

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

Decision No: [2014] NZIACDT 64

Reference No: IACDT 010/13

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Chandra Kanta**

Complainant

**AND**

**Richard Uday Prakash**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** In person

**Complainant:** In person

**Adviser:** Noel King, King Law, Auckland

Date Issued: 5 May 2014

## DECISION

### Preliminary

- [1] The complainant engaged the adviser to assist her with seeking residence and a work visa.
- [2] The initial instructions occurred before the adviser became a licensed immigration adviser.
- [3] The first set was to lodge an expression of interest. The adviser became a licensed immigration adviser in the period between taking instructions and lodging the expression of interest.
- [4] The expression of interest succeeded, so the adviser took instructions to lodge a residence application and later to assist with a failed work permit application.
- [5] The adviser had a written agreement when first instructed and a written agreement for the work relating to a work permit.
- [6] The complaint is that:
  - [6.1] The original written agreement did not comply with the Code, and the adviser did not take steps to comply after getting a licence;
  - [6.2] There was no written agreement when the adviser accepted instructions to apply for a residence visa;
  - [6.3] He undertook some additional work, again with no written agreement;
  - [6.4] He then attempted to recover interest and collection costs on top of fees.
- [7] The allegation is that the adviser failed in his duties to:
  - [7.1] Have a written agreement covering all the professional services he provided,
  - [7.2] Set out the costs of those services in advance, and
  - [7.3] His claim for interest and collection costs was not fair or reasonable.
- [8] The adviser has not challenged the allegations the Registrar set out in the statement of complaint. The Tribunal has upheld the complaint.

### The Statement of Complaint

- [9] 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.
- [10] The adviser breached the Licensed Immigration Advisers Code of Conduct 2008 and 2010 (both identically worded), in that he:
  - [10.1] 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(a), (b), (d) and (e));
  - [10.2] Breached the Code's requirements relating to fees (clause 8(a), (b), (c) and (d)); and
  - [10.3] Breached the Code's requirements relating to business practices (clause 3).
- [11] As a preliminary note, I record the adviser was a licensed immigration adviser from 1 April 2009. He did not need to hold a licence before that time. This Tribunal has no jurisdiction over the adviser prior to when he became licensed. However, from the time he held a licence, he had duties to ensure that his client relationships complied with the Code and had to take any step necessary to do that. Those matters are within the Tribunal's jurisdiction.

- [12] In outline, the background set out in the statement of complaint was:
- [12.1] In January 2009, the complainant engaged the adviser to submit an expression of interest, and signed an agreement providing for a total fee of \$2,500. However, it did not set out payment terms and conditions.
- [12.2] The adviser submitted the expression of interest after his licence was issued on 1 April 2009.
- [12.3] Between 3 April and 4 June 2009, the complainant paid the adviser \$900 in fees.
- [12.4] The expression of interest was successful and in June 2009 Immigration New Zealand invited the complainant to apply for residence.
- [12.5] The complainant engaged the adviser to assist with her application for residence. However, there was no written agreement for that service.
- [12.6] The adviser assisted with a residence application and submitted it on 21 August 2009.
- [12.7] Between 5 June 2009 and 1 April 2010, the complainant paid the adviser \$3,850 in instalments. In April 2010, the complainant paid the adviser for additional work. There was no written agreement relating to any of those services.
- [12.8] In May 2010, the complainant engaged the adviser to assist with an application for a work permit; she had personally applied and had been unsuccessful. The adviser had a written agreement for this service.
- [12.9] Between 26 April 2010 and August 2010, the complainant paid the adviser \$1,040 in instalments. In August 2010, the complainant engaged another adviser to take over the residence and work permit applications. She stopped paying fees as the adviser was no longer acting for her.
- [12.10] The adviser issued four invoices for his services, two of which do not accurately record the balance due. The inaccurate invoices are:
- [12.10.1] An invoice dated 21 April 2009 showed the balance as \$1,850, whereas the true balance due was \$1,750;
- [12.10.2] An invoice dated 2 November 2009 showed payments of \$3,150 and a balance of \$1,250 compared with the Statement of Account showing payments of \$4,000 with \$2,900 owing.
- [12.11] The adviser issued an invoice for the overdue amount and included interest and collection costs on the entire sum. Only part of the outstanding balance related to services covered by a written agreement with payment terms that provided for charging interest and collection costs.
- [13] The statement of complaint provides particulars of the potential infringements of professional obligations:
- Clause 1.5(a), (b), (d) and (e) – before any agreement is entered into, clients are made aware, in writing and in plain language, of the terms of the agreement and all significant matters relating to it; agreements contain a full description of the services to be provided; ensure clients confirm in writing they accept the terms; changes to the terms of agreements are recorded and agreed in writing.*
- [14] The adviser failed to enter into an agreement containing a full description of the services he was to provide in respect of the expression of interest, and later the application for a residence visa.
- [15] The adviser undertook additional work in April 2010, and did not have a written agreement relating to that either.
- [16] As a result, the complainant and the adviser had a dispute as to their oral agreement concerning that work.

*Clause 8(a) (b) (c) and (d) – set fees that are fair and reasonable in the circumstances; before commencing work incurring costs, set out the fees and disbursements to be charged (including Immigration New Zealand fees and charges); set out payment terms and conditions; and ensure that fees, disbursements and payment terms and conditions are provided to clients in writing prior to the signing of any written agreement.*

- [17] The written agreement the adviser had before becoming a licensed immigration adviser was not satisfactory for his client relationship once he held a licence. The agreement did not set out payment terms and conditions in writing.
- [18] The Act and Code mandate that all professional relationships conducted by a licensed immigration adviser comply with the Code. An adviser who practised before first receiving a licence had a duty to ensure that, from the time they held a licence all their professional relationships met the standards, and complied with the regulations, governing their profession.
- [19] When he received his licence, the adviser had an existing professional relationship with the complainant. However, he had not set out the fees and disbursements or payment terms, and conditions in writing. He had to do that when he received his licence, and did not do so.
- [20] When he received further instructions to apply for a visa, he did not set out fees and disbursements prior to commencing work either. He failed to do for a third time in respect of the additional work he carried out.
- [21] Only the second agreement (relating to the work visa application) provided for the recovery of collection costs. However, the adviser charged collection costs and interest on fees relating to the residence application, and the additional work carried out in April 2010 (for which there was no agreement).
- [22] The additional costs were not fair and reasonable.

*Clause 3 – a licensed immigration adviser must maintain professional business practices relating to finances*

- [23] The adviser issued invoices that were not accurate. The adviser failed to maintain proper business practices relating to finances and records.

### **Reply to the statement of complaint**

#### *The complainant*

- [24] 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*

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

### **Discussion**

- [26] 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.
- [27] I note the adviser through his counsel responded to the original complaint. However, the response did not directly address the issues later set out in the statement of complaint. The adviser has not filed a statement of reply, as he was required to do if he disputed the contents of the statement of complaint.

[28] I am satisfied the material before the Tribunal establishes the facts set out in the statement of complaint.

*Clause 1.5(a), (b), (d) and (e) – before any agreement is entered into, clients are made aware, in writing and in plain language, of the terms of the agreement and all significant matters relating to it; agreements contain a full description of the services to be provided; ensure clients confirm in writing they accept the terms; changes to the terms of agreements are recorded and agreed in writing.*

[29] The Code required that the adviser have a written agreement containing a full description of the services he would provide and a disclosure of all significant matters. Accordingly, when he became a licensed immigration adviser, he was obliged to complete the steps required under clause 1.5 of the Code in relation to all his active engagements, including those already commenced.

[30] The original agreement did not contain a full description of the services to the point of applying for a residence visa, so it could not amount to compliance.

[31] The adviser issued an invoice for additional work in April 2010 but did not have a written agreement relating to that either.

[32] I am satisfied the adviser failed to comply with his obligations under clause 1.5(a), (b), (d) and (e) in relation to completion of the process of lodging an expression of interest, applying for a residence visa, and the additional work he invoiced. Accordingly, I uphold the complaint in those respects.

*Clause 8(a), (b), (c) and (d) – set fees that are fair and reasonable in the circumstances; before commencing work incurring costs, set out the fees and disbursements to be charged (including Immigration New Zealand fees and charges); set out payment terms and conditions; and ensure that fees, disbursements and payment terms and conditions are provided to clients in writing prior to the signing of any written agreement.*

[33] The Code requires transparency in respect of fees; full disclosure is necessary before a client is committed to paying fees.

[34] The agreement that pre-dated the adviser becoming a licensed immigration adviser did not set out payment terms and conditions in writing. He failed to rectify the agreement after he received his licence.

[35] When he received further instructions to apply for a visa, he did not set out fees and disbursements prior to commencing work. He also failed to do that for the additional work he carried out.

[36] Accordingly, he breached clause 8 in those respects.

[37] He also attempted to charge collection costs and interest on fees relating to the residence application and the additional work carried out in April 2010 (for which there was no agreement allowing for such costs). He had no contractual right to do so. The charges were not fair and reasonable. The adviser failed to comply with his professional obligations and had a dispute over costs as a result.

[38] It was not fair or reasonable for the adviser to seek to recover costs that resulted from his own failure to comply with the Code of Conduct. Accordingly, I am satisfied he breached his duty to charge fees that were fair and reasonable when claiming collection costs and interest on fees which were not under the agreement relating to the work visa.

[39] I make no finding as to whether other fees were fair and reasonable, that is not a matter before the Tribunal.

[40] I am accordingly satisfied the adviser breached clause 8(a), (b), (c) and (d) in the respects identified, and I uphold the complaint in that respect.

*Clause 3 – a licensed immigration adviser must maintain professional business practices relating to finances*

- [41] The adviser issued invoices that were not accurate. It is an elementary obligation to issue accurate invoices.
- [42] Of course inadvertent errors may occur and not be worthy of an adverse disciplinary finding.
- [43] In the present case, the errors are against a background of significant non-compliance relating to fees. Further, the adviser has not offered any justification or excuse.
- [44] I am satisfied the errors were the result of a failure to maintain proper business practices relating to finances and records, in breach of clause 3 of the Code. Accordingly, I uphold the complaint in that respect.

**Decision**

- [45] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [46] 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.
- [47] In other respects, the Tribunal dismisses the complaint.

**Submissions on Sanctions**

- [48] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [49] 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.
- [50] 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*

- [51] The timetable for submissions will be as follows:
- [51.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.
- [51.2] 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.
- [51.3] 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 5<sup>th</sup> day of May 2014.

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**G D Pearson**  
Chair