

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

Decision No: [2014] NZIACDT 50

Reference No: IACDT 015/13

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Lilio Finau**

Complainant

**AND**

**Alungamonu (Laki) Tangilanu (Monu)**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** In person

**Complainant:** In person

**Adviser:** In person

Date Issued: 15 April 2014

## DECISION

### Preliminary

- [1] The complainant engaged the adviser to assist with a request for a visa. She lodged the request and Immigration New Zealand requested further information. At that point, the adviser's licence expired, so she could not respond to Immigration New Zealand. The loss of her licence precluded further work.
- [2] In the lead up to her licence expiring, the adviser did not inform her client in writing that she would no longer be able to do the work and she did not assist her client with finding further professional support or help her to look at other options. The Code of Conduct 2010 required her to take those actions in the lead up to the expiration of her licence, when she could no longer provide professional support.
- [3] The adviser has not challenged the Statement of Complaint, which set out these grounds of complaint. The Tribunal is satisfied on the material before it that it should uphold the complaint in these respects.

### The Statement of Complaint

- [4] The Registrar filed a Statement of Complaint. It says the complainant lodged the complaint on wider grounds, but the Registrar identified material that supports one aspect. Namely:
  - [4.1] The adviser breached the Code of Conduct in relation to ceasing her services, in that she:
    - [4.1.1] Did not take reasonable steps to ensure her clients' interests were represented when she could not continue as their representative; in doing so she breached her duties of care, diligence, respect and professionalism under the Code of Conduct (clause 1.1(c)); and
    - [4.1.2] Failed to confirm in writing when work ceased part way through an immigration process (clause 3(b) of the Code of Conduct).
- [5] In outline, the background was:
  - [5.1] In July 2011, the complainant engaged the adviser for assistance with a visitor visa application and paid the adviser \$310.
  - [5.2] The complainant believed her application for a visitor's visa was lodged in July 2011; in fact, she lodged a request on 15 September 2011, under section 61.
  - [5.3] On 21 September 2011, Immigration New Zealand wrote requesting further information regarding the request.
  - [5.4] The adviser's licence expired on 23 September 2011.
  - [5.5] In October 2011, the complainant personally provided the information required by Immigration New Zealand and a visa was issued.
- [6] 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, and clause 3(b) - confirming in writing when work ceased part way through an immigration process*

  - [6.1] The adviser held instructions to assist with a visa application; her licence expired part way through the process.
  - [6.2] At the time her licence expired, Immigration New Zealand had requested, and required, information.

[6.3] The adviser failed to notify her client regarding her licence expiring, and:

[6.3.1] Failed to ensure her client's interests were protected before her licence expired; and

[6.3.2] Failed to inform her client when work ceased.

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

#### *The complainant*

[7] The complainant did not file a statement of reply, and was not required to do so unless the complainant sought to challenge it. As there was no challenge, it is only necessary to determine the aspects of the complaint in respect of which the Statement of Complaint identifies supporting grounds.

#### *The adviser*

[8] The adviser did not file a statement of reply, and like the complainant was only required to do so if seeking to challenge it.

### **Discussion**

[9] I have reviewed the Statement of Complaint and the documents filed in support. I am satisfied the complaint must be upheld in the respects where the statement of complaint has identified grounds and evidence supporting it.

[10] The Statement of Complaint focuses on the point where the adviser's licence expired. From that point, she could not lawfully provide immigration advice. Accordingly, she could not respond to the outstanding query from Immigration New Zealand.

[11] The adviser took no steps either to inform her client, or to assist her with engaging further professional support.

[12] Her client was entitled to advice and assistance. It is evident there was a sound request before Immigration New Zealand and as it happened, the complainant was able to personally advance it successfully.

[13] However, the adviser was not entitled to assume her client could deal with the issues; the Code of Conduct imposes specific duties.

[14] Clause 1.1(c) requires care and professionalism to take reasonable steps to ensure an adviser represents their clients' interests if they cannot, for any reason, continue as a representative. In this case, that duty required communication with the complainant, explaining what steps were required, and advice on potentially engaging another professional. She took no steps; that inaction lacked care and professionalism and breached the Code of Conduct.

[15] Clause 3(b) has a positive requirement to communicate in writing when work ceases. The adviser did not do that. In failing to do so she breached the Code of Conduct.

### **Decision**

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

[17] 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.

[18] In other respects the complaint is dismissed.

**Submissions on sanctions**

- [19] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [20] 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.
- [21] 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*

- [22] The timetable for submissions will be as follows:
- [22.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.
- [22.2] 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.
- [22.3] 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 15<sup>th</sup> day of April 2014.

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**G D Pearson**  
Chair