

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

Decision No: [2015] NZIACDT 27

Reference No: IACDT 014/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Sefilina Tangitau

Complainant

AND

Hakaoro Hakaoro

Adviser

DECISION

REPRESENTATION:

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

Complainant: Mr R Small, Pacific Legal, Lower Hutt.

Adviser: In person

Date Issued: 17 March 2015

DECISION

Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal.
- [2] The grounds are uncomplicated. The complaint is that Mr Hakaoro accepted instructions to assist the complainant with her application for residence without entering a written agreement. He then:
 - [2.1] Failed to report to his client when he lodged the agreement,
 - [2.2] Failed to deal with Immigration New Zealand's proper inquiries,
 - [2.3] Failed to tell his client Immigration New Zealand declined her application, due to the lack of response to the inquiries,
 - [2.4] Lodged an appeal without instructions, and
 - [2.5] Failed to report to his client when this Tribunal cancelled his licence.
- [3] Mr Hakaoro has not responded to the complaint with an explanation or justification addressing the grounds of complaint.
- [4] The Tribunal has concluded it must uphold the complaint, as the material before it establishes those facts, and they amount to systematic non-compliance with the duties Mr Hakaoro owed to the complainant.

The complaint

- [5] The Registrar filed a statement of complaint, she put forward the following background as the basis for the complaint:
 - [5.1] The complainant and her family had been selected in the Pacific Access Ballot, so they engaged Mr Hakaoro to submit a residence application. Mr Hakaoro did not enter a written agreement or set out his fees and disbursements in advance.
 - [5.2] To apply successfully the complainant needed an offer of employment, and her brother-in-law paid Mr Hakaoro \$4,000 to obtain a job offer. At the time, the complainant was not aware of that payment.
 - [5.3] On 4 January 2012, Mr Hakaoro submitted a residence application, with a job offer supporting the application. Immigration New Zealand made inquiries, and the party named as the employer did not respond. On 13 April 2012, Mr Hakaoro knew of Immigration New Zealand's concerns, and Immigration New Zealand kept Mr Hakaoro informed of the lack of response.
 - [5.4] Immigration New Zealand declined the application, due to the result of the lack of response from the employer.
 - [5.5] Mr Hakaoro questioned Immigration New Zealand's decision; Immigration New Zealand pointed out Mr Hakaoro had 11 weeks to address the concerns and failed to do so. Mr Hakaoro did not inform the complainant of the difficulties, or that Immigration New Zealand declined her application.
 - [5.6] On 10 September 2012, Mr Hakaoro lodged an appeal with the Immigration and Protection Tribunal; he had no instructions to do so, and did not discuss the issue with the complainant.
 - [5.7] On 27 May 2013, this Tribunal cancelled Mr Hakaoro's licence, the appeal with the Immigration and Protection Tribunal was still current. He did not inform the complainant.

- [6] The Registrar identified potential infringements of professional standards. They were:
- [6.1] That Mr Hakaoro breached clauses 1.5(a), (b), and (d) and also 8(d) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). The factual circumstances being:
- [6.1.1] Mr Hakaoro did not have a written agreement for the work he performed.
- [6.1.2] He was required to have an agreement containing a full description of the services provided (clause 1.5(b));
- [6.1.3] The complainant had to confirm acceptance in writing (clause 1.5(d));
- [6.1.4] Mr Hakaoro had to explain all significant matters to the complainant before she entered the agreement (clause 1.5(a)); and
- [6.1.5] Fees disbursements and payment terms and conditions had to be provided to the complainant prior to signing a written agreement (clause 8(d)).
- [6.1.6] Mr Hakaoro did not comply with any of those requirements.
- [6.2] That Mr Hakaoro breached clauses 1.1(a), (b) of the 2010 Code. The factual circumstances being:
- [6.2.1] Mr Hakaoro knew from 2012 about Immigration New Zealand's concerns regarding the complainant's application, and that Immigration New Zealand would process it unless there was a response. Immigration New Zealand declined the application due to the lack of response.
- [6.2.2] Mr Hakaoro's failure to respond to Immigration New Zealand involved a lack of due care, diligence, respect and professionalism (clause 1.1(a) and (b)).
- [6.2.3] Mr Hakaoro lodged an appeal with the Immigration and Protection Tribunal, he had not discussed the issue with his client, and had no instructions.
- [6.2.4] Lodging the appeal without instructions involved a lack of due care, diligence, respect and professionalism (clause 1.1(a) and (b)).
- [6.3] That Mr Hakaoro breached clause 3(a) of the 2010 Code. The factual circumstances being:
- [6.3.1] Mr Hakaoro failed to notify the complainant of the difficulties with her application, or that Immigration New Zealand declined it.
- [6.3.2] Mr Hakaoro breached his obligation to provide ongoing timely updates (clause 3(a)).
- [6.4] That Mr Hakaoro breached clauses 1.1(c), and 3(b) of the 2010 Code. The factual circumstances being:
- [6.4.1] Mr Hakaoro was responsible for the Immigration and Protection Tribunal appeal when this Tribunal cancelled his licence, and he did not inform the complainant, and took no steps to protect her interests.
- [6.4.2] Mr Hakaoro breached his obligation to inform the complainant in writing when work ceased part way through the process, and did not otherwise protect her interests (clauses 1.1(c) and clause 3(b)).

The responses

- [7] Mr Hakaoro did not file a statement of reply. He belatedly applied to have the complaint referred back to the Registrar. In a separate decision, the Tribunal declined that application, on the grounds there is no justification for Mr Hakaoro's failure to answer the complaint.

- [8] The complainants did not file a statement of reply. They were not required to do so if they accepted the Registrar's statement of complaint set out the facts and matters in dispute appropriately.

Discussion

The standard of proof

- [9] The Tribunal determines facts on the balance of probabilities; however, the test must be applied with regard to the gravity of the finding: *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [55].

The material before the Tribunal

- [10] The Registrar provided a chronology, and supporting documentation. The parties have not disputed this record or added to it.
- [11] I am satisfied this material supports the grounds of complaint alleged.
- [12] Mr Hakaoro has had many opportunities to provide an explanation, and has wholly failed to answer the complaint. It is not a complicated complaint, and it is well documented.

The facts

- [13] The Statement of Complaint and the supporting documents establish the facts. They are simple. Mr Hakaoro accepted instructions without going through the requirements of the 2010 Code for initiating a client relationship. He then failed to report to his client, he failed to deal with Immigration New Zealand's proper inquiries, he then failed to tell his client her application failed, he then lodged an appeal without instructions, and failed to report to his client when this Tribunal cancelled his licence.

The charges of professional misconduct

- [14] The professional misconduct potentially arising from the facts before the Tribunal, are set out above in paragraph [6]. The facts properly found each of the grounds. Mr Hakaoro breached each of the requirements of the 2010 Code due to the facts identified in that paragraph.
- [15] I accordingly find Mr Hakaoro:
- [15.1] Breached clauses 1.5(a), (b), and (d) and also 8(d) of the 2010 Code. He failed to enter a complying written agreement.
- [15.2] Breached clauses 1.1(a), (b) of the 2010 Code. He failed to address Immigration New Zealand's concerns when he had a duty to do so, and he lodged an appeal without instructions.
- [15.3] Breached clause 3(a) of the 2010 Code. He failed to notify the complainant of the steps he took, and the issues Immigration New Zealand raised.
- [15.4] Breached clauses 1.1(c), and 3(b) of the 2010 Code. He failed to inform his client he could no longer provide immigration advice, and protect her interests when his licence was cancelled.

Decision

- [16] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [17] The adviser breached the 2010 Code; it is a ground for complaint pursuant to section 44(2) of the Act.

Submissions on Sanctions

- [18] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [19] 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, Mr Hakaoro is entitled to make submissions and respond to any submissions from the other parties.
- [20] 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.
- [21] The Registrar is requested to report on the extent to which Mr Hakaoro has complied with previous orders the Tribunal has imposed in respect of sanctions, and the steps she has taken to enforce the orders.

Timetable

- [22] The timetable for submissions will be as follows:
- [22.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.
- [22.2] 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.
- [22.3] 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 17th day of March 2015

G D Pearson
Chair