

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

Decision No: [2014] NZIACDT 6

Reference No: IACDT 036/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

**Wattan Veer Vikashwarjeet & Vandna
Avikshni Devi**

Complainants

AND

Artika Archina Devi

Adviser

NAMES AND IDENTITIES OF THE PARTIES NOT TO BE PUBLISHED PENDING FURTHER
ORDER OF THE TRIBUNAL

INTERIM DECISION

REPRESENTATION:

Registrar: In person.

Complainants: In person.

Adviser: Mr S Singh, Singhs Barristers & Solicitors, Auckland.

Date Issued: 30 January 2014

DECISION

Preliminary

- [1] The Registrar received a complaint relating to the Adviser.
- [2] The Registrar identified the basis of the complaint as being that the Adviser:
 - [2.1] Was negligent;
 - [2.2] Incompetent;
 - [2.3] Incapable;
 - [2.4] Engaged in dishonest or misleading behaviour; and
 - [2.5] Breached the Code of Conduct in relation to various alleged professional failings.
- [3] The factual basis for those grounds of complaint was set out in the Registrar's Statement of Complaint as a less than detailed narrative of the professional engagement.
- [4] The adviser lodged a Statement of Reply in response to the Statement of Complaint. It appears to accept that an unlicensed person carried out some of the professional work on behalf of the adviser and with her knowledge.
- [5] The Statement of Complaint refers to various materials filed by the Registrar. When looking at all the material there is an incomplete picture of the events, but there is sufficient material to identify a potential foundation for finding that the adviser failed to meet professional service delivery standards.
- [6] On reviewing the Statement of Response, it is not clear the adviser has fully understood either the complaint, or how it relates it to her professional obligations.
- [7] In the circumstances, this interim decision sets out a potential view of the facts founding the complaint and gives the adviser the opportunity to respond before a decision to uphold or dismiss the complaint is made.

Discussion

The facts

- [8] The material allegations in the complaint appear to be:
 - [8.1] The complainants approached the adviser to assist with seeking a visitor's visa for the parents of one of the complainants.
 - [8.2] At the initial meeting, the complainants explained to the adviser that there was a potential issue in that one of the persons seeking a visa had previously had a visa revoked due to a character issue.
 - [8.3] The adviser gave the advice that as the application was new they should not worry about the previous character issue, that Immigration New Zealand had approved cases that were more difficult, and that the adviser knew of such cases.
 - [8.4] Relying on the advice, the complainants entered into an agreement with the adviser, dated 2 August 2011, for the provision of her professional services.
 - [8.5] An employee engaged in the adviser's practice carried out the professional work for the complainants and they had no contact with the adviser after she signed the agreement.

- [8.6] This Tribunal, with effect from 12 September 2011, cancelled the adviser's licence. The Tribunal gave her an opportunity to arrange for continuing professional representation for clients before the cancellation took effect.
- [8.7] The adviser had not lodged the application before she lost her licence. The adviser did not inform her clients she was about to lose her licence, or take any other steps to protect their interests, or discharge her professional duties to them.
- [8.8] On 17 October 2011, someone in the adviser's former practice lodged an application for the visitor visas. The application did not identify the adviser. It appears a person who did not hold a licence prepared and lodged the application unlawfully.
- [8.9] Unlicensed persons at the adviser's former practice continued to provide immigration advice, and took fees for doing so.
- [8.10] On 17 February 2012, Immigration New Zealand declined the application for visitor visas on the grounds of the character issue the complainants raised when first instructing the adviser.
- [8.11] While the adviser's lawyer has filed a Statement of Reply denying liability, the statement does not properly address the allegations made. Given the absence of a proper response from the adviser on the points made, the material before the Tribunal potentially supports:
- [8.11.1] The complainants' statement that they raised the character issue at their first meeting with the adviser.
 - [8.11.2] The view that the outcome of the application was foreseeable, that the adviser gave advice that was wrong, and that wrong advice was the foundation for her instructions.
 - [8.11.3] A conclusion the adviser did not confirm her advice in writing in accordance with clause 3(f) of the Code of Conduct (she has not yet produced evidence of doing so).
- [8.12] The complainants requested that the fees they had paid be refunded. The adviser has not refunded the fees being \$1,800 paid initially, and a further \$350 paid after she lost her licence.
- [9] The matters that arose that are potential grounds for complaint within the Tribunal's jurisdiction appear to be:
- [9.1] The adviser failed to provide appropriate advice regarding the difficulties raised by the character issue.
 - [9.2] The adviser had complete instructions to apply for visitor visas from 2 August 2011 and should have lodged the application promptly. She failed to lodge it between 2 August 2011 and 12 September 2011 when this Tribunal cancelled her licence.
 - [9.3] The adviser was a party to an unlicensed person dealing with her clients in relation to professional matters, and undertaking work she had instructions to complete. She did so knowing that person could not lawfully undertake the work.
 - [9.4] The adviser was obliged to keep unearned fees in a client account, and should have been in a position to account for them; in fact, she had not complied.
 - [9.5] This Tribunal, after cancelling the adviser's licence, allowed a period for the adviser to communicate with clients and arrange their ongoing professional representation. During that period, the adviser needed to determine whether she was obliged to refund fees or make arrangements acceptable to her client, such as paying unearned fees to the new adviser. All the fees appear to have been unearned, as the adviser's instructions followed her inadequate advice regarding the prospects of a visa issuing and she did not lodge the application.

- [10] If the potential factual findings were made out, the Tribunal could potentially determine:
- [10.1] The adviser failed to provide timely updates, or confirm in writing the details of material discussions (Clause 3 of the Code of Conduct).
- [10.2] The adviser failed to carry out her instructions to file applications for visitor visas and did so through lack of care, diligence and professionalism (Clause 1 of the Code of Conduct), and/or did so negligently (section 44 of the Act) by both failing to properly inform the complainants of the likelihood of an application being successful and by failing to lodge the application itself.
- [10.3] The adviser was a party to an unlicensed person providing immigration advice as defined in the Act, and accordingly acted unprofessionally (Clause 1 of the Code of Conduct), and/or engaged in dishonest or misleading behaviour (section 44(2)(d) Immigration Advisers Licensing Act 2007).
- [10.4] The adviser failed to bank unearned fees in a separate bank account (Clause 4 of the Code of Conduct), failed to issue proper invoices (Clause 8(e) of the Code of Conduct), and failed to account for and refund fees when her engagement terminated (Clause 3 of the Code of Conduct).
- [10.5] When the adviser lost her licence, she failed to notify her clients that she could no longer act for them and failed to arrange appropriate professional support. That conduct lacked professionalism (Clause 1 of the Code of Conduct), and resulted in the complainants' affairs being wholly or partly in the hands of unlicensed persons acting unlawfully.
- [11] As matters stand, the adviser is at risk of the potential adverse conclusions identified in para.[10], above.
- [12] The Tribunal notes it does not have jurisdiction over persons who are not licensed immigration advisers, accordingly the events after the adviser lost her licence cannot be grounds for upholding the complaint. However, losses including the fees of \$350 paid after the cancellation are potentially a consequence of any failure to act professionally at the termination of her practice.
- [13] It is important to give the adviser the opportunity to reflect on her response and provide any further material she wishes. She is a professional who was required to keep and maintain records of her professional engagement (Clause 3 of the Code of Conduct); she should explain the allegations in the complaint with reference to her records and produce those records.

Directions - timetable

- [14] Within 10 working days of this direction, the adviser may provide further evidence and submissions relating to the complaint.
- [15] Other parties will have 5 working days to reply to that material.
- [16] If the adviser does not respond, the Tribunal will make a decision on the material now before it.

DATED at WELLINGTON this 30th day of January 2014

G D Pearson
Chair