

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

Decision No: [2014] NZIACDT 48

Reference No: IACDT 005/13

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**Between**

**Inderpal Saul**

Complainant

**AND**

**Genoveva Evelyn (Gennie) Ramos (Sta  
Maria)**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** In person

**Complainant:** In person

**Adviser:** In person

Date Issued: 9 April 2014

## DECISION

### Preliminary

- [1] The complainant engaged the adviser to assist with migrating to New Zealand. They entered into an agreement that contemplated first a student visa, followed by work and residence visas.
- [2] Immigration New Zealand issued the student visa. The visa sticker in the complainant's passport allowed a date of arrival in New Zealand that was significantly later than the date contemplated as the extent of the permitted stay in New Zealand.
- [3] The complainant had some difficulties and the adviser sought a new visa just before his first visa expired. When it expired, she made further applications, under a provision allowing persons with an expired visa to seek discretionary relief.
- [4] The complainant says the adviser led him to believe his visa did not expire until the later of the two dates in the visa sticker; in fact, it expired on the first of the two dates.
- [5] The adviser says the complainant understood perfectly well when his visa expired, and he has made up the complaint in that respect.
- [6] The adviser did not prepare a new or amended written agreement to deal with the applications following the complainant's visa expiring, and the original agreement did not cover that work. The adviser admits she should have done so.
- [7] The adviser also admits she took fees of \$2,000 from a fund deposited with her by the complainant for tuition fees, and accepts that was wrong. She has since repaid the money.
- [8] The Tribunal has to determine whether the adviser gave unsatisfactory advice, and whether the failure to have a new written agreement and the diversion of funds for an unauthorised purpose breached the Code of Conduct.
- [9] The Tribunal is satisfied those three grounds of complaint have been made out.

### The Statement of Complaint

- [10] The Registrar filed an amended Statement of Complaint dated 28 February 2014.
- [11] It sets out that the complainant lodged the complaint on wider grounds, but the Registrar identified material supporting three aspects:
  - [11.1] The adviser failed to perform her services with due care, diligence and professionalism (clause 1.1(a) of the Code of Conduct);
  - [11.2] Failed to obtain a written agreement for the provision of services with a full description of services, confirmed, recorded, and agreed in writing (clause 1.5 of the Code of Conduct); and
  - [11.3] Used funds held on behalf of a client for a purpose other than that for which the client paid the money to the adviser (clause 4(c) of the Code of Conduct).
- [12] In outline, the background was:
  - [12.1] The complainant sought the adviser's assistance to migrate to New Zealand. They entered into an agreement dated 24 September 2009 for the provision of professional services. The agreement sets out a pathway, which begins with a student visa application, progresses to a work visa applicant and ends with a residence application.
  - [12.2] The complainant paid the adviser \$2,000, was granted a student visa and subsequently travelled to New Zealand. The visa label includes a "Must not arrive after" date of 31 December 2012, and states the holder "may travel to New Zealand on application may be granted a permit for/to 31 March 2011."

- [12.3] The “permit”, (later termed visa due to a statutory change in terminology) was the authorisation to remain in New Zealand after arrival. Accordingly, the date of 31 March 2011 was the latest date contemplated for remaining in New Zealand on the visa label.
- [12.4] The complainant queried the dates on the visa label. They were inconsistent, in that the date on which the complainant could travel to New Zealand was after the latest date the label indicated he could remain in New Zealand.
- [12.5] The adviser told him his visa was current until 31 December 2012, whereas it expired on 31 March 2011.
- [12.6] The adviser filed a work visa application prior to 31 March 2011, when the student visa expired. The application failed as the complainant did not meet the requirements.
- [12.7] The complainant remained in New Zealand after his visa expired on 31 March 2011, and the adviser submitted the following further requests to try and regularise the complainant’s immigration status:
- [12.7.1] A request for reconsideration of the declined work visa application,
  - [12.7.2] A request for a visitor visa (under section 61),
  - [12.7.3] A request for a student visa (under section 61),
  - [12.7.4] A further request for a student visa (under section 61), and
  - [12.7.5] A submission to the Minister of Immigration.
- [12.8] Each of the requests failed.
- [12.9] The adviser held \$19,000 of the complainant’s funds on his behalf as course fees; she repaid the money but retained \$2,000 for her professional services.
- [13] The Statement of Complaint provides particulars of the potential infringements of professional obligations:
- Clause 1.1(a) – the obligation to perform services with due care, diligence, respect and professionalism*
- [13.1] The adviser informed the complainant his visa expired on 31 December 2012, when it expired on 31 March 2011.
- [13.2] The following documents support the allegation:
- [13.2.1] An email, written by the complainant, says the adviser gave repeated oral assurances to this effect.
  - [13.2.2] In a letter dated 12 December 2012, responding to the complaint, the adviser said the two dates on the visa sticker were consistent with her advice to the complainant.
  - [13.2.3] She gave contradictory advice. On 1 August 2011 by email, she told the complainant he did not have a valid visa. On 19 January 2012 in another email, she said the complainant had a current visa.
- Clause 1.5 – the obligation in relation to written agreements*
- [13.3] When the complainant’s visa expired, he pursued a different course of action. The written agreement had not contemplated the development, it provided for a progression from student visa, to work visa, to residence. The complainant had difficulties with his study that affected that progression.

- [13.4] To comply with the Code of Conduct, the adviser had to either:
- [13.4.1] Enter into a new agreement and have the complainant confirm his acceptance in writing; or
  - [13.4.2] Record and agree in writing, to changes of the existing agreement.
- [13.5] The adviser neither provided a new agreement, nor modified the existing agreement.
- Clause 4(c) – the obligation to use funds for the purpose the complainant paid them to the adviser*
- [13.6] The complainant deposited \$19,000 for a course fee into the adviser’s client account in September 2011.
- [13.7] When his visa application failed, the adviser took \$2,000 as professional fees.
- [13.8] The adviser has subsequently refunded the \$2,000 to the complainant.

### **Reply to the Statement of Complaint**

#### *The complainant*

- [14] 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*

- [15] The adviser filed a Statement of Reply.
- [16] On the issues where the Statement of Complaint identified there was potentially evidence to support the complaint, the adviser said:

#### *Clause 1.1(a) – the obligation to perform services with due care, diligence, respect and professionalism*

- [16.1] In an email of 2 March 2010, the adviser informed the complainant the visa was only for one year, as he only paid fees for one year of tuition.
- [16.2] The complainant was never confused about the expiry of the visa, it was very clear it was for one year.
- [16.3] The complainant has fabricated the complaint.

#### *Clause 1.5 – the obligation in relation to written agreements*

- [16.4] The adviser admits she should have prepared further agreements.

#### *Clause 4(c) – the obligation to use funds held on behalf of clients for the purpose for which they were paid to the adviser*

- [16.5] It was an error to retain \$2,000. She made the deduction with the complainant’s knowledge. However, he thought a fee of \$500 was sufficient given the lack of success. A full refund of the \$2,000 was issued later.

## Discussion

[17] I am satisfied the complaint must be upheld in the three respects identified by the Registrar.

### *Clause 1.1(a) – the obligation to perform services with due care, diligence, respect and professionalism*

[18] The complainant says he was confused and the adviser repeatedly told him he had a valid visa to be in New Zealand after it had in fact expired.

[19] That is entirely consistent with the adviser's email to him dated 19 January 2012, she said:

“This is not how immigration works, I think you will complete an application for a student visa not in section 61 because you have a visa anyway ... and we will lodge it ... we will attach your visa.”

[20] The adviser wrote this email many months after the complainant's visa had in fact expired, 31 March 2011. There had been applications lodged under section 61 before the email was written, it is a section that only applies if a person is in New Zealand without a current visa.

[21] The contents of the email are simply inconsistent with the adviser having an understanding of the complainant's visa expiry date and his immigration status in New Zealand.

[22] The adviser's claim her client fully understood the terms of the visa and fabricated his complaint does her little credit.

[23] It is evident from the written record that the adviser did not understand the situation and clearly had sufficient information to be concerned to inquire and find out what the true position was.

[24] Even now, with the Statement of Complaint that sets out clearly why she was in error and the benefit of hindsight, it appears she is uncomprehending.

[25] I accept the two dates on the visa sticker were potentially confusing. The adviser has rationalised them as being consistent, the complainant's current adviser thinks they are a simple administrative error. The latter is the better view. However, there is no doubt that one of the elementary and most important issues for migrants is the date of expiry of their visa. Remaining in New Zealand unlawfully after a visa expires has serious consequences, and clients must understand their status.

[26] I am satisfied the adviser was on notice that the issue needed to be addressed. However, she performed irreconcilable actions in lodging applications under section 61 and advising her client he still had a current visa.

[27] I am satisfied this was the result of the adviser failing to take due care and act with diligence. Had she done so, that would have led to making proper inquiries.

[28] I am also satisfied her approach was unprofessional. She was dealing with a serious issue for her client. Instead of examining the erroneous and inconsistent advice she gave, she has refused to reconsider her advice. Had she done so, she would have seen her advice and actions were not consistent and she needed to ensure her client did understand the true position.

[29] Her unprofessional attitude has persisted to the point where she currently claims her client is dishonest.

[30] I am satisfied the complaint must be upheld due to these breaches of clause 1 of the Code of Conduct.

### *Clause 1.5 – the obligation in relation to written agreements*

[31] The adviser has appropriately accepted she was required to either have a new written agreement or modify the existing agreement when the work changed.

[32] The changes were significant and a dispute in relation to fees followed. The lapse was substantial; there was far more than an incidental adjustment to the professional services and fees. The adviser should have been well aware of her obligations.

[33] I am satisfied the adviser breached clause 1.5 of the Code of Conduct.

*Clause 4(c) – the obligation to use funds held on behalf of clients for the purpose for which they were paid to the adviser*

[34] The adviser properly admits she used funds held for the payment of course fees for her own fees. The issue is aggravated by the fact there was a dispute over the level of fees and the adviser did not have a written agreement establishing the fees to be charged in light of the material changes to the work being undertaken.

[35] I am satisfied the adviser breached clause 4(c) of the Code of Conduct.

### **Decision**

[36] The Tribunal upholds the complaint pursuant to section 50 of the Act.

[37] 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.

[38] In other respects the complaint is dismissed.

### **Submissions on Sanctions**

[39] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.

[40] 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.

[41] 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*

[42] The timetable for submissions will be as follows:

[42.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.

[42.2] 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.

[42.3] 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 9<sup>th</sup> day of April 2014.

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**G D Pearson**  
Chair