

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

Decision No: [2014] NZIACDT 4

Reference No: IACDT 021/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Achudan Nair

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NAMES AND IDENTITIES OF THE PARTIES NOT TO BE PUBLISHED PENDING FURTHER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: Mr DM Kruger, McClymont & Associates, Auckland.

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

Date Issued: 29 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 negligent;
 - [2.2] Incompetent;
 - [2.3] Engaged in dishonest or misleading behaviour; and
 - [2.4] She breached the Code of Conduct in relation to various alleged professional failings.
- [3] The factual basis for the grounds of complaint was set out in the Registrar's Statement of Complaint as a less than detailed narrative of the professional engagement.
- [4] The adviser had responded to the complaint. She addressed the issues raised in a letter.
- [5] The adviser lodged a Statement of Reply in response to the Statement of Complaint. She accepted the Statement of Complaint adequately set out her position.
- [6] The Statement of Complaint refers to various materials filed by the Registrar. When looking at all the material there is a less than complete picture of the events, but there is sufficient material to identify a potential foundation for a finding that the adviser failed to meet professional service delivery standards.
- [7] It is not clear that the adviser has fully understood the complaint as she has neither answered nor accepted the central issues in the complaint.
- [8] In the circumstances, this interim decision sets out a potential view of the facts founding the complaint and gives the adviser the opportunity to respond before a decision to uphold or dismiss the complaint is made.

Discussion

The Facts

- [9] The material allegations in the complaint appear to be:
 - [9.1] The complainant engaged the adviser to assist with seeking a residence visa. They entered into an agreement dated 13 August 2010. The fee was \$5,000; the complainant would pay in instalments, disbursements were additional.
 - [9.2] At some point a staff member associated with the adviser's practice told the complainant he could be certain of getting a visa due to the adviser's connection with Immigration New Zealand.
 - [9.3] The process to get a visa required first an expression of interest, and then, if Immigration New Zealand invited the complainant to apply, his application for a residence visa followed.
 - [9.4] The complainant paid fees, and provided all necessary information.
 - [9.5] The adviser lodged an expression of interest, and on 6 September 2010, Immigration New Zealand invited the complainant to apply for a residence visa.
 - [9.6] The adviser failed to notify the complainant he could apply for a visa.

- [9.7] The complainant made inquiries and a staff member associated with the adviser's practice told him he could apply for a visa.
- [9.8] The adviser did lodge an application for the visa, but the invitation had lapsed, so Immigration New Zealand could not process it.
- [9.9] The complainant personally made inquiries with Immigration New Zealand and found his application for a visa was not under consideration. He raised the issue with a staff member at the adviser's practice who said Immigration New Zealand was making a false statement.
- [9.10] The complainant went to the police and lodged a complaint. The adviser offered a refund of fees less a 20% administration charge.
- [10] If made out, those facts might support findings that:
- [10.1] The adviser failed to manage her practice with professionalism by allowing a staff member to guarantee a successful application on engaging the adviser and making false allegations against Immigration New Zealand (Clause 1 of the Code of Conduct).
- [10.2] The adviser failed to confirm in writing when she lodged applications and did not provide timely updates (Clause 3 of the Code of Conduct).
- [10.3] The adviser failed to exercise due care and diligence, and to act professionally with the result that the complainant's application for a visa was not prepared and lodged in a timely manner (Clause 1 of the Code of Conduct).
- [10.4] The adviser failed to refund fees when her engagement was terminated. The adviser was not entitled to any fees as she failed to complete work that was necessary to achieve the immigration objective she was engaged to assist with (Clause 3 of the Code of Conduct).
- [11] As matters stand, the adviser is at risk of the adverse conclusions identified in para [10], above.
- [12] The Tribunal also notes the Statement of Complaint raises the issue of dishonest or misleading behaviour, without providing particulars or facts that would support that finding.
- [13] It is important the adviser has the opportunity to reflect on her response and provide any further material she wishes. She is a professional who was required to keep and maintain records of her professional engagement; she should explain why this engagement appears not to have reached a successful outcome and produce her records.

Directions - timetable

- [14] Within 10 working days of this direction, the adviser may provide further evidence and submissions relating to the complaint.
- [15] Other parties will have 5 working days to reply to that material.
- [16] The Tribunal will make a decision on the material now before it, if the adviser does not respond.

DATED at WELLINGTON this 29th day of January 2014

G D Pearson
Chair