

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

Decision No: [2015] NZIACDT \*\* 28

Reference No: IACDT 017/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Errol Anthony Darlerbe**

Complainant

**AND**

**Hakaoro Hakaoro**

Adviser

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**DECISION**

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**REPRESENTATION:**

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

**Complainant:** In person

**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 his application for residence and received fees; and then:
- [2.1] He lost his licence, as this Tribunal cancelled it.
- [2.2] He could no longer lawfully undertake the work he agreed to provide.
- [2.3] He did not tell his client. His client needed to know, as he needed to obtain the services Mr Hakaoro could no longer provide, and he needed to know about his immigration situation.
- [2.4] The complainant eventually found out what had happened from Immigration New Zealand.
- [2.5] Mr Hakaoro has never refunded the fees he took, and did not provide the services he agreed to provide.
- [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] On 7 January 2013, the complainant entered a written agreement with Mr Hakaoro for services relating to an application for residence. He paid \$3,000 for those services, the last instalment being on 26 January 2013.
- [5.2] On 4 June 2013, an order of this Tribunal cancelled Mr Hakaoro's licence.
- [5.3] Mr Hakaoro did not tell the complainant he did not have a licence, and the complainant tried to contact Mr Hakaoro. He could not locate him.
- [5.4] On 10 December 2013, Immigration New Zealand told the complainant Mr Hakaoro did not have a licence, and there was no application lodged for him.
- [6] The Registrar identified potential infringements of professional standards. They were:
- [6.1] That Mr Hakaoro breached clauses 1.1(c), 3(b) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). The factual circumstances being:
- [6.1.1] Mr Hakaoro did not tell the complainant when his licence had been cancelled and ceased work on the application (clause 3(b)), and
- [6.1.2] He did not take reasonable steps to ensure he protected the complainant's interests when that occurred (clause 1.1(c)).

- [6.2] That Mr Hakaoro breached clause 3(d) of the 2010 Code. The factual circumstances being:
- [6.2.1] Mr Hakaoro received \$3,000 for his professional services, he had not performed them when the Tribunal cancelled his licence, he could no longer provide the services.
- [6.2.2] Mr Hakaoro did not refund the fees.
- [6.2.3] Mr Hakaoro breached his obligation to provide a refund on ceasing the contract to provide services, and he was required to do so (clause 3(d)).

### **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 complainant 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 the Registrar has provided the documentation supporting it.

#### *The facts*

- [13] The Statement of Complaint and the supporting documents establish the facts. They are simple. Mr Hakaoro commenced a client relationship and took fees from his client. He lost his licence, as this Tribunal cancelled it. He could no longer lawfully undertake the work he agreed to provide. He did not tell his client. His client needed to know, as he needed to obtain the services Mr Hakaoro could no longer provide, and he needed to know about his immigration situation. The complainant eventually found out what had happened from Immigration New Zealand. Mr Hakaoro has never refunded the fees he took, and did not provide the services he agreed to provide.

#### *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 1.1(c) and 3(b) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). Clause 3(b) required Mr Hakaoro to confirm in writing when work ceases. Work had to cease when he did not have a licence. He did not

inform his client, accordingly he breached clause 3(b). When he could no longer act, his client required representation. Mr Hakaoro did nothing, he did not tell his client he could no longer act, he was left to make his own inquiries. His client needed to know what his immigration circumstances were, and have the professional representation he had paid for. Accordingly, he breached clause 1.1(c).

- [15.2] Breached clause 3(d) of the 2010 Code. Mr Hakaoro received \$3,000, he had not lodged the application he had been paid to lodge. There is no apparent benefit of any kind from work Mr Hakaoro did, if he did any work at all. The complainant was entitled to some or all of the fees he paid. Clause 3(d) required Mr Hakaoro to refund the fees, and he failed to do so. Accordingly, he breached clause 3(d).

## **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 17<sup>th</sup> day of March 2015

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**G D Pearson**  
Chair