

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

Decision No: [2015] NZIACDT 25

Reference No: IACDT 040/14

**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**

**Shu (Louisa) Chen**

Adviser

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**DECISION ON APPLICATION TO DISMISS COMPLAINT**

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**REPRESENTATION:**

**Registrar:** M Denyer, 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 Chen responded with an application to dismiss the complaint because the Statement of Complaint does not comply with the Tribunal's practice note and does not adequately set out material matters.
- [2] She has refused to file a statement of reply, for that reason.
- [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 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 potentially 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 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 Chen had engaged in dishonest or misleading behaviour, and breached the Code of Conduct. Engaging in dishonest behaviour is of course a very serious allegation.
- [9] The Registrar, having investigated the complaint, lodged a statement of complaint that said "the complaint may disclose" a breach of clause 1.5 of the Licensed Immigration Advisers Code of Conduct 2010 (the Code of Conduct). The particulars indicate the potential grounds are a relatively low-level complaint relating to a failure to enter a written agreement, which the Code of Conduct requires.

### Discussion

#### *Form of the statement of complaint*

- [10] For Ms Chen, 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 Chen notice of the complaint, and the respects in which it appears to have potential support.
- [11] The departure from the prescribed form is on the contrary very much in Ms Chen's interest, as it does not unnecessarily traverse the grounds of dishonest or misleading behaviour, and

focuses on the far narrower and less serious allegation of a potential breach of the Code of Conduct. The complainant may or may not pursue the wider grounds. If he does, then Ms Chen will have a right of reply.

- [12] I am satisfied Ms Chen's complaint of departures from the prescribed form, is in reality founded on alterations that are in her own interests. I satisfied the material matters are adequately set out and that Ms Chen has the opportunity to respond to the narrow grounds of complaint. There is no unfairness in the form of the Statement of Complaint.
- [13] The submissions on form include a claim that the Registrar, in preparing the Statement of Complaint, failed to take adequate account of Ms Chen's response to the complaint. I discuss that issue in the following section.

*Allegation of an inadequate regard to Ms Chen's response to the complaint*

- [14] Ms Chen contends, through her counsel, that the Registrar has not adequately considered her response to the complaint. In particular, she says the complainant just wanted his money back and the lack of an agreement was innocuous with no harm done. The submission suggests this is evidence the registrar has not properly evaluated the complaint under section 45 of the Act.
- [15] This ground is little more than an invitation to determine the substance of the complaint at a preliminary stage. Ms Chen is entitled to take no further steps, and the Tribunal will deal with the complaint on the papers before it. The suggestion the Registrar has not undertaken her duties is inconsistent with the fact she has indicated that she does not support the most serious elements of the initial complaint. Assuming that the Tribunal has the authority to dismiss a complaint before it is heard, I decline this application.

**Timetable**

- [16] This application having failed, there will be a further opportunity for the complainant and Ms Chen to respond to the substance of the complaint as set out in the Statement of Complaint. The complainant and Ms Chen 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.
- [17] 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