

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

Decision No: [2015] NZIACDT 29

Reference No: IACDT 018/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

L Z E

Complainant

AND

Hakaoro Hakaoro

Adviser

**THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE
PUBLISHED**

DECISION

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 complaint is that Mr Hakaoro accepted instructions to assist the complainant with a request for a visa, she was in New Zealand unlawfully as she did not hold a visa. Mr Hakaoro:
- [2.1] Knew his client's circumstances, she did not have a job offer or New Zealand partner.
- [2.2] He considered it would be advantageous if she did have a job offer and a partner.
- [2.3] Mr Hakaoro lodged two requests with Immigration New Zealand, the first dishonestly misrepresented the complainant had a job offer. That failed, he procured a payment of \$2,000 from the complainant to obtain a job offer. The complainant did not ever receive a job offer.
- [2.4] Mr Hakaoro then lodged a second request with Immigration New Zealand, on this occasion he dishonestly misrepresented both that the complainant had a job offer and a New Zealand partner.
- [2.5] Mr Hakaoro dishonestly told the complainant Immigration New Zealand was considering her request after it had declined both requests.
- [2.6] When this Tribunal cancelled his licence, Mr Hakaoro did not tell his client.
- [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 and dishonest 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] During 2009, the complainant was in New Zealand and her visa expired, and she did not get a new visa.
- [5.2] In the latter part of 2012, the complainant and her niece met with Mr Hakaoro. She told Mr Hakaoro she did not have an offer of employment, or a partner who was a New Zealand citizen or resident. She entered a written agreement with Mr Hakaoro to apply for a visa under section 61 of the Immigration Act 2009.
- [5.3] The complainant paid Mr Hakaoro \$3,000 for his fees, the final instalment at the end of August 2012. At that time, she told Mr Hakaoro she had not been able to find work. Mr Hakaoro said she should not worry.
- [5.4] Subsequently Mr Hakaoro submitted a request to Immigration New Zealand for the complainant, and said she had an offer of employment. Immigration New Zealand refused the request.
- [5.5] After Immigration New Zealand refused the visa, the complainant again told Mr Hakaoro she did not have an offer of employment, or a New Zealand partner. Mr Hakaoro said that if she paid him \$3,000 he would obtain an offer of employment. She paid \$2,000.
- [5.6] Mr Hakaoro then submitted an application representing that the complainant had an offer of employment, and a partner who was a New Zealand citizen. Immigration New Zealand refused the application.

- [5.7] In the early part of 2013, Mr Hakaoro told the complainant Immigration New Zealand was still considering the request.
- [5.8] This Tribunal's order cancelled Mr Hakaoro's licence on 4 June 2013. In July 2013, Mr Hakaoro said to the complainant's niece Immigration New Zealand had refused the request for a visa.
- [6] The Registrar identified potential infringements of professional standards. They were:
- [6.1] That Mr Hakaoro engaged in dishonest or misleading behaviour in relation to Immigration New Zealand and the complainant (in breach of section 44(2)(d) of the Immigration Advisers Licensing Act 2007 (the Act). The grounds were:
- [6.1.1] The complainant repeatedly told Mr Hakaoro she did not have an offer of employment, or a New Zealand partner.
- [6.1.2] Mr Hakaoro procured a payment of \$2,000 to secure a job offer. He never provided any details to the complainant of a job offer.
- [6.1.3] Mr Hakaoro submitted a request for a visa and represented the complainant had an offer of employment; and on another occasions submitted a request representing she had an offer of employment and a partner who was a New Zealand citizen.
- [6.1.4] Mr Hakaoro falsely represented:
- [6.1.4] On the first occasion that the complainant had an offer of employment when she did not;
- [6.1.4] On the second occasion that she had an offer of employment and a New Zealand partner, when she had neither.
- [6.1.5] That conduct may have breached the prohibition against dishonest or misleading behaviour under the Act; or clause 5.2 of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). That clause prohibits a licensed immigration adviser knowingly providing false or misleading documentation with a request.
- [6.1.6] Immigration New Zealand notified Mr Hakaoro the first request had been refused. He told the complainant some 15 months later that Immigration New Zealand was considering the request. Mr Hakaoro had, in fact, received a response from Immigration New Zealand in respect of the two requests.
- [6.1.7] Mr Hakaoro engaged in dishonest or misleading behaviour by providing the false information to his client, and potentially breached his duties of due care, diligence, respect and professionalism (clause 1.1(a) of the 2010 Code).
- [6.2] That Mr Hakaoro breached clause 1.1(c) of the 2010 Code in relation to not informing the complainant he could not continue to provide services. The grounds were:
- [6.2.1] This Tribunal cancelled Mr Hakaoro's licence with effect from 4 June 2013.
- [6.2.2] He did not tell the complainant.
- [6.2.3] He breached clause 1.1(c) of the 2010 Code as he did not take reasonable steps to ensure the complainant's interests were represented.

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 knew his client's circumstances. He knew she did not have a job offer or New Zealand partner. He considered they would be advantageous.
- [14] Mr Hakaoro lodged two requests with Immigration New Zealand, the first dishonestly misrepresented the complainant had a job offer. That failed, he procured a payment of \$2,000 from the complainant to obtain a job offer. The complainant did not ever receive a job offer.
- [15] Mr Hakaoro then lodged a second request with Immigration New Zealand; on this occasion he dishonestly misrepresented both that the complainant had a job offer and a New Zealand partner.
- [16] Mr Hakaoro dishonestly told the complainant Immigration New Zealand was considering her request after it had declined the two requests, and was not considering anything relating to her.
- [17] When this Tribunal cancelled his licence, Mr Hakaoro did not tell his client.

The charges of professional misconduct

- [18] 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 the Act and the 2010 Code due to the facts identified in that paragraph.
- [19] I accordingly find Mr Hakaoro:

- [19.1] Engaged in dishonest and misleading behaviour, which is a ground for complaint pursuant to section 44(2) of the Act. Mr Hakaoro knew that his client's prospects of success with her request were potentially affected by an offer of employment and having a New Zealand partner. He knew she had neither. He procured \$2,000 from the complainant, who never received a job offer from an employer. Mr Hakaoro twice dishonestly told Immigration New Zealand the complainant had a job offer; and once that she had a New Zealand partner. He did so intending to mislead Immigration New Zealand, and probably did so for his personal advantage of justifying fees he procured, including a payment of \$2,000 for a job offer he knew did not exist. The behaviour involved overt dishonesty, it is not necessary to consider the provisions of the 2010 Code which the Registrar identified as alternative grounds.

[19.2] He also dishonestly misrepresented that Immigration New Zealand was considering the complainant's request, when he knew that was false. That too was dishonest and misleading behaviour.

[19.3] He also breached clause 1.1(c) the 2010 Code. Mr Hakaoro did not tell his client when he lost his licence, and could not provide any services for her. She needed representation, as she was in New Zealand unlawfully; instead Mr Hakaoro misinformed her. He breached his duties to take reasonable steps to ensure the complainant's interests were represented when he could no longer assist.

Decision

[20] The Tribunal upholds the complaint pursuant to section 50 of the Act.

[21] The adviser engaged in dishonest and misleading behaviour, and breached the 2010 Code; they are grounds for complaint pursuant to section 44(2) of the Act.

Submissions on Sanctions

[22] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.

[23] 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.

[24] 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.

[25] 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

[26] The timetable for submissions will be as follows:

[26.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.

[26.2] 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.

[26.3] 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.

Order prohibiting publication of the complainant's name or identity

[27] As the complainant was in New Zealand unlawfully, the Tribunal orders that her name and any information that may identify her is not to be published.

[28] This order recognises that persons seeking advice regarding their unlawful status in New Zealand are entitled to complain regarding professional misconduct, without fear of publication that may adversely affect them.

[29] Leave is reserved for the complainant or the Registrar to apply to vary this order. The order does not prevent **the complainant** disclosing the decision to her professional advisers, or any authority **she** considers should have a copy of the decision.

DATED at Wellington this 17th day of March 2015

G D Pearson
Chair