

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

Decision No: [2014] NZIACDT 24

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

SUPPLEMENTARY DECISION

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: In person

Date Issued: 13 March 2014

DECISION

- [1] The Tribunal dismissed this complaint in a decision issued on 12 February 2014.
- [2] The decision noted the adviser had indicated a refund of \$1,810 in fees would be paid to the complainant.
- [3] The adviser told the Tribunal “The company is ready to refund the balance amount of \$1810.00 to the complainant as a full and final refund”, and asked for bank account details. The Tribunal understood this implied funds were available for immediate payment, and communications difficulties were the only reason the refund was not paid earlier.
- [4] Accordingly, the Tribunal accepted this as the adviser’s personal undertaking. She was the licence holder, and responsible for the professional relationship. The Tribunal specifically put the adviser on notice she had a professional obligation to ensure the complainant received the refund.
- [5] In a letter to the Tribunal, the complainant alleged the adviser has not honoured her undertaking, and the funds are not available, contrary to what she told the Tribunal. That information was an essential part of the decision, which accepted the failure to refund was due to communication errors, not a failure to refund.
- [6] Without the adviser’s representation, the Tribunal would have potentially found the adviser was under a duty to refund fees and in breach of that duty.
- [7] The Tribunal will deal with this as an application for a rehearing on the grounds the adviser procured the Tribunal’s decision through a misrepresentation that renders the decision a nullity.
- [8] While unusual for a Tribunal to recognise its own decision is a nullity, if that is truly the case, then it is potentially open to the body that made the decision to take that step: *R v Nakhla (No 2)* [1974] 1 NZLR 453; *Craig v Kanseen* [1943] KB 256; [1943] 1 All ER 108 (CA). A serious error of process has been held to warrant re-listing a case: *R v Daniel* [1977] QB 364; [1977] 1 All ER 620 (CA).
- [9] An order procured by a party through presenting false information is potentially sufficient to render the decision invalid.
- [10] The Tribunal would have to be satisfied the decision is a nullity to take any further steps, as it would otherwise be *functus officio* and the principles relating to finality would be determinative.
- [11] The Tribunal invites the adviser to provide submissions on the application.

DATED at WELLINGTON this 13th day of March 2014

G D Pearson
Chair