fees he received as clients funds in relation to services he had not provided.

[39] It appeared Mr Hakaoro did not take those steps and the complaint would potentially be upheld in that respect.

*Unprofessional conduct at the meeting of 23 July 2011*

[40] The view was open on the material presently before the Tribunal, which Mr Hakaoro had not answered, that Mr Hakaoro acted unprofessionally at his meeting with the complainant and her parents.

[41] Mr Hakaoro demanded further fees and failed to account for the existing fees. The view was open that he fabricated an account as to what fees were reasonable, after dishonestly

procuring the initial fees without accounting for them; it was further open that he sought further fees without any proper basis for doing so and that he did dishonestly.

- [42] Further, that his manner was unprofessional and he intended to take advantage of a vulnerable migrant.

*Failure to account for client funds*

- [43] The view was also open on the material then before the Tribunal, that Mr Hakaoro neither banked the money he received as fees nor accounted for money when required to do so.

*Unprofessional conduct in responding to the complaint*

- [44] This Minute had identified unprofessional conduct in relation to Mr Hakaoro's response to the complaint, where he made comments disparaging persons of the complainant's nationality.

- [45] That conduct will not be treated as a ground of the present complaint. Though it could well be grounds for a complaint, it would be a separate complaint and the Tribunal does not initiate complaints.

- [46] However, the Tribunal may well have regard to this conduct in assessing the veracity of the evidence. Further, if the complaint is upheld it may well have a bearing on the nature of the sanctions imposed.

- [47] Mr Hakaoro was put on notice that he may wish to consider this aspect of his response, and that he would have the opportunity to make any further comments on it to the Tribunal.

*Potential outcome*

- [48] It followed that the Tribunal, on the material then before it, would potentially conclude:

[48.1] The facts alleged in the complaint would be found to be correct.

[48.2] Mr Hakaoro breached Clause 1 of the Code, as his conduct was unprofessional and he ignored the requirements that apply to a professional engagement.

[48.3] He failed to account for client funds he received (in breach of clause 3 of the Code).

[48.4] He engaged in dishonest and misleading behaviour in failing to account for funds and attempting to solicit further funds to which he was not entitled (in breach of s 44(2)(d) of the Act).

[48.5] The complaint would be upheld pursuant to section 44(2)(d) and (e) of the Act.

**Oral hearing**

- [49] In the course of a series of interlocutory steps (with the parties filing affidavits and other documents), the Tribunal determined that there should be an oral hearing, which is not usual. The interlocutory process is recorded in minutes, and it is not necessary to detail the steps. In essence the purpose of the oral hearing was to allow Mr Hakaoro to respond fully to the written material, by allowing cross-examination, and the oral presentation of his evidence.

- [50] At the hearing, the Authority and Mr Hakaoro were represented by counsel.

- [51] The complainant appeared in person, as she received no funds to allow her to be represented. Complainants cannot be expected to have any expertise in professional disciplinary matters. In this case English is not the complainant's first language. She required the assistance of an interpreter for some matters at the hearing. She was challenged with technicalities such as an unmeritorious claim that she gave "evidence from the bar". The situation was, to say the least, difficult for her.

- [52] Oral hearings usually occur only in the most serious cases. Credibility over disputed conduct can in some cases only be resolved in an oral hearing. Such cases will often involve vulnerable persons making complaints.
- [53] Counsel for the Authority made it clear her instructions were that she should not present the complainant's case for her, or indeed present evidence the complainant identified. Ms Thompson, counsel for the Authority, did very ably assist by conducting an examination of witnesses the complainant had brought to the hearing. She explained that her instructions required that she examine the witnesses during the hearing, without any prior briefing of them, or communication with the complainant.
- [54] The complainant gave evidence and affirmed the complaint, which has been outlined previously. She called two witnesses. They gave evidence regarding the incident where the complainant says she was taken into a bedroom separate from other people who were present.
- [55] Mr Hakaoro and his wife both gave evidence.
- [56] As the Tribunal is an expert tribunal, it is appropriate where necessary to ensure that parties are aware of the Tribunal's understanding of professional regulation, practice, and professional standards. The evidence will be evaluated against that background. Accordingly, the Tribunal put its concerns to Mr Hakaoro at the hearing, that his evidence was not consistent with the Tribunal's understanding of the complainant's immigration opportunities, and the steps available to assist her.

## Discussion

### *Mr Hakaoro's defence*

- [57] At the oral hearing it became apparent the main thrust of Mr Hakaoro's defence involved two propositions:
- [57.1] Mr Hakaoro, prior to being licensed on 24 June 2011, did not undertake or promise to undertake any immigration work. The only thing he or his wife did was to take fees for the purpose of seeking an offer of employment; and
- [57.2] After he was licensed on 24 June 2011 his instructions were terminated before he had any opportunity or need to enter into a professional engagement under the Code of Conduct.
- [58] If correct, then that would be a defence to the allegations he faced. Indeed the second of the two propositions would have that effect.

### *Onus and standard of proof*

- [59] 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 at [113]-[118]).
- [60] There can be no doubt the allegations Mr Hakaoro faces are at the most serious end of the scale, and disputed issues of fact must be determined on that basis by the Tribunal.

### *What was required when Mr Hakaoro became a licensed immigration adviser*

- [61] There is no dispute Mr Hakaoro was first licensed as an immigration adviser on 24 June 2011. Accordingly, conduct prior to that time is not within the Tribunal's jurisdiction.
- [62] When Mr Hakaoro became a licensed immigration adviser, regardless of what had occurred before, he was obliged to conduct his professional relationship in accordance with the Code from that point forward.

- [63] The reasons for that, and the consequences, were discussed in the minute. They are set out above commencing at para [33] above. Mr Hakaoro's counsel did not challenge that view.
- [64] I am satisfied that on 24 June 2011, if Mr Hakaoro was holding money relating to professional instructions he was required to put those funds into a client account to the extent they had not been earned, and undertake the engagement and disclosure process.
- [65] However, it is important to consider the claim that the fees had been paid for another purpose. Mr Hakaoro and his wife claimed the money was paid for employment search purposes, and that they were entitled to the money.

*What was the nature of the engagement and the reasons for paying fees*

- [66] Mr Hakaoro and his wife gave evidence that any fees they received were for a "job search". The Minute had put Mr Hakaoro on notice the complainant said the fees were wholly or primarily for immigration services. Further, the explanation was implausible as:
- [66.1] The amount of \$3,000 was more than would be expected for that work.
- [66.2] Usually employers pay recruitment fees, unless there are specific services such as CV drafting assistance and the like.
- [66.3] The complainant needed a work permit before she could work so Mr Hakaoro would be assisting the complainant to seek to work unlawfully, if immigration issues were not being addressed.
- [66.4] Mr Hakaoro had not produced records consistent with any real job search services.
- [67] These matters were explored in the oral evidence. Mr Hakaoro gave a vague account that his wife had approached one potential employer and another person who had a network of connections. His wife said she thought she might have contacted five potential employers. They claimed the fee they received was less than \$3,000, saying a \$300 payment was not made.
- [68] Mr Hakaoro and his wife did not provide a sensible explanation that was consistent with a real search for employment and they could not produce the records that would have been created if they had done so. They admitted the absence of a CV, interview, and other records.
- [69] In the course of the hearing I put Mr Hakaoro on clear notice his explanation was beyond belief given the Tribunal's understanding of the immigration law and policy which Mr Hakaoro must also have understood. Mr Hakaoro claimed extensive immigration experience and he had been required to demonstrate the skills required of a licensed immigration adviser when applying for his licence.
- [70] The stark reality was that at the time Mr Hakaoro and his wife said they were searching for employment, the complainant could not work lawfully in New Zealand. Yet, they were seeking to justify taking fees of \$3,000 to search for employment which she could not lawfully take up.
- [71] Furthermore, the employment they say they sought for the complainant was unskilled work. It was not work that would in itself lead to an entitlement to be issued a work visa.
- [72] Mr Hakaoro's explanation was that the complainant had said that she had another immigration adviser. He could not explain why he was not communicating with that adviser as a preliminary step before accepting fees to look for a job the complainant could not take up.
- [73] In contrast the complainant gave a coherent account; it was premised on Mr Hakaoro offering both immigration and employment search services. He could not lawfully offer the former as he was not licensed at the time. The issues relating to offering immigration advice when he was not entitled to do so are not matters within the Tribunal's jurisdiction, but it is evidence that is material to demonstrating that Mr Hakaoro did not receive fees for job search services alone. The circumstances were consistent with the receipts that omitted mention of immigration services.



- [74] The complainant said Mr Hakaoro had always dealt with immigration and job search as a joint issue. That is entirely understandable, as her immigration status was the primary issue.
- [75] The complainant said Mr Hakaoro had used her immigration circumstances as a means of attempted sexual exploitation. He suggested that if she had a New Zealand born child that would improve her immigration prospects, and attempted to exploit her sexually, suggesting he assist her to get pregnant. He was wholly unsuccessful in that attempted exploitation and his advances were rejected.
- [76] As the conduct occurred before he was licensed, it is not part of the complaint. However, the evidence adds to the case that Mr Hakaoro was engaged with immigration issues and advising (unlawfully) on how immigration issues could be managed prior to becoming licensed.
- [77] In an affidavit of 29 January 2013, Mr Hakaoro said of the claim the he had invited the complainant into a bedroom and had a private discussion:
- “I do not speak to any woman without my wife being present.”
- [78] Accordingly, he denied there had been any private discussion at all. Mr Hakaoro’s wife made the same claim. The two witnesses called by the complainant both said they were present at the house and witnessed Mr Hakaoro saying he needed to have a private discussion with the complainant, and that had gone to a separate room with her. The fact of going into a separate room for a private discussion was not challenged in cross-examination.
- [79] I am satisfied the complainant’s evidence is true and, as far as their knowledge extends, that of the two witnesses she called.
- [80] In all respects where they differ, I prefer the complainant’s and her witnesses’ evidence over that of Mr Hakaoro and his wife, for the reasons discussed. Furthermore:
- [80.1] The account given by the complainant is plausible. It has been related consistently, subject to minor variations of the kind consistent with the limitations of memory. The account is also consistent with the record as far as it extends.
- [80.2] In contrast, the account Mr Hakaoro and his wife gave is inherently implausible; it was not sensible to be engaging only with employment issues and not immigration prior to the time Mr Hakaoro was licensed. Furthermore, there is no satisfactory explanation for the absence of the records that should exist if what they say is true.
- [81] Accordingly, I am satisfied that as at 24 June 2011, Mr Hakaoro had existing instructions relating to immigration services and that he held unearned fees he had procured for that purpose.
- [82] He apparently offered job search services as an element of that engagement. Job search services could be offered without providing immigration services. However, in this case they were integrally linked. I am satisfied that when Mr Hakaoro was licensed, the job search component was an integral part of the service he was providing as a licensed immigration adviser.

*Failure to establish a professional relationship*

- [83] It follows that soon as reasonably practicable after 24 June 2011, Mr Hakaoro was obliged to:
- [83.1] establish the professional relationship by entering into a written agreement and undertaking the disclosure process (clauses 1.4 and 1.5); and
- [83.2] bank the fees he received as clients funds in relation to services he had not provided (clause 4).
- [84] Mr Hakaoro did not take those steps. He claims his instructions were terminated first.

- [85] However, that is at odds with his own affidavit in which he said he flew to the complainant's country of origin on 27 July 2011, in pursuance of instructions from the complainant. Mr Hakaoro said these instructions were received as a "social worker".
- [86] However, the instructions related to the custody of her children. The complainant gave evidence that one of the forms of pressure used by Mr Hakaoro when sexually propositioning her was that he could secure the right for her children to come to New Zealand. Regardless, it is not consistent with the professional relationship having been terminated prior to or about 24 June 2011. Mr Hakaoro's affidavit says it was on his return from the 27 July 2011 trip that the complainant "cancelled everything".
- [87] Furthermore, Mr Hakaoro put the timing of the 23 July 2011 visit as "either October or November 2011". If so his professional engagement continued for many months after he was licensed.
- [88] It is not possible to reconcile Mr Hakaoro's affidavit, which he confirmed at the oral hearing, with his defence that his instructions were terminated before 24 June 2011, or so soon thereafter that he could not comply with his obligations under the Code of Conduct.
- [89] I am satisfied that Mr Hakaoro at the very least had instructions from 24 June 2011 until after 27 July 2011 while he was a licensed immigration adviser. He was obliged to comply with the Code in relation to his instructions as from 24 June 2011, and failed to do so.
- [90] I find that the complaint is established on the basis Mr Hakaoro:
- [90.1] Failed to failed to establish his professional relationship in accordance with clauses 1.4, and 1.5) of the Code of Conduct.
- [90.2] He failed to deal with the fees he had received and not earned by dealing with them as client funds, in breach of clause 4 of the Code of Conduct.

*Unprofessional conduct at the meeting of 23 July 2011*

- [91] Mr Hakaoro faced the evidence he acted unprofessionally at the meeting on 23 July 2011, when he met with the complainant and her parents. Mr Hakaoro disputes the date of the meeting; however, he could provide no contemporaneous record. The date is not in itself material as he says the meeting was in "October or November 2011" and he was licensed on all of the potential dates.
- [92] The issues are:
- [92.1] whether he misconducted himself at that meeting; and
- [92.2] whether he demanded further fees and failed to account for the existing fees.
- [93] There was a lack of clarity in the evidence regarding what Mr Hakaoro claimed at the meeting.
- [94] The most likely position is that Mr Hakaoro claimed \$3,000 for composite immigration and employment search fees.
- [95] However, the evidence became confused. Mr Hakaoro said there was a \$3,000 fee for job search services, and consistent with his claim there was no immigration component, he said there would be further fees if he was instructed on immigration matters.
- [96] The complainant was confused, but did say her understanding was there had been one fee of \$3,000 not two of them amounting to \$6,000.
- [97] Mr Hakaoro could provide no evidence of ascertaining the real immigration prospects of the complainant, or what services would be required to pursue them. The case against him was essentially that he procured what fees he thought he could demand, did nothing of substance in pursuance of them, and refused to refund them though he had not earned them.

- [98] For the reasons discussed, I am satisfied Mr Hakaoro did intend to exploit his client. He promised immigration and employment services, and had little interest in his client's immigration prospects. He provided no services of substance after being paid.
- [99] When he became a licensed immigration adviser he misrepresented what he was entitled to charge, failed to bank the fees, and then failed to refund the fees. He provided a dishonest explanation and did so through to the hearing before this Tribunal.
- [100] However, I do not find Mr Hakaoro solicited further fees at the meeting on 23 July 2011. In all other respects I accept what the complainant said regarding this meeting, as outlined in her complaint which is set out above.
- [101] I find Mr Hakaoro engaged in misleading and dishonest behaviour, due to his attempts at deception in relation to the fees and his obligations concerning them, which is a ground for complaint pursuant to section 44(2)(d) of the Act.
- [102] Further, his conduct was unprofessional, lacking in respect, and accordingly in breach of Clause 1 of the Code of Conduct.

*Failure to account for client funds*

- [103] Mr Hakaoro had neither banked the money he received as fees, nor accounted for money when required to do so.
- [104] Furthermore, when his instructions were terminated he failed to provide the refund due at that point.
- [105] He was required to set fees that were fair and reasonable pursuant to clause 8 of the Code of Conduct. No element of the fees taken could fairly and reasonably be charged as Mr Hakaoro provided no services of value, and procured the fees without any adequate exploration of immigration prospects. It follows that he breached clause 3(d) of the Code of Conduct when he failed to refund the fees he held when his instructions were terminated.

**Decision**

- [106] Pursuant to section 50 of the Act, the complaint is upheld as
- [106.1] Mr Hakaoro has breached the Code of Conduct in the respects identified; all of which are grounds for complaint pursuant to section 44(2)(e) of the Act; and
- [106.2] Mr Hakaoro engaged in dishonest and misleading behaviour which is a ground for complaint pursuant to section 44(2)(d).
- [107] The specific conduct being that which was discussed above, in particular:
- [107.1] Failing to commence a professional relationship in accordance with the Code of Conduct.
- [107.2] Dishonestly misrepresenting he was entitled to fees when he was not.
- [107.3] Failing to deal with unearned fees as client funds.
- [107.4] Failing to refund fees owed to his client.

**Submissions on sanctions**

- [108] As the complaint has been upheld, section 51 allows the Tribunal to impose sanctions.
- [109] 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 and respond to any submissions from the other parties.

- [110] 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.
- [111] If Mr Hakaoro claims his financial circumstances are relevant to the appropriate sanctions, he is expected to provide a statement of his assets and liabilities, and his income, both of which are to be verified on oath; a similarly verified and full disclosure of any interest as a beneficiary or potential beneficiary in any trust is also expected. He should also provide submissions in support of his position.
- [112] 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).
- [113] The Tribunal notes that, in relation to other complaints, Mr Hakaoro has provided information relating to his financial circumstances. Mr Hakaoro may provide a copy of the same information with updates if that is easier.

#### *Timetable*

- [114] The timetable for submissions will be as follows:
- [114.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.
- [114.2] 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.
- [114.3] 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.
- [115] 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 [116] below) after five working days, unless any party applies for orders not to publish any aspect.

#### *Suppression of name*

- [116] The names, and other information that identifies the complainant or the witnesses she called are not to be published at anytime in relation to this complaint.

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

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**G D Pearson**  
Chairperson