

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

Decision No: [2014] NZIACDT 51

Reference No: IACDT 042/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers
Registrar

Between

Siope Tuitupou and Manusiu Tuitupou
Complainants

AND

Alungamonu (Laki) Tangilanu (Monu)
Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainant: Richard Small, Pacific Legal, Wellington

Adviser: In person

Date Issued: 15 April 2014

DECISION

Preliminary

- [1] The complainants engaged the adviser to assist with a request for a visa. The complainant who required the visa was in New Zealand without a current visa, so the request had to address his unlawful status in New Zealand under a discretionary provision.
- [2] The grounds of complaint are in essence that:
 - [2.1] The adviser gave preliminary advice and charged \$50 without complying with the requirement to set out that fee in writing.
 - [2.2] Then the adviser charged \$500 to undertake the work. She did not undertake any work, but she told her clients she had made the request to Immigration New Zealand. She also made up an account of what had happened to the request.
 - [2.3] The adviser's licence expired. She had still done nothing. She did not take any steps to protect her clients' interests, or refund fees.
- [3] The adviser has not challenged the Statement of Complaint, which set out these grounds of complaint. The Tribunal is satisfied the material before it requires that it uphold the complaint in the respects identified.

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 the following grounds of complaint:
 - [4.1] The adviser engaged in dishonest or misleading behaviour, by giving a false account to the complainants of the immigration work she had performed.
 - [4.2] The adviser breached the Code of Conduct 2010 (the Code), in that:
 - [4.2.1] She breached her duties of care, diligence, respect and professionalism under the Code, in performing her services, carrying out her instructions, and concluding her client relationship (clause 1.1 (a), (b) and (c));
 - [4.2.2] She failed to set out her fees in writing before commencing work and she failed to provide a copy of that to her clients (clause 8 b) and (d); and
 - [4.2.3] She failed to refund fees on completing or ceasing her contract for services (clause 3 (d) of the Code).
- [5] In outline, the background to the complaint was:
 - [5.1] On 12 March 2011 the complainants engaged the adviser to apply for a work visa for the male complainant. He was in New Zealand and had not held a current visa since March 2010. They paid \$50 for the initial consultation.
 - [5.2] The female complainant signed a written agreement with the adviser for assistance with lodging a request for a work visa under section 61 of the Immigration Act 2009. The complainants paid \$500 in professional fees, in accordance with the agreement.
 - [5.3] Some two or three months later, the complainants contacted the adviser. The adviser told them that she had submitted everything to Immigration New Zealand, and they should wait for a response. After a period, the female complainant contacted the adviser again. She told the complainant Immigration New Zealand declined the request for a visa and that she had resubmitted the request.

- [5.4] The adviser's licence expired on 23 September 2011. Immigration New Zealand records establish the adviser had not submitted any applications or requests for a visa by this date.
- [5.5] On 14 February 2012, Immigration New Zealand received a letter dated 30 March 2011, purporting to be from the male complainant requesting a work visa under section 61. He neither wrote nor sent the letter to Immigration New Zealand.
- [5.6] The adviser did not refund the fees she received from the complainants.
- [6] The Statement of Complaint provides particulars of the potential infringements of professional obligations:

Dishonest or misleading behaviour (section 44(2)(d))

- [6.1] The adviser's statements to the complainants, that she submitted the request under section 61, that Immigration New Zealand declined the request, and the adviser resubmitted it, were false.
- [6.2] The false statements to her clients potentially amounted to dishonest or misleading behaviour.

Clause 1.1 a), b) and c) – the obligation to perform services, carry out instructions and terminate her engagement with: due care, diligence, respect and professionalism

- [6.3] The adviser was engaged to assist with a visa application.
- [6.4] She failed to take any steps.
- [6.5] The failure to take any steps potentially breached her duties to:
- [6.5.1] Perform her services (clause 1.1(a)),
 - [6.5.2] Carry out her instructions (clause 1.1(b)), and
 - [6.5.3] Take steps to protect her clients' interests when her licence expired and she could no longer represent them (clause 1.1(c)).

Clause 8(b) and (d) – obligations relating to fees

- [6.1] The Code of Conduct requires that all fees are set out and agreed in writing prior to commencing work incurring the fee.
- [6.2] The adviser charged \$50 for the complainants' first consultation. The subsequent written agreement does not include that fee and no other document set out that fee.
- [6.3] The adviser potentially failed to set out the consultation fee and provide her clients with a copy in writing before they signed the written agreement and before commencing work under that agreement, as the Code requires.

Clause 3 d) – obligation to refund fees

- [6.4] The complainants paid \$500 to the adviser for services she did not provide.
- [6.5] When her licence expired, she could no longer lawfully provide those services. She did not refund the fees.
- [6.6] Accordingly, the adviser potentially failed to refund the fees as the Code of Conduct required when her engagement ended.

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 challenging 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 all respects where the statement of complaint has identified grounds and evidence supporting those grounds.

Dishonest or misleading behaviour (section 44(2)(d))

- [10] The allegation against the adviser is uncomplicated. She did not perform the professional work she agreed to undertake. Her clients inquired about progress and she dishonestly told them: she had submitted the request under section 61, that Immigration New Zealand declined the request and she had resubmitted it. That was untrue, as she had done nothing.
- [11] I am satisfied this unchallenged allegation is supported on the material before me. The only evident explanation is that the adviser dishonestly fabricated an account to hide the fact she had not performed work.
- [12] The issue is at the serious end of the scale of professional offending, first because overt dishonesty of this kind is wholly inconsistent with the standards required in a professional relationship. Second, the issue concerned a client's unlawful status in New Zealand. He was entitled to know, and needed to know, what steps the adviser was taking with Immigration New Zealand. It potentially affected him and his family in important respects.
- [13] I am satisfied the adviser engaged in dishonest and misleading behaviour, that is a ground for upholding the complaint under section 44(2)(d) of the Act.

Clause 1.1(a), (b) and (c) – the obligation to perform services, carry out instructions and terminate her engagement with: due care, diligence, respect and professionalism

- [14] The adviser was engaged to assist with a visa application. She did nothing of significance to carry out those instructions, they were important instructions and it was necessary that her client address his unlawful status in New Zealand. He had taken the initiative to do so, and the outcome would have important effects.
- [15] Failing to act on the instructions amounted to a lack of care, diligence and professionalism. I am satisfied the adviser breached clauses 1.1(a) and (b) in failing to perform her services or carryout her instructions.
- [16] When the adviser's licence expired, she had not carried out her instructions. Her clients did not know that. They were entitled to know what the true position was and have appropriate professional assistance. Instead, the adviser allowed them to continue to think she had carried out her instructions.
- [17] The adviser failed to meet her duties of care and professionalism, and accordingly breached clause 1.1(c) of the Code of Conduct in this respect.

Clause 8(b) and (d) – obligations relating to fees

- [18] The adviser charged \$50 for the complainants' first consultation. The fee was never set out in writing.
- [19] The Code of Conduct required both that the fee be set out in writing (clause 8(b)), and that document setting out fees be provided to the complainants prior to signing the compulsory written agreement for the provision of services (clause 8(d)).
- [20] The adviser was wholly non-compliant with the Code of Conduct in these respects. Accordingly she breached those requirements of the Code of Conduct.

Clause 3(d) – obligation to refund fees

- [21] The complainants paid \$500 to the adviser for services she did not provide. Clause 3(d) of the Code of Conduct required the adviser to pay refunds due on completing or ceasing a contract for services.
- [22] When the adviser's license expired, she could not provide the services and had done nothing to earn the fee of \$500.
- [23] Accordingly, I am satisfied the adviser failed to meet the requirements of clause 3(d) of the Code of Conduct.

Decision

- [24] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [25] The adviser engaged in dishonest and misleading behaviour and breached the Code of Conduct in the respects identified. These are grounds for complaint pursuant to section 44(2)(d) and (e) of the Act.
- [26] In other respects the complaint is dismissed.

Submissions on Sanctions

- [27] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [28] It is important that adviser should appreciate the finding of dishonesty puts this matter into the serious category, and may involve restrictions on applying for a licence and a financial penalty of up to \$10,000.
- [29] 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.
- [30] 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

- [31] The timetable for submissions will be as follows:
- [31.1] The Authority and the complainants are to make any submissions within 10 working days of the issue of this decision.
- [31.2] The adviser is to make any further submissions (whether or not the Authority or the complainants make submissions) within 15 working days of the issue of this decision.

[31.3] 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 15th day of April 2014.

G D Pearson
Chair