

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

Decision No: [2014] NZIACDT 2

Reference No: IACDT 033/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Mohammed Arafat Khan

Complainant

AND

Artika Archina Devi

Adviser

NAMES AND IDENTITIES OF THE PARTIES NOT TO BE PUBLISHED PENDING FURTHER
ORDER OF THE TRIBUNAL

INTERIM DECISION

REPRESENTATION:

Registrar: In person.

Complainant: In person.

Adviser: Mr S Singh, Singhs Barristers & Solicitors, Auckland.

Date Issued: 15 January 2014

DECISION

Preliminary

- [1] The Registrar received a complaint relating to the adviser.
- [2] The Registrar identified the basis of the complaint as being that the adviser:
 - [2.1] Was incapable; and
 - [2.2] Engaged in dishonest or misleading behaviour.
- [3] The Registrar provided an outline of the events leading to these allegations. They involved an unsatisfactory interaction relating to an immigration application.
- [4] However, the facts presented in support of the complaint did not involve the adviser meeting the complainant. Indeed the Registrar, who lodged the Statement of Complaint with the Tribunal, did not provide any facts that involved an act on the part of the adviser. Neither did the Registrar provide facts that were grounds for regarding the adviser as responsible for what occurred with the complainant's immigration affairs.
- [5] The adviser has filed a Statement of Reply. It contains new and fundamentally important facts. In particular, the adviser appears to admit she was involved in the matters that led to the complaint. Furthermore, she was the sole licensed immigration adviser involved, and others undertook significant work.
- [6] This decision is an interim decision that puts the adviser on notice of potential adverse findings that may follow from combining the information contained in the Registrar's Statement of Complaint and the adviser's Statement of Reply. They are conclusions that are quite different from those which might be reached from the contents of the Registrar's Statement of Complaint alone.

The Statement of Complaint

- [7] The Registrar filed a Statement of Complaint with the Tribunal, which set out the facts alleged in support of the complaint and information gathered by the Registrar.
 - [8] There is a background narrative where the complainant and a person, who is not a licensed immigration adviser, engaged in an arrangement for the provision of immigration services; the provision of those services was not satisfactory.
 - [9] In the Statement of Complaint the Registrar wrote the following with regard to the adviser:
 - [9.1] The complainant says he has never met the adviser.
 - [9.2] There is a written agreement that refers to the adviser.
 - [9.3] The adviser's name and license number were recorded on documents submitted to Immigration New Zealand.
 - [10] Registrar identified the grounds for referring this complaint in his Statement of Complaint. They were that the adviser:
 - [10.1] Was incapable.
 - [10.2] The adviser engaged in dishonest or misleading behaviour.
- There were no particulars of any conduct which was said to give rise to those grounds.

The adviser's response

- [11] The adviser responded to the Statement of Complaint by filing a Statement of Reply.

- [12] The Statement of Reply contains information that discloses a substantial role; she accepts:
- [12.1] She was a “voluntary worker” for Universal Immigration Services Limited. That company apparently provided immigration services.
 - [12.2] She was aware of the complainant and acted for him, but does not claim to have had any personal dealings with him.
 - [12.3] She did not have full knowledge of what occurred in relation to the complainant as others were doing the work.
- [13] It also appears from the evidence currently before the Tribunal that she was the only licensed immigration adviser involved with the company.

Discussion

- [14] The material before the Tribunal is not sufficient to make a final decision. It is apparent that the Registrar has not filed a Statement of Complaint that addresses the most significant issue. The adviser has provided critical information. However, the submissions presented by her counsel appear to overlook the significance of the information.
- [15] There have been numerous decisions of this Tribunal that address the fundamental features of the regime for licensed immigration advisers. Features relevant to the present complaint are as follows:
- [15.1] Unless a person is licensed or exempt from holding a licence, it is a criminal offence to provide “immigration advice”.
 - [15.2] The Act defines “immigration advice” in broad terms.
 - [15.3] It is not possible for a client engagement to commence, in accordance with the Code of Conduct, without a licensed immigration adviser personally engaging with the client.
 - [15.4] The scope of “clerical work”, which can be carried out by a person who is not licensed, is narrow.
 - [15.5] A licensed immigration adviser is personally responsible for all aspects of a client engagement, and will be personally responsible for the refund of fees, compensation, and the like.
 - [15.6] A corporate body cannot hold a licence as an immigration adviser.
- [16] The material before the Tribunal points to a potential finding that the adviser has, in effect, put her status as a licensed immigration adviser at the disposal of others and accordingly:
- [16.1] She was a party to unlicensed persons providing immigration advice and services in her name.
 - [16.2] The engagement with the complainant was unlawful, and not in accordance with the Code of Conduct, as:
 - [16.2.1] It was not properly commenced, with a licensed immigration adviser engaging with the client and undertaking the advice and disclosure obligations, and
 - [16.2.2] The adviser allowed unlicensed persons to perform professional duties.
 - [16.3] The adviser is responsible for refunding all fees paid, as they had been solicited with her being a party to the instructions and her status as a licensed immigration adviser being used.
- [17] Those findings would establish a breach of the Code of Conduct in that:

- [17.1] The adviser acted unprofessionally by being a party to the unlawful provision of immigration advice (clause 1.1 of the Code of Conduct).
- [17.2] The adviser failed to initiate the professional relationship in accordance with the Code of Conduct (clause 1.5 of the Code of Conduct).
- [17.3] The adviser failed to refund fees (clause 3(d) of the Code of Conduct).
- [18] There are outstanding questions regarding how the adviser treated client funds, set fees, dealt with communication duties, and the like.
- [19] There is also some evidence the unlicensed persons performed professional services in a manner that did not meet professional standards, and the adviser was responsible.
- [20] However, there is insufficient information to make any finding adverse to the adviser on the material before the Tribunal, except for those outlined above in paras [16]-[17].
- [21] The adviser is entitled to understand the potential consequences of the material before the Tribunal. Much of that material did not appear in the Statement of Complaint and the adviser in her Statement of Reply provided an essential part of the material facts.
- [22] The adviser needs to be aware that if the potential findings, outlined above, are upheld, she will potentially be personally liable for the refund of fees, and other sanctions provided in the Act as she was a licensed professional with a personal responsibility to her client. The Act imposes personal responsibility upon her for professional engagements in her practice.
- [23] The Tribunal will provide the parties with an opportunity to respond.

Timetable

- [24] The adviser will have the opportunity within 10 working days of the issue of this interim decision to provide further submissions, factual material, and to apply for an oral hearing after considering this interim decision.
- [25] The complainant and the Registrar may respond to any material submitted by the adviser within 15 working days of the issue of this interim decision.
- [26] If the adviser does not provide any response, the Tribunal will determine the matter on the papers now before it and potentially reach the conclusions outlined in paras [16]-[17] above.

DATED at WELLINGTON this 15th day of January 2014

G D Pearson
Chair