

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

Decision No: [2014] NZIACDT 7

Reference No: IACDT 003/13

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Saritamani Naidu

Complainant

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NAMES AND IDENTITIES OF THE PARTIES NOT TO BE PUBLISHED PENDING FURTHER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

Complainant: In person.

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

Date Issued: 5 February 2014

DECISION

Introduction

- [1] This is an interim decision as the material before the Tribunal is not an appropriate basis to complete the hearing on the papers, without giving the adviser the opportunity to address the facts further.
- [2] The Registrar filed a Statement of Complaint; the central issue is an allegation that the adviser dishonestly conducted her practice by “signing off” documentation, while staff unlawfully provided immigration advice. Once her practice ended, due to the cancellation of her licence, the staff continued to provide immigration advice unlawfully. It appears the complaint is that the adviser did not assist with a “handover” of the complainant’s application to another licensed immigration adviser.
- [3] In addition, the Statement of Complaint identifies as a ground of complaint an allegation that the adviser incompetently, or due to incapability, failed to advise the complainant to apply for a visitor’s permit to remain in New Zealand lawfully. Negligence might be added as an additional ground of complaint on this basis, if the facts on this issue are made out.
- [4] The Statement of Complaint also raises a further ground for complaint being that there was no written agreement as required by Clause 1.5 of the Code of Conduct.
- [5] The adviser denies the alleged facts, says she engaged with the instructions personally, and is not responsible for any professional failings.
- [6] There is a fundamental issue of credibility; the Tribunal will have to make factual determinations that reject some or all of the contested facts.
- [7] The Tribunal will give the adviser the opportunity to support her case with oral evidence, should she wish to do so.

Directions

Notice to the adviser

- [8] The adviser’s response to the complaint includes minimising her responsibility for an immigration practice in which she was the sole licence holder.
- [9] Decisions of this Tribunal address the regime in the Act governing licensed immigration advisers. Features relevant to the present complaint are as follows:
 - [9.1] Only an individual can hold a licence under the Act; a company is not eligible.
 - [9.2] A licensed immigration adviser engaged in a practice will usually be personally responsible for the management and conduct of the practice; that is a personal professional responsibility.
 - [9.3] The Act requires that a person who is licensed or exempt must provide immigration advice. The scope of “clerical work”, which can be legally carried out by a person who is not licensed, is narrow.
 - [9.4] A licensed immigration adviser is personally responsible for all aspects of a client engagement, and will be personally responsible for the refund of fees, compensation, and the like.
- [10] The Tribunal puts the adviser on notice; it is aware she claims to have mislaid part or all of the records relating to this matter. She should concern herself with the plausibility of that claim, as the absence of a file is also consistent with the competing claims of the complainant. Furthermore, the adviser was required to keep proper records pursuant to the Code of Conduct. It also appears from the material the Tribunal has before it, the adviser’s practice used electronic communications and likely had other electronic records. Without further

explanation, the Tribunal will find it difficult to accept that electronic records would have been lost in the manner the adviser claimed.

- [11] The Tribunal also puts the adviser on notice regarding the material presently before the Tribunal. She is at risk of the following findings:
- [11.1] That she was a party to an unlicensed person providing immigration advice. If the Tribunal made that finding, the conduct would potentially be unprofessional and in breach of Clause 1 of the Code of Conduct. The Tribunal could potentially make this finding irrespective of whether or not the threshold for dishonesty as put forward in the Statement of Complaint is reached (section 44).
- [11.2] That she negligently, incompetently, or due to incapability, failed to advise the complainant of her immigration options with regard to extending her visiting visa (sections 44(2)(a)-(c)). The Tribunal notes that this is a factual dispute, as the adviser claims to have inquired into this option and established that it was inappropriate for the complainant's purposes.
- [11.3] That the adviser failed to commence properly the engagement for services through a written agreement and failed to keep proper written records of the engagement (Clause 1 of the Code of Conduct).
- [12] The Tribunal will not, of its own motion, require the parties to participate in an oral hearing, and will decide the complaint on the evidence it has before it if the parties elect not to call evidence. The parties are not required or expected to repeat any information already before the Tribunal.

Direction and timetable

- [13] Within 10 working days of this direction, the adviser may provide signed briefs of evidence containing any evidence she wishes to call at an oral hearing. A memorandum identifying additional issues the adviser wishes to have addressed at an oral hearing may accompany those briefs.
- [14] The Registrar and the complainant will then have 10 working days to reply with signed briefs of evidence. They may also file a memorandum identifying additional issues they may wish to have addressed at an oral hearing.
- [15] If the parties do not file briefs of evidence, the Tribunal will forgo the oral hearing and decide the complaint on the information then before it.
- [16] The Tribunal will convene a telephone conference to address the procedure for an oral hearing if briefs of evidence are filed.

DATED at WELLINGTON this 5th day of February 2014

G D Pearson
Chair