

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

Decision No: [2015] NZIACDT 31

Reference No: IACDT 043/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

D S

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**THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE
PUBLISHED**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: Mr N Tupou, Barrister, Tupou Law, Auckland

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] Failed to take any of the steps required to establish a professional relationship in accordance with the 2010 Code.
 - [2.2] He dishonestly told the complainant, her family, and Immigration New Zealand that the complainant and her siblings had job offers.
 - [2.3] Mr Hakaoro used his wife to offer immigration services in exchange for sexual availability, and the provision of domestic services.
 - [2.4] When this Tribunal cancelled his licence, Mr Hakaoro did not tell his client and made no provision for continued representation.
- [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 gross breach of the fundamental 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's visa expired in late 2005; she was accordingly in New Zealand unlawfully from that time. In June 2010, her family engaged Mr Hakaoro to assist with the complainant and her family's immigration status.
 - [5.2] On 24 June 2011, Mr Hakaoro became a fully licensed immigration adviser. This decision will only address issues arising on or after 24 June 2011, as this Tribunal has no jurisdiction over Mr Hakaoro's conduct before he was a licensed immigration adviser.
 - [5.3] On 12 November 2011, Mr Hakaoro met with the complainant and her family and told them Immigration New Zealand had agreed to delete their status of being unlawfully in New Zealand without current visas.
 - [5.4] On 16 and 21 December 2011, the complainant paid Mr Hakaoro a total of \$3,000. In January 2012 the complainant's family provided original death certificates for their parents to Mr Hakaoro.
 - [5.5] On 18 January 2012, Mr Hakaoro submitted a request for visas to Immigration New Zealand on behalf of the complainant and her siblings; and on 24 January 2012, Immigration New Zealand declined the request.
 - [5.6] In March 2012, Mr Hakaoro's wife told the complainant she should enter into a sexual relationship with Mr Hakaoro, and move into their house to attend to domestic duties. She refused.
 - [5.7] On 20 March 2012, the complainant asked Mr Hakaoro's wife what happened to the death certificates, and she told her they had been lodged with Immigration New Zealand.

[5.8] This Tribunal, with effect from 4 June 2013 cancelled Mr Hakaoro's licence.

[6] The Registrar identified potential infringements of professional standards during the course of Mr Hakaoro's engagement. They were:

[6.1] That Mr Hakaoro breached clauses 1.5(a), (b) and (d) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code) in relation to written agreements. The grounds were:

[6.1.1] Mr Hakaoro did not have a written agreement to provide immigration services.

[6.1.2] Mr Hakaoro was in breach of his obligations to:

[6.1.2] Make the complainant aware, in writing and in plain language, of the terms of a written agreement and all significant matters relating to it (clause 1.5(a) of the 2010 Code);

[6.1.2] To have a written agreement which contained a full description of the services he was to provide (clause 1.5(b) of the 2010 Code).

[6.1.2] To have the complainant confirm in writing she accepted the terms of the agreement (clause 1.5(d) of the 2010 Code).

[6.2] That Mr Hakaoro breached clause 8(b) of the 2010 Code in relation failing to set out costs, fees and disbursements. The grounds were:

[6.2.1] Mr Hakaoro took fees of \$3,000 for his services, after he became licensed.

[6.2.2] He did not set out the fees and disbursements before commencing work.

[6.2.3] Clause 8(b) of the 2010 Code required that Mr Hakaoro set out fees and disbursements before commencing work.

[6.3] That Mr Hakaoro engaged in dishonest or misleading behaviour in relation to the complainant and Immigration New Zealand which is a ground for complaint under section 44(2)(d) of the Immigration Advisers Licensing Act 2007. The grounds were:

[6.3.1] On 12 November 2011, Mr Hakaoro met with the complainant and her family and told them Immigration New Zealand had agreed to delete their status of being unlawfully in New Zealand without current visas. The information he provided was false, as Immigration New Zealand had made no such agreement.

[6.3.2] The complainant paid Mr Hakaoro \$2,200 and he issued her a receipt saying she had a job offer. She had not received a job offer; the payment was for immigration services.

[6.3.3] Mr Hakaoro lodged requests for visas with Immigration New Zealand for the complainant and her siblings, which stated they had offers of employment. He had represented to them they had offers of employment, but they have never received offers of employment from a prospective employer.

[6.3.4] Immigration New Zealand notified Mr Hakaoro it refused the requests for visas, Mr Hakaoro then told the complainant and her siblings their requests for visa were still being considered by Immigration New Zealand.

[6.3.5] Mr Hakaoro engaged in dishonest and misleading behaviour in the course of those events, as he falsely:

[6.3.5] Told the complainant and her family Immigration New Zealand had deleted their immigration status in relation to overstaying visas;

[6.3.5] Issued a receipt stating the complainant had a job offer;

- [6.3.5] Told Immigration New Zealand the complainant and her siblings had job offers when they did not; and
- [6.3.5] Told the complainant Immigration New Zealand was considering her request, when they had refused it.
- [6.3.6] In addition, the Registrar set out potential breaches of the 2010 Code in addition to dishonest and misleading behaviour.
- [6.4] That Mr Hakaoro engaged in unprofessional and disrespectful conduct in relation to his wife seeking to procure the complainant to enter a sexual relationship with Mr Hakaoro, and provide domestic services, in breach of clause 1.1(a) of the 2010 Code. The grounds were:
- [6.4.1] Mr Hakaoro's wife suggested the complainant enter a sexual relationship with Mr Hakaoro and that she provide domestic services.
- [6.4.2] His wife was acting on Mr Hakaoro's behalf, with his knowledge, and was present when the complainant refused.
- [6.4.3] Engaging in and condoning this behaviour was unprofessional, and disrespectful.
- [6.5] That Mr Hakaoro failed to return passports and other personal documents on request, without delay and in a secure manner, in breach of clause 1.3(b) of the 2010 Code. The grounds were:
- [6.5.1] The complainant and her siblings provided death certificates relating to their parents.
- [6.5.2] The complainant made inquiries in March 2012 to Mr Hakaoro's wife, she was acting on Mr Hakaoro's behalf.
- [6.5.3] Mr Hakaoro took no steps to return the documents, and he was required to do so pursuant to clause 1.3(b) of the 2010 Code.
- [6.6] That Mr Hakaoro failed to inform the complainant he could not continue with his instructions after his licence was cancelled, in breach of clause 1.1(c) of the 2010 Code. The grounds were:
- [6.6.1] Mr Hakaoro knew his licence was cancelled from 4 June 2013.
- [6.6.2] The complainant was at that time in New Zealand without a current visa, and waiting to hear of the outcome of the request she instructed Mr Hakaoro to make for her.
- [6.6.3] Mr Hakaoro took no steps to protect the complainant or inform her he could no longer provide services; and he was required to do so pursuant to clause 1.1(c) of the Code.

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.
- [14] Mr Hakaoro failed to take any of the steps required to establish a professional relationship in accordance with the 2010 Code. He dishonestly told the complainant, her family, and Immigration New Zealand that the complainant and her siblings had job offers. Mr Hakaoro used his wife to offer immigration services in exchange for sexual availability, and the provision of domestic services.
- [15] When this Tribunal cancelled his licence, Mr Hakaoro did not tell his client and made no provision for continued representation.

The charges of professional misconduct

- [16] 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.
- [17] I accordingly find Mr Hakaoro:
- [17.1] Breached clauses 1.5(a), (b) and (d), and 8(b) of the 2010 Code; he wholly failed to comply with the mandatory requirements for establishing a client relationship. The disclosure requirements and the obligation to set out particulars in writing were all breached. It follows the breaches of the 2010 Code the Registrar identified are established.
- [17.2] Mr Hakaoro also engaged in dishonest and misleading behaviour, which is a ground for complaint pursuant to section 44(2)(d) of the Act. Knowing the representations were false, he:
- [17.2.1] Told the complainant and her siblings he had altered their status with Immigration New Zealand.
- [17.2.2] Later, told them he had procured job offers, to assist with their immigration situation.
- [17.2.3] Provided the same false information to Immigration New Zealand.
- [17.2.4] Told the complainant Immigration New Zealand was considering her request, when it had been declined.
- [17.3] The information was calculated to convince the complainant to pay Mr Hakaoro for his services, persuade her he was providing services, and potentially influence Immigration New Zealand to make a favourable decision. Mr Hakaoro was aware the information was false. He has not provided any justification or excuse that explains his conduct; the dishonest motivations implicit in his behaviour are self-evident. It is not necessary to consider whether the same conduct breached the 2010 Code, as the behaviour was at the higher level of dishonesty.

- [17.4] That Mr Hakaoro engaged in unprofessional and disrespectful conduct by having his wife seek to procure the complainant to enter a sexual relationship with him, and provide domestic services for both of them. Mr Hakaoro, was required to treat his client with respect, and act professionally pursuant to clause 1.1(a) of the 2010 Code. His conduct was grossly disrespectful, and unprofessional.
- [17.5] Mr Hakaoro had an obligation to return passports and other personal documents on request, without delay and in a secure manner pursuant to clause 1.3(b) of the 2010 Code. The complainant and her siblings provided Mr Hakaoro with death certificates to provide to Immigration New Zealand. He did not return them, despite requesting that he do so.
- [17.6] Mr Hakaoro failed to inform the complainant he could not continue with his instructions after his licence was cancelled, in breach of clause 1.1(c) of the 2010 Code. He had an obligation to do so pursuant to clause 1.1(c); his client needed that information as she had a current immigration issue, and was trying to address it. Mr Hakaoro should have provided support for her to obtain alternative representation.

Decision

- [18] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [19] 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

- [20] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [21] 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.
- [22] 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.
- [23] 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

- [24] The timetable for submissions will be as follows:
- [24.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.
- [24.2] 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.
- [24.3] The Authority and the complainant may reply to any submissions made by the adviser within 5 working days of her filing and serving those submissions.

Order prohibiting publication of the complainant's name or identity

- [25] 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.

- [26] 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.
- [27] 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