

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

Decision No: [2014] NZIACDT 10

Reference No: IACDT 059/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

THD

Complainant

AND

BMU

Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: In person

Date Issued: 12 February 2014

DECISION

- [1] The Registrar filed a Statement of Complaint. It identified the complaint was referred to the Tribunal in respect of concerns that the adviser provided misleading information to Immigration New Zealand.
- [2] The Statement of Complaint explained that after further review the Registrar has reached the view the evidence does not support the complaint. The complaint was one of dishonest or misleading behaviour.
- [3] The adviser lodged a Statement of Reply supporting that position.
- [4] The complainant also lodged a Statement of Reply.
- [5] In the Statement of Complaint, the Registrar identified that there were two issues:
- [5.1] Whether a payment for a NZQA qualification was unnecessary, and
- [5.2] Whether the adviser falsely represented a fee for interview preparation was necessary.
- [6] The Registrar indicated the material available indicated the adviser had offered a partial refund of the NZQA fee, and that was reasonable. Furthermore, the disputed interview fee was optional and the complainant made a choice and accepted an option.
- [7] The complainant's Statement of Reply stated the adviser had not made the partial refund and indicated it appeared there was no effective choice regarding the additional fee for interview preparation.
- [8] The adviser in her Statement of Reply reiterated she will refund a balance of \$1,810 and simply requires bank account details to do so.
- [9] 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).
- [10] This complainant lodged the complaint as one of dishonest or misleading behaviour; accordingly, it is at the highest end of the scale. I am not satisfied on the material before me there has been more than communication errors or misunderstanding. That applies to both the NZQA assessment and the option of preparing for an interview.
- [11] I note the adviser's willingness to refund a balance of \$1,810 in fees. The Tribunal accepts this undertaking, and the Tribunal puts the adviser on notice she has a professional obligation to put it into effect. If she has communication difficulties with the complainant, she should inform the Registrar.
- [12] The Tribunal is satisfied the Registrar's position regarding the evidence is correct and dismisses the complaint pursuant to section 50(a).

DATED at WELLINGTON this 12th day of February 2014

G D Pearson
Chair