

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

Decision No: [2015] NZIACDT 24

Reference No: IACDT 028/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Jinhee Kim

Complainant

AND

Kimberley Eyon Hee Kim

Adviser

DECISION ON APPLICATION TO DISMISS COMPLAINT

REPRESENTATION:

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

Complainant: S Laurent, Laurent Law, Auckland.

Adviser: In person.

Date Issued: 13 March 2015

DECISION

The issue

- [1] The Registrar filed a statement of complaint dated 20 November 2014. Through her counsel, Ms Kim 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, exhibited "bias" against Ms Kim "at a level [that she] ... is no longer competent to carry out" her statutory functions.
- [1.3] The Registrar "acted dishonestly".
- [2] Ms Kim 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 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 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 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 or different 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 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.

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 Kim was negligent, incompetent, and breached the Code of Conduct.
- [9] The Registrar, having investigated the complaint, identified the complaint may disclose specific breaches of the Code of Conduct and potentially misleading behaviour. The Statement of Complaint sets out the reasons for those grounds potentially having support.

Discussion

Form of the Statement of Complaint

- [10] For Ms Kim, 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 Kim notice of the complaint, and the respects in which it appears to have potential support. The criticism is one of form, which does not go to the substance of the document.

- [11] The submission includes a claim that the Registrar in preparing the Statement of Complaint failed to take adequate account of Ms Kim's response to the complaint. I discuss that issue in the following section.

Allegation of actual bias and dishonesty against the Registrar

- [12] Through her counsel, Ms Kim identifies a concern that the Registrar included her acknowledgement that she signed a blank Immigration New Zealand form in the Statement of Complaint. However, she says she did not refer to her response to the rest of the complaint. This, Mr Laurent contends shows the Registrar was "seeking to bolster the complaint to the Complainant's advantage".
- [13] The Statement of Complaint does have a section containing documents provided by Ms Kim; in fact, it is the largest section of the material. Mr Laurent did not identify any missing material. His submission appeared to be that the text of the Statement of Complaint did not set out Ms Kim's response in any significant respect, other than those parts that tended to support the complaint. This appears to be correct, however, the implication is that the Registrar did not consider that the adviser's initial response answered the grounds which were continued in the Statement of Complaint. The next step in the process is for Ms Kim to have the option of lodging a statement of reply that sets out her position and/or provides further evidence supporting her version of events. To date she has refused to take that step.
- [14] Mr Laurent went on to contend "several elements of the purported grounds of complaint were not in fact authored by the Complainant at all". He said the Registrar "raised them and purported to put them under the name of the Complainant rather than advance them by way of an own motion complaint by the Registrar".
- [15] Mr Laurent contends that this evidences that the Authority "acted dishonestly". Mr Laurent referred to the "Authority" in his submissions, however, the Registrar has the relevant statutory duties and she personally signed and presented the Statement of Complaint.
- [16] It is difficult to conceive of a more serious allegation against the Registrar of a licensing authority. Dishonesty of any kind is inconsistent with holding a statutory decision-making power.
- [17] 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 allegations of bias or dishonesty.
- [18] The substance of Mr Laurent's contention was that the Registrar did not set out Ms Kim's response to the complaint and that she added to the grounds advanced by the complainant. Both of those matters are clear from the body of material that the Registrar provided in, and with, the Statement of Complaint; it included both the initial complaint and the adviser's initial response to that complaint. It is not acceptable to use the processes of this Tribunal to make unfounded allegations of dishonesty.
- [19] Mr Laurent's contention also lacks merit in terms of the Registrar's statutory duties. The Registrar is entitled to lodge an "own motion" complaint under section 46 of the Act. That does not preclude her processing a complaint made by another person, and including grounds not articulated by a lay complainant who is unlikely to be able to do so with precision.
- [20] It is routine for the Registrar to indicate she does not consider some of the allegations in a complaint are supported and to refine the nature of the facts and the potential breach of the Act or the Code of Conduct.
- [21] Section 47 of the Act allows the Registrar to "gather further information on the complaint"; and section 48 requires the Registrar to submit the complaint after "having gathered such further information in relation to the complaint as he or she thinks fit". The Registrar also has a decision-making duty under section 45 before referring the material to the Tribunal, or dealing with the complaint in another way.
- [22] Mr Laurent's proposition is in effect that despite the statutory power to gather information, and then exercise statutory powers and duties, the Registrar must not go beyond the terms of what the complainant said originally. He says if the Registrar's inquiries disclose further matters,

then she should, in addition to the original complaint, lodge an “own motion” complaint under section 46. The proposition has no merit, he provided no authority to support it and his contention is inconsistent with the statutory scheme.

- [23] There is no sensible reason for the Act to allow the Registrar to receive a complaint, “gather further information” and then ignore the information when processing the complaint under sections 45 and 48. The obvious purpose of gathering information is to decide how to deal with the complaint and, if referring it to the Tribunal, to provide a clear outline of the factual allegations and the potential breaches of the Act and Code of Conduct. The Act contemplates the Registrar will process a complaint made, in most cases, by a layperson, gather information (which the complainant may not have had, such as the adviser’s file) and then deal with the complaint on an informed basis. That is what occurred in this case, it is the proper course and it is to be expected that this may lead to different grounds of complaint than those identified prior to gathering further information.
- [24] There is no justification for, or 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

- [25] This application having failed, there will be a further opportunity for the complainant and Ms Kim to respond to the substance of the complaint as set out in the statement of complaint. The complainant and Ms Kim 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.
- [26] 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 13th day of March 2015

G D Pearson
Chair