

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

Decision No: [2013] NZIACDT 47

Reference No: IACDT 065/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

Between

Dinesh Chand

Complainant

AND

Kamlesh Rana

Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: In person

Date Issued: 8 April 2014

DECISION

Preliminary

- [1] This complaint arises from instructions to the adviser to lodge three visa applications.
- [2] He says he had a written agreement to complete one application and was to lodge the other two without cost.
- [3] Complications followed and there was an additional fee of \$500 for additional work, but the complainant did not give written consent to the additional fee.
- [4] The Registrar lodged a Statement of Complaint that identified only potential deficiencies in the written agreement, and a failure to obtain written consent for the additional fees of \$500.
- [5] The adviser did not take issue with the essential facts, and the complainant did not seek to pursue the further grounds in his original complaint.
- [6] The Tribunal had determined it must uphold the complaint. However, it will take no further action.

The Statement of Complaint

- [7] The Registrar filed an amended Statement of Complaint dated 27 February 2014.
- [8] It sets out that the complainant had lodged the complaint on wider grounds, but the Registrar identified material supporting only two aspects:
 - [8.1] The written agreement did not comply with the Code of Conduct 2010 (clauses 1.5 and 8); and
 - [8.2] The complainant did not agree to an increase in fees in writing (clause 3(c) of the Code of Conduct).
- [9] The background to the complaint can be outlined as follows:
 - [9.1] On 23 February 2010, the complainant engaged the adviser to submit work visa applications for himself and his wife, and a student visa for their son.
 - [9.2] The agreed fee was \$4,500, with \$2,250 paid on engaging the adviser.
 - [9.3] The adviser filed one application, but Immigration New Zealand raised a concern. The adviser agreed to address it on payment of a further \$500. The adviser addressed the issue and the complainant paid the additional fee.
 - [9.4] At that point, the complainant's wife told the adviser they would submit the remaining applications themselves.
 - [9.5] The complainant says the adviser overcharged, as he paid \$2,750 for one person's work visa.
- [10] The Registrar has set out the following information regarding the two matters he identified as potential grounds for complaint.
- [11] The Code of Conduct requires:
 - [11.1] The adviser ensure clients are made aware, in writing and in plain language, of the terms of the agreement engaging him and all significant matters relating to it (clause 1.5(a)); and
 - [11.2] Agreements must contain a full description of the services to be provided (clause 1.5(b)).

- [11.3] Fees and disbursements to be charged must be set out (clause 8(b)), and provided in writing prior to signing the written agreement (clause 8(d)).
- [12] The adviser potentially breached those requirements, as:
- [12.1] The written agreement has a fixed fee for services, including work and student visas.
- [12.2] The adviser provided notes of an oral agreement that services relating to the complainant's wife and son would be free of charge. However, the written agreement does not reflect that.
- [12.3] Accordingly, a significant matter relating to the agreement was absent from it, and the fees were not accurately set out.
- [13] The Code of Conduct also requires that the adviser obtain agreement in writing to any material increase in costs.
- [14] There was no express written agreement to the increase in costs of \$500, only a general provision that there may be additional costs in the principal agreement.

Reply to the Statement of Complaint

Complainant

- [15] The complainant did not reply to the Statement of Complaint and was not required to do so unless he took issue with it.

The Adviser

- [16] The adviser filed a Statement of Reply.
- [17] On the specific points the Statement of Complaint identified, the adviser said:
- [17.1] The written agreement was for only one visa application, he was going to lodge the other work visa application and student visa application without charge.
- [17.2] He sent a letter to his client informing him of the additional \$500 fee, and he sent out an annotated invoice before performing the work.

Discussion

- [18] I am satisfied the complaint must be upheld in the two respects identified by the Registrar.
- [19] The written agreement identifies the work involved at least one work visa and a student visa. If there was an agreement that the work and the fee was related to only one visa and there would be free services for the others, that is not evident in the agreement.
- [20] This absence of information in the agreement led to confusion and dispute. If the complainant and his wife understood that the agreement and fee related to only one agreement it is unlikely they would have carried out the free work themselves.
- [21] Furthermore, this was a set of instructions and the adviser had to regulate the client relationship in accordance with the Code of Conduct for all three parts of the work.
- [22] I am satisfied the adviser failed to ensure he made his client aware, in writing and in plain language, of the terms of the agreement and all significant matters relating to it (clause 1.5(a)). He failed to identify the true terms regarding the work to which the fee related and additional work for which there was no fee.
- [23] That agreement did not contain a full description of the services he would provide (clause 1.5(b)). He failed to set out the work in more than a rudimentary way, but, in particular, he failed to make it clear which of the three visas he was applying in exchange for the fee.

- [24] He failed to set out the fees and disbursements to be charged (clause 8(b)), and provide that in writing prior to signing the written agreement (clause 8(d)). He failed to identify that the fee related to only one visa, and there was another agreement regarding the work for two visas being without cost.
- [25] I accept the adviser did communicate clearly regarding the additional fee of \$500. However, he did not get his client's written agreement.
- [26] Clause 3(c) of the Code of Conduct requires the adviser to "obtain agreement in writing to any material increase in costs". The adviser has contended that his written communications served that function. However, the conventional meaning of agreement in writing requires that each party signify their assent in writing. There are of course different modes of achieving that, which include electronic writing, agents and the like. However, there is no evidence the complainant initiated any writing that amounted to agreement. This issue is important, as a written document that both parties assent to at least makes it clear what was agreed.
- [27] It is clear the Code of Conduct has a very prescriptive approach to agreements and keeping written records. It is necessary that licensed advisers follow the Code of Conduct, as it is regulation that has regard to the vulnerability of consumers in this area of professional practice. The onus is on the professional to keep records and get clear written agreement where that is required; difficulties have arisen in the past in the absence of clear records.
- [28] Accordingly, I am satisfied the adviser breached the requirements of clause 3(c) of the Code of Conduct.

Decision

- [29] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [30] 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. In other respects, the complaint is dismissed.

Sanctions

- [31] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [32] However, I am satisfied the infringements were not the result of wilfulness. The adviser has expressed understanding, and concern to ensure he fully complies in the future. I am also conscious the adviser initially faced a much more serious complaint, involving allegations of dishonest or misleading behaviour. The Registrar was satisfied there was no evidence to support those allegation. He has also undertaken professional training to ensure he meets professional standards at a high level.
- [33] Having regard to all these circumstances, I am satisfied this is a case where the Tribunal should uphold the complaint but take no further action pursuant to section 50(b) of the Act.

DATED at WELLINGTON this 8th day of April 2014.

G D Pearson
Chair