

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

Decision No: [2014] NZIACDT 40

Reference No: IACDT 055/12

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Sunitha Varghese Kuttikkatt**

Complainant

**AND**

**Glen William Standing**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** In person

**Complainant:** In person

**Adviser:** In person

Date Issued: 27 March 2014

## DECISION

### Introduction

- [1] The complainant engaged the adviser to assist her to apply for residence visas for her and her family; the adviser did not complete the process. This Tribunal cancelled his licence due to an unrelated complaint. The adviser did not tell the complainant what had happened, refund the fees he had taken in advance, or arrange for ongoing representation.
- [2] The adviser has not responded to the complaint. This issue for the Tribunal is whether the circumstances amount to grounds to uphold the complaint.
- [3] The Tribunal has upheld the complaint.

### The complaint

- [4] The Registrar filed a Statement of Complaint. The factual background identified in the Statement of Complaint, on which the complaint is founded is:
  - [4.1] The adviser, a licensed immigration adviser, provided immigration services pursuant to a written agreement dated 6 August 2009. The agreement provided he would assist the complainant and her family with an application for residence visas to migrate to New Zealand.
  - [4.2] The agreement provided the professional fees would be \$7,400 with Immigration New Zealand filing fees totalling \$2,100. Any further filing fees payable for the complainant's husband and children were to be paid by the adviser out of the professional fees.
  - [4.3] It also provided the fee of \$7,400 would be refunded if the complainant secured an offer of full employment and a residence visa was not obtained.
  - [4.4] The agreement included employment search assistance at no additional cost.
  - [4.5] The complainant paid the fees totalling \$9,500 and, on 22 June 2010, the adviser submitted a residence application. The result was that on 1 August 2011, Immigration New Zealand issued a job search visa and deferred the residence visa application for 12 months.
  - [4.6] On 15 August 2011, this Tribunal cancelled the adviser's licence due to an unrelated complaint.
  - [4.7] The complainant secured full time employment in June 2012 and Immigration New Zealand issued residence visas on 27 July 2012. The complainant had to pay a further migrant fee of \$1,240 (which, under the written agreement, had been included in the fee of \$9,500).
  - [4.8] The complainant was not satisfied with the employment search services.
- [5] The Statement of Complaint identifies the potential grounds for upholding the complaint, with particulars. The key elements are:
  - [5.1] A breach of Clause 1(c) of the Code of Conduct – the obligation to take reasonable steps to ensure clients' interests are represented if the adviser cannot for any reason continue as a representative. The particulars being:
    - [5.1.1] The Tribunal's decision on 8 August 2011 cancelled the adviser's licence with effect from 15 August 2011.
    - [5.1.2] The delay in the cancellation taking effect allowed the adviser time to refer his clients to another licensed immigration adviser. The adviser was notified of this purpose.

- [5.1.3] The adviser did not take any steps to ensure representation of the complainant's interests in the future.
- [5.2] A breach of Clause 3(b) of the Code of Conduct – the obligation to confirm in writing to clients when work ceases part way through the immigration process. The particulars being:
  - [5.2.1] The Statement of Complaint refers to the same particulars as outlined in the preceding subparagraph [5.1].
  - [5.2.2] The adviser did not inform the complainant in writing that he could not continue to provide immigration services.
- [5.3] A breach of Clause 3(d) of the Code of Conduct – the obligation to refund any fees payable when work ceased part way through the immigration process:
  - [5.3.1] The complainant paid \$9,500.
  - [5.3.2] The work was not completed, and the adviser failed to refund the unearned balance of the fees.

### **Discussion**

- [6] The adviser did not respond to the Statement of Complaint. Documentation filed with the Statement of Complaint supports its content.
- [7] I am satisfied the Statement of Complaint, with its supporting documents, establish the grounds of complaint. The adviser has provided no challenge to that.
- [8] It is evident the adviser failed to:
  - [8.1] Inform the complainant his licence was to be cancelled;
  - [8.2] Inform her he could no longer represent her;
  - [8.3] Give her advice on, or assistance with, continued representation; and
  - [8.4] Did not refund unearned fees.
- [9] That conduct was in breach of the provisions in the Code of Conduct identified in the Statement of Complaint, namely Clauses 1(c), 3(b), and 3(d) for the reasons identified in the Statement of Complaint.

### **Decision**

- [10] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [11] The adviser breached the Code of Conduct in the respects identified. These are grounds for complaint pursuant to section 44(2)(e) of the Act.

### **Submissions on sanctions**

- [12] The Tribunal has upheld the complaint; accordingly, pursuant to section 51 of the Act, it may impose sanctions.
- [13] 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, the adviser is entitled to make submissions and respond to any submissions from the other parties.
- [14] The Tribunal requests the complainant to identify the amount of the fee she seeks to have repaid.

- [15] 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.

*Timetable*

- [16] The timetable for submissions will be as follows:

- [16.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.
- [16.2] The adviser is to make any further submissions (whether or not the Authority or the complainant makes submissions) within 15 working days of the issue of this decision.
- [16.3] The Authority and the complainant may reply to any submissions made by the adviser within 5 working days of him filing and serving those submissions.

**DATED** at WELLINGTON this 27<sup>th</sup> day of March 2014

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**G D Pearson**  
Chair