

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

Decision No: [2014] NZIACDT 57

Reference No: IACDT 029/12

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Lavinia Tuumotooa and Paulo  
Tuumotooa**

Complainant

**AND**

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

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** In person

**Complainant:** Mr Nalesoni Tupou, Lawyer, Auckland.

**Adviser:** In person

Date Issued: 29 April 2014

## DECISION

### Preliminary

- [1] The complainants engaged the adviser to assist with an application.
- [2] The complaint is, in essence, that the adviser:
  - [2.1] Lodged a visa application with Immigration New Zealand for the complainants,
  - [2.2] Immigration New Zealand made a routine request for information,
  - [2.3] The complainants provided the information to the adviser,
  - [2.4] The adviser did not pass the information to Immigration New Zealand,
  - [2.5] The complainants' application failed as the adviser did not pass on the information,
  - [2.6] After that point, the adviser's licence expired and she took no steps to inform her clients of their circumstances or assist with engaging ongoing professional support.
- [3] The adviser has not challenged the statement of complaint, which set out this basis for the complaint. The Tribunal has decided that the material before it requires it to uphold the complaint.

### The Statement of Complaint

- [4] The Registrar filed a statement of complaint. It recognises that the complainant lodged the complaint on wider grounds, but the Registrar identified material that supports more limited grounds of complaint and so has advanced the complaint on the following basis:
  - [4.1] The adviser failed to meet her professional obligations, in that:
    - [4.1.1] She was negligent (section 44(2)(a) of the Act);
    - [4.1.2] She breached her duties of care, diligence, respect and professionalism under the Code of Conduct by failing to take reasonable steps to ensure her clients' interests were represented when she was no longer able to continue as representative (clause 1.1(c)); and
    - [4.1.3] She breached her duties in relation to providing timely updates (clause 3(a)).
- [5] In outline, the background was:
  - [5.1] In March 2011, the complainants engaged the Adviser to assist them to apply for visas. They paid \$350 for the service.
  - [5.2] The adviser lodged the visa applications.
  - [5.3] Immigration New Zealand requested information, which the complainants provided to the adviser.
  - [5.4] The adviser did not provide the information to Immigration New Zealand, and accordingly Immigration New Zealand declined the applications in May 2011.
  - [5.5] Due to the application failing, the complainants were in New Zealand unlawfully. Despite the complainants inquiring, the adviser did not provide updated information regarding their applications.
  - [5.6] The Adviser's licence expired on 23 September 2011; she was still in possession of the complainants' passports.

[5.7] In February 2012, the complainants found out Immigration New Zealand declined their visa applications in May the previous year.

[6] The statement of complaint provides particulars of the alleged infringements of professional obligations:

*Negligence*

[6.1] Immigration New Zealand requested evidence of the complainants' onward travel arrangements. The adviser had 10 days to provide the information, and she received it from the complainants in good time.

[6.2] The adviser did not provide the information to Immigration New Zealand and that resulted in the application failing.

*Clause 1.1(c) – obligation to take reasonable steps to ensure the clients' interest were represented after she could not continue to provide services; obligation to meet the standards of: due care, diligence, respect and professionalism in this regard.*

[6.3] When the adviser's licence was due to expire, she took no steps to arrange continued representation, or otherwise protect her client's interests.

*Clauses 3(a) – obligation to maintain professional business practices, including confirming in writing to clients when applications have been lodged, with ongoing timely updates*

[6.1] The adviser did not inform the complainants when Immigration New Zealand declined their application in May 2011. An employee of the adviser's practice informed them in February 2012 what had happened.

[6.2] During the period between May 2011 and February 2012, the adviser failed to inform the complainants that Immigration New Zealand declined their application. Further, they had requested information from her and she did not tell them what had happened.

## **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 the statement of complaint.

## **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 Registrar has identified grounds and supporting evidence.

[10] In her response to the initial complaint, the adviser stated the complainants did not provide her with the return flight information until 27 May (more than a week after the due date), she has also denied responsibility without reasoning or facts.

[11] The adviser has provided no records that support this explanation. She was obliged to keep records (Code clause 3), and if information was provided to her late, she should have quickly provided the information to Immigration New Zealand and explained the circumstances. She has not produced information of that kind. I prefer the account given by the complainants. The

adviser's decision not to lodge a statement of reply in any case involves her abandoning a challenge to the facts set out in the statement of complaint.

### *Negligence*

- [12] Immigration New Zealand requested evidence that was essential to the complainants' applications. The adviser had 10 days to provide the information, which she received from the complainants within one week.
- [13] The adviser did not pass the information on to Immigration New Zealand. She has provided no explanation.
- [14] The result was her clients' application failed and they were in New Zealand unlawfully. The importance of passing on the information was high and the steps to comply easily achieved.
- [15] I am satisfied the material before me establishes that the adviser was negligent in failing to perform her duties. Accordingly, this aspect of the complaint is upheld pursuant to section 44(2)(a) of the Act.

*Clause 1.1(c) – obligation to take reasonable steps to ensure her clients' interests were represented after she could not continue to provide services; obligation to meet the standards of due care, diligence, respect and professionalism in this regard*

- [16] When the adviser's licence was due to expire, she took no steps to inform her clients or to arrange further support.
- [17] When her licence expired, the adviser knew her clients were in New Zealand unlawfully, that they did not know that, and that they needed professional support.
- [18] As she took no steps to rectify this situation, I am satisfied she breached her duties of care, diligence, respect and professionalism. Accordingly, she breached clause 1.1(c) of the Code.

*Clause 3(a) – obligation to maintain professional business practices, including an obligation to confirm in writing to clients when applications have been lodged, with ongoing timely updates*

- [19] The adviser did not inform the complainants when Immigration New Zealand declined their application in May 2011. This information was essential; they could not legally remain in New Zealand without current visas. If they did overstay their visas, they would potentially suffer adverse immigration consequences.
- [20] Clause 3(a) of the Code required the adviser to provide the complainants with ongoing timely updates. She failed to do so in respect of an important issue. Immigration New Zealand informed her clients in February 2012 of what happened the previous May.
- [21] The adviser has offered no explanation justifying her conduct.
- [22] Accordingly, the adviser breached clause 3(a) of the Code.

### **Decision**

- [23] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [24] The adviser was negligent and breached the Code of Conduct in the respects identified. These are grounds for complaint pursuant to section 44(2)(a) and (e) of the Act.
- [25] In other respects, the complaint is dismissed.

### **Submissions on Sanctions**

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

- [27] 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.
- [28] 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*

- [29] The timetable for submissions will be as follows:
- [29.1] The Authority and the complainants are to make any submissions within 10 working days of the issue of this decision.
- [29.2] 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.
- [29.3] The Authority and the complainants may reply to any submissions made by the adviser within 5 working days of him filing and serving those submissions.

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

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**G D Pearson**  
Chair