

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

Decision No: [2015] NZIACDT 42

Reference No: IACDT 021/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

**Michael Carley (Immigration New
Zealand)**

Complainant

AND

Rosemarie Navarette-Scholes

Adviser

DECISION

REPRESENTATION:

Registrar: In person.

Complainant: Mr M Carley, Ministry of Business, Innovation and Employment.

Adviser: In person.

Date Issued: 20 April 2015

DECISION

Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal.
- [2] Immigration New Zealand has complained that Ms Navarette-Scholes, on eight different occasions, issued cheques which the bank dishonoured when it presented them. The cheques were to pay client fees due to Immigration New Zealand, which Ms Navarette-Scholes had to pay on lodging her client's immigration applications.
- [3] Issuing the cheques was potentially the result of a failure on the part of Ms Navarette-Scholes to maintain professional business practices relating to finances.
- [4] Ms Navarette-Scholes accepts she was responsible for issuing the cheques, but says there were mitigating circumstances, without specifying the details of what they were.
- [5] The Tribunal has to determine whether the information it has regarding the dishonoured cheques establishes Ms Navarette-Scholes issued them as a result of her failure to maintain professional business practices.
- [6] The Tribunal has concluded the grounds of complaint have been made out.

The complaint

- [7] The Registrar filed a statement of complaint, she put forward the following background as the basis for the complaint:
 - [7.1] Ms Navarette-Scholes is a licensed immigration adviser, and the director and sole shareholder of ANZSIIS Consulting Ltd (the company). She operated her immigration practice in conjunction with the company.
 - [7.2] Between June 2010 and February 2013, the company delivered cheques drawn on its bank account to Immigration New Zealand to pay fees on behalf of Ms Navarette-Scholes' clients. On presentation to the company's bank, it dishonoured eight of those cheques.
 - [7.3] On one occasion Immigration New Zealand notified Ms Navarette-Scholes, she failed to respond by the deadline and accordingly her client's file had an alert loaded onto it.
 - [7.4] Immigration New Zealand returned another client's application as a failed lodgement because of the dishonoured cheque. Ms Navarette-Scholes attempted to pay by credit card and the bank declined the charge. Due to assurances from Ms Navarette-Scholes that funds were now available, Immigration New Zealand tried the card again; it was declined on a total of five occasions.
- [8] The Registrar identified a potential breach of professional standards. The potential infringement was:
 - [8.1] That Ms Navarette-Scholes breached clause 3 of the Licensed Immigration Advisers Code 2010 (the 2010 Code). The clause required that she maintain professional business practices relating to finances. The allegation is:
 - [8.1.1] Ms Navarette-Scholes provided cheques to pay clients fees, and the bank dishonoured the cheques.
 - [8.1.2] The failure to pay the fees adversely affected clients.
 - [8.1.3] Ms Navarette-Scholes's failure to make the payments in a proper form was the result of a failure to maintain professional business practices.

The responses

- [9] Ms Navarette-Scholes filed a statement of reply. She said:
- [9.1] She did not intend to present cheques that the bank would dishonour.
- [9.2] She was not in New Zealand when the bank dishonoured the cheques.
- [9.3] The cheques were later honoured, and her clients received visas.
- [9.4] Ms Navarette-Scholes accepts there were “lapses in administration procedures”; she has improved her practices and rectified the issues.
- [10] The complainant did not file a statement of reply, and was not required to do so if it accepted the contents of the Statement of Complaint. The complaint was on wider grounds than the Statement of Complaint; however, the complainant did not seek to advance grounds beyond the grounds in the Statement of Complaint. Accordingly, the Tribunal will deal only with the grounds in the Statement of Complaint.

Discussion

The standard of proof

- [11] 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

- [12] The Registrar provided a chronology and supporting documentation. The parties have not disputed this record or added to it.
- [13] I am satisfied this material supports the grounds of complaint alleged.

The facts

- [14] The facts are uncomplicated and Ms Navarette-Scholes has not denied what occurred. She has claimed in a general way there were mitigating circumstances. However, she has not provided any information to displace the obvious explanation that she repeatedly issued cheques on a bank account without sufficient funds to cover the cheques. Further, that she offered payment by credit card, when it was at or beyond its credit limit.
- [15] Ms Navarette-Scholes has said she was not in New Zealand when the bank dishonoured the cheques. However, that is not on its face a justification or excuse. Ms Navarette-Scholes was obliged to maintain professional practices at all times; furthermore, could have had access to electronic banking to ensure she did know what was occurring. If for any reason she could not effectively manager her practice remotely, then she was obliged to engage assistance so to manage her practice in accordance with the Code of Conduct. Ms Navarette-Scholes did not explain how her absence resulted in issuing the dishonoured cheques.

The charge of failing to maintain professional business practices

- [16] It is of course possible for an error to occur in the course of making a payment, and fall short of the disciplinary threshold. A simple administrative error can result in an irregularity with a payment.
- [17] However, it is not possible to characterise the facts supporting this complaint in that way. The first matter of concern is the repeated occasions when Ms Navarette-Scholes issued cheques that the bank later dishonoured. That occurred over an extended period, it was not an isolated error. Accordingly, Ms Navarette-Scholes was on notice of the issue, and continued to present cheques that the bank dishonoured.

- [18] On one occasion, she used an alternative form of payment, namely a credit card and the bank rejected it on five occasions, Ms Navarette-Scholes having asked Immigration New Zealand to reprocess the transaction.
- [19] In relation to six of the cheques, Ms Navarette-Scholes was paying the fees with client funds. Ms Navarette-Scholes was required to bank client funds separately from other funds, pursuant to clause 4 of the 2010 Code. Ms Navarette-Scholes was required to use the client funds held on trust only for the purpose for which she received them. She had a duty to ensure she knew where the funds came from. Ms Navarette-Scholes has not explained what had happened to the client funds and why they were not available at the time.
- [20] Ms Navarette-Scholes has not provided any evidence that explains how any form of administrative error could result in her presenting eight dishonoured cheques, and the repeated credit card rejections. She has said that the issue arose from having two separate cheque accounts, but if that was the only issue, the problem should not have persisted. Particularly when on most occasions the payments were from client funds, and it was important to ensure the funds came from the correct account. The probable cause was that there were insufficient funds to cover the cheques, and the credit card was at or beyond its limit. Ms Navarette-Scholes has not explained how she could have justifiably been unaware of the fact funds were not available, and given the repeated occasions and failure to make good on one occasion with a credit card, it is not an inference I can draw from the facts.
- [21] Accordingly, I am satisfied that the eight occasions when Ms Navarette-Scholes issued cheques was probably the result of a failure to manage her practice. Her clients had engaged her as a licensed immigration adviser. Accordingly, they were entitled to expect she would manage their dealings with Immigration New Zealand in accordance with the 2010 Code. An elementary part of Ms Navarette-Scholes's obligations was to deal with disbursements properly. It is plainly unacceptable to offer Immigration New Zealand worthless cheques as payment for client fees when lodging applications, and Ms Navarette-Scholes did so repeatedly.
- [22] When Ms Navarette-Scholes paid fees, she was personally obliged to ensure the payment was in a proper and regular form. In this instance, her clients did ultimately receive visas, none-the-less the failure created extra work for Immigration New Zealand, put her clients' interests at risk, and delayed their applications. Her conduct falls far short of the minimum standards required of a licensed immigration adviser.
- [23] I am accordingly satisfied Ms Navarette-Scholes failed to meet the requirements of 3 of the 2010 Code, she failed to maintain professional business practices relating to finances.

Decision

- [24] The Tribunal upholds the complaint pursuant to section 50 of the Act; due to the identified breach of the 2010 Code identified; they are grounds for complaint pursuant to section 44(2)(e) of the Act.

Submissions on Sanctions

- [25] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [26] The Authority and the complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs. Whether they do so or not, Ms Navarette-Scholes is entitled to make submissions and respond to any submissions from the other parties.
- [27] The Tribunal will take into account Ms Navarette-Scholes' submissions relating to her actions, already taken, to remedy and regularise the finances of the practice. However, the Tribunal also puts Ms Navarette-Scholes on notice it regards this complaint as a serious matter and invites her to make further submissions on this point. Ms Navarette-Scholes's conduct raises concerns regarding:

[27.1] Her fitness to operate as the principal of a practice, and

- [27.2] Whether she has the financial stability to offer professional services to the public and be accountable.
- [28] The Tribunal accordingly requests that the Registrar and the complainant, who will have an awareness of Ms Navarette-Scholes's circumstances and compliance with professional standards, provide any information they consider the Tribunal should take into account when determining the appropriate sanctions.
- [29] The Tribunal requests pursuant to section 49(4) of the Immigration Advisers Licensing Act 2007 that the Registrar report on Ms Navarette-Scholes's compliance with previous sanctions imposed by the Tribunal, and any enforcement action the Registrar has undertaken.
- [30] 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.

Timetable

- [31] The timetable for submissions will be as follows:
- [31.1] The Authority and the complainant are to make any submissions and provide any information within 10 working days of the issue of this decision.
- [31.2] Ms Navarette-Scholes is to make any further submissions and provide any information (whether or not the Authority or the complainant makes submissions) within 15 working days of the issue of this decision.
- [31.3] The Authority and the complainant may reply to any submissions made by Ms Navarette-Scholes within 5 working days of her filing and serving those submissions.

DATED at Wellington this 20th day of April 2015

G D Pearson
Chair