

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

Decision No: [2014] NZIACDT 59

Reference No: IACDT 017/13

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Viliani Tukutau**

Complainant

**AND**

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

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** In person

**Complainant:** Richard Small, Pacific Legal, Wellington

**Adviser:** In person

Date Issued: 30 April 2014

## DECISION

### Preliminary

- [1] The complainant engaged the adviser to assist with a request for a visa; he was in New Zealand without a current visa. He sought the adviser's assistance to get a work visa.
- [2] The complaint is that the adviser had a written agreement which did not set out the services she was to provide. Second, she lodged the complainant's request to Immigration New Zealand for a visa relying on a job offer that was obviously unsatisfactory.
- [3] The adviser has not challenged the allegations and the Tribunal has upheld the complaint that the agreement was not compliant. In addition, the Tribunal has found the adviser was incompetent, and upheld the complaint on that ground.

### 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 she:
    - [4.1.1] Failed to comply with the Code's requirement that a professional engagement must be established with a written agreement containing a full description of services (clause 1.5(b)); and
    - [4.1.2] Negligence and/or Incompetence (Section 44(2)(a) and (b) of the Act).
- [5] In outline, the background was:
  - [5.1] On 25 October 2010, the complainant and his wife entered into an agreement with the adviser. It did not describe the services she was to provide.
  - [5.2] On 8 December 2010, the adviser sent a request for a visa to Immigration New Zealand under section 61 of the Immigration Act 2009.
  - [5.3] The request had supporting documents relating to employment opportunities, including a job offer.
  - [5.4] On 18 March 2011 Immigration New Zealand declined the request, and noted:
    - [5.4.1] The job offer was unsatisfactory as it was paid by piece work, not salary or wages; and
    - [5.4.2] It did not guarantee at least 30 hours of work; and
    - [5.4.3] It was in the horticulture or viticulture industry.
- [6] The statement of complaint provides particulars of the potential infringements of professional obligations:

*Clause 1.5(b) – Agreements must contain a full description of the services the adviser agrees to provide.*
- [7] The written agreement did not contain any description of the services the adviser agreed to provide.

*Negligence or incompetence.*

- [8] The job offer relied on in the request for a work visa could not satisfy Immigration New Zealand's Essential Skills work visa instructions, or any other categories. The request necessarily failed for that reason.
- [9] It followed that the adviser either:
- [9.1] Did not know the job offer could not satisfy Immigration New Zealand instructions, which was potentially evidence of incompetence; or
- [9.2] The adviser failed to review the job offer, which was potentially evidence of negligence.

**Reply to the Statement of Complaint***The complainant*

- [10] 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*

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

**Discussion**

- [12] 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 supporting evidence.

*Clause 1.5(b) – agreements must contain a full description of the services the adviser agrees to provide.*

- [13] As the agreement had no description of the services the adviser was providing, it did not comply with clause 1.5(b).
- [14] The adviser has provided no explanation. I am satisfied the complaint must be upheld in this respect.

*Negligence or incompetence.*

- [15] It is an elementary requirement that a licensed immigration adviser can evaluate whether a job offer is compliant with Immigration New Zealand instructions. There are of course situations that are not certain. A competent and careful immigration adviser may overlook a critical point that is not obvious. However, the present case is far from the areas of uncertainty, or obscurity.
- [16] In this case, there were multiple and obvious reasons that made the job offer noncompliant.
- [17] I accept too, that the adviser could have responsibly made the request under section 61 if the job offer was noncompliant but there were other humanitarian reasons to justify the exercise of discretion. However, the adviser's submission relied on the job offer alone.
- [18] I am satisfied the request was hopeless; it had no substance at all and Immigration New Zealand inevitably rejected it. The adviser should have recognised the outcome was inevitable for the request she submitted.

[19] The substance of the adviser's submission requesting the exercise of the discretion under section 61 was this passage in the adviser's letter to Immigration New Zealand:

"[The complainant] has great experiences of this kind and would love to serve New Zealand in this way."

[20] The adviser did not address why the complainant was in New Zealand unlawfully, did not put forward a case for exercising the statutory discretion in her client's favour and relied only on a job offer that was patently unsatisfactory.

[21] The Tribunal is required to determine facts on the balance of probabilities; however the test must be applied with regard to the gravity of the finding (*Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1).

[22] I am satisfied the standard of the work was far short of the minimum level of competence. The type of work was routine, not complex. I have reviewed the submission drafted by the adviser. It provides strong evidence of incompetence. The application was unimpressive in form, as it did not provide a reasoned argument supporting the exercise of the statutory discretion. It was wholly deficient in substance for the reasons Immigration New Zealand identified. The adviser has not provided an explanation that suggests any conclusion other than incompetence for the unsatisfactory submission.

[23] Accordingly, I am satisfied the adviser was incompetent.

[24] I am satisfied on the balance of probabilities the adviser was incompetent, and that, rather than negligence, explains her professional failure. The finding is that the adviser was incompetent in relation to routine and elementary work.

[25] I am satisfied this aspect of the complaint must be upheld under section 44(2)(b), in that respect.

### **Decision**

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

[27] The adviser breached the Code of Conduct and was incompetent in the respects identified. These are grounds for complaint pursuant to section 44(2)(b) and (e) of the Act.

[28] In other respects the complaint is dismissed.

### **Submissions on Sanctions**

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

[30] 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.

[31] 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*

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

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

[32.2] 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.

[32.3] The Authority and the complainant may reply to any submissions made by the adviser within 5 working days of her filing and serving those submissions.

**DATED** at WELLINGTON this 30<sup>th</sup> day of April 2014.

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**G D Pearson**  
Chair