

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

Decision No: [2014] NZIACDT 54

Reference No: IACDT 016/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Amini Kaufusi and Tivinia Kaufusi

Complainants

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainants: In person

Adviser: In person

Date Issued: 24 April 2014

DECISION

Preliminary

- [1] The complainant engaged the adviser to assist with an appeal to the Immigration and Protection Tribunal.
- [2] The grounds of complaint are in essence that the adviser:
 - [2.1] Failed to undertake the compulsory steps for client engagement, but took fees;
 - [2.2] Did not carry out the work she agreed to perform; and
 - [2.3] Failed to refund the fees she had not earned.
- [3] The adviser has not challenged the statement of complaint, which set out these grounds of complaint. The Tribunal's decision is that the material before it requires that it 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 the following grounds of complaint:
 - [4.1] The adviser breached the Licensed Immigration Advisers Code of Conduct 2010, in that:
 - [4.1.1] She breached her duties of care, diligence, respect and professionalism under the Code of Conduct, in performing her services and carrying out her instructions (clause 1.1(a) and (b));
 - [4.1.2] Breached her duties in relation to written agreements and fees (clauses 1.5(a), (b) and (d); and 8(d)); and
 - [4.1.3] Failed to refund fees (clause 3(d)).
- [5] In outline, the background was:
 - [5.1] Immigration New Zealand declined the complainants' residence applications.
 - [5.2] In April 2011, the complainants engaged the adviser to appeal against the decision to decline their residence applications.
 - [5.3] The adviser accepted the instructions, but did not present a written agreement.
 - [5.4] The complainants paid the adviser \$400 in professional fees and paid the filing fee of \$550 to the Ministry of Justice to lodge the appeal.
 - [5.5] The adviser did not lodge the appeal.
- [6] The Statement of Complaint provides particulars of the potential infringements of professional obligations:

Clause 1.1(a) and (b) – the obligation to perform services and carryout instructions with: due care, diligence, respect and professionalism

 - [6.1] The adviser was engaged to lodge an appeal, and did not do so.
 - [6.2] She failed to carry out her instructions.

Clauses 1.5, and 8 – obligations relating to a written agreement, and fees

- [6.1] The adviser did not have a written agreement for the provision of professional services, set out her fees in writing, or attend to other requirements for commencing a professional engagement.
- [6.2] She breached the Code which required:
- [6.2.1] A written agreement containing a full description of the services to be provided (clause 1.5(b));
 - [6.2.2] All significant matters to be explained before her clients entered the written agreement (clause 1.5(a));
 - [6.2.3] That she set out in writing the fees and disbursements (clause 8(d));
 - [6.2.4] That she inform the complainants they could seek legal advice (clause 1.5(c)); and
 - [6.2.5] The complainants accept the terms in writing (clause 1.5(d)).

Clause 3(d) – obligations relating to refunding fees

- [6.3] The complainants paid the adviser \$400 for professional services and she did not provide the services. She did not refund the fee.
- [6.4] The adviser was obliged to refund unearned fees pursuant to clause 3(d) of the Code 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 the statement of complaint. 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 challenging 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.

Clause 1.1(a) and (b) – the obligation to perform services and carryout instructions with: due care, diligence, respect and professionalism

- [10] The adviser had instructions to lodge an appeal. It is elementary and important that this appeal has a statutory time limit, which any licensed immigration adviser accepting work of this kind must understand. The consequence of not filing the appeal in time is that it permanently deprives a person of the ability to appeal.
- [11] The adviser accepted the instructions to appeal, it follows that she led her client to believe the appeal had merit. She had a duty to lodge the appeal in a proper and adequate form, or get further instructions within the appeal period.
- [12] The adviser failed to carry out her instructions to lodge the appeal and did not revisit her instructions with her client.

[13] The adviser provided no explanation to justify her failure to carry out instructions. I am satisfied the adviser failed to meet the minimum standards of a licensed immigration advice acting with care, diligence and professionalism in relation to her instructions.

[14] Accordingly the adviser breached clause 1.1(a) and (b) of the Code of Conduct in this respect.

Clauses 1.5, and 8 – obligations relating to a written agreement, and fees

[15] The adviser had no written agreement for the provision of professional services, did not set out her fees in writing, and did not attend to the requirements for commencing a professional engagement.

[16] She breached the Code which required her to:

[16.1] Provide a written agreement containing a full description of the services to be provided (clause 1.5(b));

[16.2] Explain all significant matters before entering the written agreement (clause 1.5(a));

[16.3] Set out fees and disbursements in writing (clause 8(d));

[16.4] Inform the complainants they could see legal advice (clause 1.5(c)); and

[16.5] Get the complainants' written acceptance of the terms of the agreement (clause 1.5(d)).

[17] The adviser was wholly non-compliant with the Code of Conduct in these respects, and accordingly breached those requirements of the Code of Conduct.

Clause 3(d) – obligations relating to refunding fees

[18] The complainants paid the adviser \$400 for professional services, and she did not provide the services. She did not refund the fee.

[19] The adviser was obliged to refund unearned fees pursuant to clause 3(d) of the Code when her engagement ended. In failing to do so she breached the Code in that respect.

Decision

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

[21] 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.

[22] In other respects the complaint is dismissed.

Submissions on Sanctions

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

[24] The Authority and the complainants 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.

[25] 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

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

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

[26.2] 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.

[26.3] 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 24th day of April 2014.

G D Pearson
Chair