

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

Decision No: [2014] NZIACDT 62

Reference No: IACDT 018/13

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Vika Uia

Complainant

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

DECISION

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; she was in New Zealand without a current visa. She 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.
- [3] The adviser has not challenged the allegation and the Tribunal has upheld the complaint that the agreement was not compliant.

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.
- [5] The adviser breached the Licensed Immigration Advisers Code of Conduct 2010, in not establishing her professional engagement with a written agreement containing a full description of services (clause 1.5(b)).
- [6] In outline, the background was:
 - [6.1] On 5 November 2010, the complainant entered into an agreement that the adviser would provide professional services.
 - [6.2] The complainant had previously paid \$50 in fees, and the agreement provided for further fees of \$800.
 - [6.3] The adviser undertook work for the complainant and submitted a request to Immigration New Zealand on 19 November 2010. Immigration New Zealand declined the request.
 - [6.4] On 7 November 2011, the adviser issued an invoice to the complainant for \$500.
- [7] The statement of complaint provides particulars of the alleged infringements of professional obligations:

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

Reply to the Statement of Complaint

The complainant

- [9] 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

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

Discussion

[11] 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 1.5(b) – Agreements must contain a full description of the services the adviser agrees to provide.

[12] As the agreement had no description of the services the adviser was providing, it did not comply with clause 1.5(b).

[13] The adviser charged fees and performed professional services. Accordingly, it is evident there was a professional relationship that triggered the requirement for a written agreement that complied with the Code.

[14] Providing a compliant written agreement is an essential part of an adviser's professional responsibilities; the process ensures the client has a record of what they have agreed to and what they are entitled to expect. The written agreement also provides the Immigration Advisers Authority, and ultimately this Tribunal, with an outline of the agreed obligations, against which the Adviser's subsequent conduct is measured. The obligation to provide a written agreement that outlines the services the adviser will provide is an important one. The adviser must comply for every instruction they accept from a client.

[15] The adviser has provided no explanation for the deficiency in this case.

[16] I am satisfied the complaint must be upheld as the adviser failed to identify the professional services she was to supply.

Decision

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

[18] The adviser breached the Code of Conduct in the respect identified. It is a ground for complaint pursuant to section 44(2)(e) of the Act.

[19] In other respects the complaint is dismissed.

Submissions on Sanctions

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

[21] 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.

[22] 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

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

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

[23.2] 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.

[23.3] 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 30th day of April 2014.

G D Pearson
Chair