

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

Decision No: [2015] NZIACDT 23

Reference No: IACDT 041/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Zelin Ye**

Complainant

**AND**

**Li (Jackie) Wang**

Adviser

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**DECISION ON APPLICATION TO DISMISS COMPLAINT**

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**REPRESENTATION:**

**Registrar:** K England, Ministry of Business Innovation and Employment, Auckland.

**Complainant:** In person.

**Adviser:** S Laurent, Laurent Law, Auckland.

Date Issued: 13 March 2015

## DECISION

### The issue

- [1] The Registrar filed a statement of complaint dated 9 December 2014. Through her counsel, Ms Wang responded with an application to dismiss the complaint on the grounds:
- [1.1] The Statement of Complaint does not comply with the Tribunal's practice note.
  - [1.2] The Registrar in the conduct of her statutory functions:
    - [1.2.1] Exhibited "bias" against Ms Wang "at a level [that she] ... is no longer competent to carry out" her statutory functions;
    - [1.2.2] Either "deliberately withheld" an email from the Tribunal or overlooked it;
    - [1.2.3] Potentially engaged in an "attempt to mislead the Tribunal";
    - [1.2.4] Filed an "unbalanced" statement of complaint.
- [2] Ms Wang said she refused to file a statement of reply, for those reasons.
- [3] This decision determines the application to dismiss the complaint.

### Background

- [4] The Registrar has changed her approach to evaluating and processing complaints. The result has been the Registrar now investigates and evaluates complaints, and then lodges a statement of complaint. The statement of complaint identifies potential grounds where the Registrar is in a position to lodge information supporting the grounds, and identifies any wider grounds the complainant advanced for which the Registrar did not find support. Formerly, the Registrar only gave the Tribunal notice of the complaint as presented by the complainant.
- [5] The result is that the statement of complaint now puts:
- [5.1] The adviser on notice of potential grounds of complaint and of the evidence that the Registrar considers supports those grounds.
  - [5.2] The complainant on notice the Registrar does not consider there is evidence to support any wider grounds, if they advanced such grounds.
- [6] The next step in the process allows both the complainant and the adviser to respond. Typically, complainants accept the narrower grounds the Registrar identifies and the adviser is of course in a position to admit or dispute all or some of the complaint.
- [7] The Registrar has modified the form of the statement of complaint from that prescribed in the practice note to reflect her current processes. It is not necessary for her to set out details of information that has become apparently irrelevant after the investigative and evaluation process and the Tribunal has been accepting statements of complaint in this form as they better serve the purpose of the document. I do so in this particular case using the Tribunal's power to regulate its own procedure.

### This case

- [8] The present case is a typical example of the new process adopted by the Registrar. The complainant lodged a complaint with the Registrar that Ms Wang engaged in dishonest or misleading behaviour, and breached the Code of Conduct. The allegation that Ms Wang's conduct included dishonesty is among the most serious grounds of complaint.
- [9] The Registrar, having investigated the complaint, lodged a statement of complaint that said "the complaint may disclose" a breach of the Licensed Immigration Advisers Code of Conduct

2010 (the Code of Conduct) relating to documentation of the client engagement; and clause 3 relating to finances. She did not support the complaint of dishonest or misleading behaviour.

- [10] The Statement of Complaint identifies the Registrar considered there was potential support for the Tribunal to conclude Ms Wang received immigration instructions, acted on them, but:
- [10.1] Failed to enter into a written agreement for the service and to set out fees disbursements and payment terms; and
- [10.2] Received fees and funds to pay disbursements and tuition fees and may have failed to deal with the funds in accordance with the Code of Conduct.

## Discussion

### *Form of the statement of complaint*

- [11] For Ms Wang, her counsel sets out in some detail the respects in which the Statement of Complaint departs from the practice note. However, he fails to identify any respect in which it is unfair or inadequate in achieving the purpose of giving Ms Wang notice of the complaint, and the respects in which it appears to have potential support. The criticism is one of form and does not go to the substance of the document.
- [12] The departure from the prescribed form is on the contrary very much in Ms Wang's interest, as it does not unnecessarily traverse the grounds of dishonest or misleading behaviour. The complainant may or may not pursue those grounds further. If she does, then Ms Wang will have a right of reply.
- [13] I am satisfied Ms Wang's complaint of departures from the prescribed form is in reality founded on alterations that are in her own interests.
- [14] The submissions on form include a claim that the Registrar, in preparing the Statement of Complaint, failed to take adequate account of Ms Wang's response to the complaint. I discuss that issue in the following section.

### *Allegation of actual bias and a potential attempt to mislead the Tribunal against the Registrar*

- [15] Through her counsel, Mr Laurent, Ms Wang identifies a concern over whether the complainant paid four sums of \$500 each. The Statement of Complaint refers to fees, and references various documents which could potentially support the allegation the fees were paid.
- [16] During the course of the complaints process Mr Laurent took issue with whether the complainant did pay the four payments of \$500. The Registrar responded in an email saying she had inquired of the complainant and had not received a response. That specific email was not included in the material accompanying the Statement of Complaint. The material did include a reference to it, namely Mr Laurent's letter of 3 November 2014. It stated:

"It is alleged that the Complainant paid \$500 to [the Adviser's practice] ...

Upon inquiry, the Authority responded on 23 October 2014 that it possessed no evidence of such payment; and confirmed that the Complainant did not respond to a request of 12 April 2013 for the same. On that basis, the allegation contained in the Complaint Form remains no more than that, and there is no evidence of any sort that such payment was ever made by the Complainant. It may be that he was confused about what he paid, and for what."

- [17] The email of 23 October 2014 (which was not included in the material with the statement of complaint) said:

"The Authority sought further evidence relating to the INZ fees from the Complainant in April 2013, but received no response. Please refer to the email from [an officer of the Authority] dated 12 April 2013, which was sent to the adviser with the complaint documents in May of last year."

- [18] Mr Laurent submitted that because the Statement of Complaint included an admission by the adviser that she accepted not having a signed service agreement; but it omitted the email of 23 October 2014; that amounted to evidence that:
- [18.1] The Registrar “has either deliberately withheld or has overlooked” the email of 23 October 2014.
- [18.2] There was “an attempt to mislead the Tribunal, or at best it [was] a significant lapse in judgement”.
- [18.3] The Registrar was “seeking to bolster the complaint to the Complainant’s advantage ... in breach of [her] statutory duty”.
- [18.4] The statement of complaint was “unbalanced”.
- [18.5] The Registrar’s conduct “evidenced such a level of bias against the Adviser that [she] is no longer competent to carry out” her functions relating to the complaint.
- [19] The Registrar referred to the “Authority” in the submissions; however, the Registrar has the relevant statutory duties and she personally signed and presented the Statement of Complaint.
- [20] It is difficult to conceive of more serious allegation against the Registrar of a licensing authority than that she has deliberately withheld a document from a professional disciplinary process, attempted to mislead a disciplinary tribunal, and exhibited such bias she could no longer perform her statutory functions in respect of a complaint.
- [21] It is only necessary to set out Mr Laurent’s submissions and the material contents of the Statement of Complaint to see Mr Laurent’s submissions are wholly lacking merit; they do not provide a basis to properly make those allegations.
- [22] As can be seen, the document Mr Laurent says was potentially “deliberately withheld” is referred to in the material. Mr Laurent’s own letter was included, with a full explanation of the circumstances and a reference to the email of 23 October 2014.
- [23] I find there is no merit in Mr Laurent’s submission regarding the Registrar’s conduct; his position that his client should refuse to file a statement of reply is equally lacking in substance and merit. Assuming that the Tribunal has the authority to dismiss a complaint before it is heard, I decline this application.

#### **Timetable**

- [24] This application having failed, there will be a further opportunity for the complainant and Ms Wang to respond to the substance of the complaint as set out in the Statement of Complaint. The complainant and Ms Wang may file statements in reply within 10 working days of the date of this decision. Each may file a reply to the other party’s statement of reply within 5 working days of receiving the reply.
- [25] Neither party is required to file a statement of reply if they accept the Statement of Complaint adequately sets out issues, reasoning and factual material they wish the Tribunal to consider.

**DATED** at WELLINGTON this 13<sup>th</sup> day of March 2015

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**G D Pearson**  
Chair