

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

Decision No: [2014] NZIACDT 5

Reference No: IACDT 019/13

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Vijendra Latchman Nair**

Complainant

**AND**

**Artika Archina Devi**

Adviser

NAMES AND IDENTITY OF THE PARTIES NOT TO BE PUBLISHED PENDING FURTHER ORDER  
OF THE TRIBUNAL

---

**INTERIM DECISION**

---

**REPRESENTATION:**

**Registrar:** In person.

**Complainant:** In person.

**Adviser:** 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] Incapable;
  - [2.4] Engaged in dishonest or misleading behaviour; and
  - [2.5] 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 lodged a Statement of Reply in response to the Statement of Complaint.
- [5] The Statement of Complaint refers to various materials filed by the Registrar. When looking at all the material currently before the Tribunal, there is an incomplete picture of the events. However, there is sufficient material to identify a potential foundation for the finding that the adviser failed to meet professional service delivery standards.
- [6] On reviewing the Statement of Reply, it is not clear the adviser has fully understood the complaint. In part, that may be because the Statement of Complaint requires reference to the supporting documents to understand its extent.
- [7] 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*

- [8] The material allegations in the complaint appear to be:
  - [8.1] The complainant engaged the adviser to assist with seeking a work visa. They entered into an agreement dated 14 March 2011.
  - [8.2] The adviser completed this work successfully, in that Immigration New Zealand issued the work visa valid until 20 April 2012.
  - [8.3] On 27 June 2011 the adviser called the complainant and his wife into her office, and said they could apply for a residence visa. That day they entered into an agreement for the adviser to do that work. The stated fee was \$5,000, plus disbursements. The complainant was to pay fees in instalments which reflected steps in the process for obtaining a residence visa.
  - [8.4] The process to get a visa requires first an expression of interest be lodged with Immigration New Zealand, and then, if Immigration New Zealand invited the complainant to apply, a formal application for a residence visa could be filed. The contract set out that \$2,500 became payable after the Expression of Interest was selected from the pool, \$1,250 after receiving the invitation to apply for the residence permit, and the remaining \$1,250 after receiving the Levy for stamping of the residence permit

- [8.5] The Statement of Complaint sets out the claim the actual payments made by the complainant for this work were:
- [8.5.1] \$400 for the Expression of Interest; no receipt. It is unclear whether this was a filing fee or an additional charge by the adviser's company.
  - [8.5.2] On 3 July 2011, \$2,500 was paid, and a receipt for \$2,000 issued. The description on the receipt reads "selected from the pool".
  - [8.5.3] On 26 July 2011, \$1,250 was paid and a receipt of \$450 issued, noting that \$800 in instalments was still due. The description on the receipt reads "[Permanent Residency] package received". On 14 July 2011, Immigration New Zealand invited the complainant to apply for a residence visa, explained the process and indicated the application fee was \$1,550.
  - [8.5.4] On 27 July 2011, the complainant signed a credit contract with a company that was represented as associated with the adviser's practice. A "cash advance" of \$650 was provided to the complainant, to be repaid in instalments of \$100. In the period 5 August to 9 September 2011, the complainant paid instalments amounting to \$600. It is unclear from the Statement of Complaint whether this advance was put towards the 26 July 2011 payment or was used for some other purpose.
  - [8.5.5] The complainant paid a further \$1,500 when providing his family's medical documents on an undisclosed date; he states that he did not get a receipt.
- [8.6] Accordingly, the complainant apparently paid between \$5,250 and \$6,250 as fees towards the process of seeking a residence visa. In addition, he paid Immigration New Zealand filing fees of between \$1,550 and \$1,950.
- [8.7] A meeting on 26 July 2011 was the last contact the complainant had with the adviser. About this time, the complainant completed the medical assessments for himself and his family, and provided all information to the adviser's company as required.
- [8.8] The adviser failed to supply the medical certificates to Immigration New Zealand.
- [8.9] This Tribunal, with effect from 12 September 2011, cancelled the adviser's licence. The Tribunal gave her an opportunity to arrange continuing and appropriate representation for clients before the cancellation took effect.
- [8.10] At the time her licence was cancelled, the adviser had not filed the complainant's application for a residence visa; after that time she did not make any arrangements with the complainant for the refund of fees or provide a referral to a licensed immigration adviser.
- [8.11] After 26 July 2011, the complainant went to the office where the adviser's practice was located, was directed to a junior clerk, and told him she was now in charge of his case.
- [8.12] This Tribunal only has jurisdiction over licensed immigration advisers; from 13 September 2011 the adviser was not licensed. However, there is some narrative in the complaint after that point which is relevant only to the extent it arises from conduct during the time the adviser was licensed:
- [8.12.1] During February 2012, the complainant engaged the company through which the adviser had operated her practice to apply for an extension to the work permit; it was due to expire on 20 April 2012. Eventually he sought the assistance of another adviser, and then discovered this Tribunal had cancelled the adviser's license with effect from 12 September 2011.
  - [8.12.2] A staff member associated with the adviser's practice charged \$170 to the credit card in or about May 2012.
- [9] The above matters give rise to the following potential grounds for complaint within the Tribunal's jurisdiction:

- [9.1] The adviser failed to communicate with the complainant regarding his immigration affairs in a timely manner throughout her engagement.
- [9.2] The adviser had complete instructions to apply for a residence visa from 26 July 2011 and should have lodged it promptly. She failed to lodge it between 26 July 2011 and 12 September 2011 when this Tribunal cancelled her licence.
- [9.3] The adviser was obliged to keep unearned fees in a client account, and should have been in a position to account for them; in fact, she had not complied.
- [9.4] The adviser failed to receipt properly payments received for her fees.
- [9.5] This Tribunal, after cancelling the adviser's licence, allowed a period for the adviser to communicate with clients and arrange for their ongoing professional representation. During that period, the adviser needed to determine whether she was obliged to refund fees or make arrangements acceptable to her client, such as paying unearned fees to the new adviser. Some fees appear to have been unearned as the adviser had not lodged the application for a residence visa and held fees for that purpose.
- [10] If the potential factual findings were made out, the Tribunal could potentially determine:
- [10.1] The adviser failed to confirm in writing when she lodged the application, did not provide timely updates, or confirm in writing the details of material discussions (Clause 3 of the Code of Conduct).
- [10.2] The adviser failed to carry out her instructions to file an application for a residence visa, and did so through lack of care, diligence, and professionalism (Clause 1 of the Code of Conduct), and/or did so negligently (section 44 of the Act).
- [10.3] The adviser failed to bank unearned fees in a separate bank account (Clause 4 of the Code of Conduct), failed to issue proper invoices (Clause 8(e) of the code of Conduct), and failed to account for and refund fees when her engagement terminated (Clause 3 of the Code of Conduct).
- [10.4] The adviser charged fees in excess of fixed costs set out in the written agreement (clause 8(b) Code of Conduct).
- [10.5] The adviser failed to work in a manner that did not unnecessarily increase costs (Clause 1.1(d) of the Code of Conduct). In particular, the adviser failed to lodge properly the application in a timely manner, and created the need to apply for an extension of the current work visa.
- [10.6] When the adviser lost her licence, she failed to notify her client that she could no longer act for him and failed to arrange appropriate professional support. That conduct lacked professionalism (Clause 1 of the Code of Conduct), and resulted in the complainant's affairs being wholly or partly in the hands of unlicensed persons acting unlawfully.
- [11] As matters stand, the adviser is at risk of the potential adverse conclusions identified in para [10], above.
- [12] It is important to give the adviser the opportunity to reflect on her response, and provide any further material she wishes. She was a professional who was required to keep and maintain records of her professional engagement (Clause 3 of the Code of Conduct); she should seek to explain the allegations in the complaint with reference to her records, and produce those records. She is requested to produce a full record of the fees claimed and paid.

*Directions - timetable*

- [13] Within 10 working days of this direction, the adviser may provide further evidence and submissions relating to the complaint.

[14] Other parties will have 5 working days to reply to that material.

[15] If the adviser does not respond, the Tribunal will make a decision on the material now before it.

**DATED** at WELLINGTON this 29<sup>th</sup> day of January 2014

---

**G D Pearson**  
Chair