

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

Decision No: [2015] NZIACDT 46

Reference No: IACDT 029/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Manit Ly**

Complainant

**AND**

**Rosemarie Navarette-Scholes**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** In person.

**Complainant:** In person

**Adviser:** Mr S Laurent, lawyer, Laurent Law, Auckland.

Date Issued: 29 April 2015

## DECISION

### Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal.
- [2] The complaint is that Ms Navarette-Scholes had an unlicensed associate she worked with, and the associate engaged with potential clients. The essential circumstances were:
- [2.1] Ms Navarette-Scholes received a complaint from potential clients that they had paid money to the associate for Ms Navarette-Scholes's fees.
- [2.2] Ms Navarette-Scholes knew she held some immigration documents for the potential clients. But says they were for safe keeping only. She had not undertaken any immigration work for the potential clients, nor had she agreed to undertake any.
- [2.3] When Ms Navarette-Scholes received the complaint, she met with the potential clients, but neither recorded the discussions in writing nor provided written confirmation. She did not make inquiries or address her potential responsibility for the fees allegedly paid to her associate.
- [2.4] Ms Navarette-Scholes claimed the potential clients were not clients, and she had not accepted instructions from them. She says she accordingly had no relevant professional obligations to them.
- [3] The Tribunal has to determine what Ms Navarette-Scholes's professional responsibilities were when she received the complaint (and potentially at earlier points in time).
- [4] The Tribunal has upheld the complaint, as it is satisfied Ms Navarette-Scholes failed to respond using professional business practices when she became aware of the complaint regarding the unlicensed associate.

### The complaint

- [5] The Registrar's Statement of Complaint put forward the following background as the basis for the complaint:
- [5.1] Ms Navarette-Scholes was the director of ANZSIIS International School (AISL), and a licensed immigration adviser. She had a colleague (the associate). The associate was not a licensed immigration adviser, but was not required to be; her immigration services with AISL were limited to providing offshore advice on student visas.
- [5.2] Ms Navarette-Scholes and the associate travelled from New Zealand to Cambodia. They travelled with persons connected with the associate. Those persons included Ms Sok. She is the complainant's niece (the niece). In Cambodia, Ms Navarette-Scholes and the associate both attended the niece's engagement party on 19 July 2012. Her fiancé wanted to migrate to New Zealand and the complainant instructed Ms Navarette-Scholes to lodge a visitor visa application to commence that process.
- [5.3] The day after the engagement party, the niece told the associate of her New Zealand immigration sponsorship history. She paid the associate \$3,500 in cash as the associate said that money had to be paid to Immigration New Zealand so "previous sponsorships do not affect her new fiancé's future application". The niece also provided documents to support the applicant's application for a visa to the associate, and they were delivered to Ms Navarette-Scholes's office.
- [5.4] On 12 August 2012, the niece paid the associate \$1,000 and paid further deposits totalling \$550 into the associate's bank account.
- [5.5] Ms Navarette-Scholes met with the complainant and the niece at her business premises in August 2012 and September 2012, and the applicant's documents remained there.

- [5.6] On 1 October 2012, the complainant's lawyer wrote to Ms Navarette-Scholes requesting that the documents be returned urgently, as medical and police certificates were due to expire. Despite a further request, the documents remained with Ms Navarette-Scholes until 17 October 2012, and the complainant's lawyer said the delay resulted in the certificates expiring.
- [6] The Registrar identified potential infringement of professional standards during the course of Ms Navarette-Scholes's engagement, the allegations were that potentially:
- [6.1] Ms Navarette-Scholes breached clause 3 of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). It required her to maintain professional business practices in relation to finances, records, documents, contracts and staff management. The circumstances were:
- [6.1.1] Ms Navarette-Scholes met with the complainant and her niece on a number of occasions to discuss immigration issues, relating to the applicant.
- [6.1.2] Ms Navarette-Scholes knew:
- [6.1.2] The complainant and the niece wanted to submit a visitor visa application for the applicant, and gave her an application to lodge.
- [6.1.2] The complainant had paid money to the associate, and that money was to pay for Ms Navarette-Scholes's services.
- [6.1.2] The applicant's personal documents were in Ms Navarette-Scholes's possession from 3 August 2012 until 17 October 2012.
- [6.1.3] These circumstances caused the complainant to expect Ms Navarette-Scholes was engaged to perform immigration services.
- [6.1.4] On 20 May 2014, the Immigration Advisers Authority requested records of Ms Navarette-Scholes's interactions with the complainant, including file notes, meeting notes and any documents confirming material discussions with the parties. Ms Navarette-Scholes said she had no such records, as she did not enter into any business engagement with the complainant.
- [6.1.5] This may establish that Ms Navarette-Scholes failed to maintain professional business practices in that:
- [6.1.5] She retained the applicant's visa application and supporting documents for some two and a half months.
- [6.1.5] She attended meetings to discuss the applicant's immigration affairs, and did not record those interactions in writing.
- [6.1.5] She failed to take charge of payments made in respect of her services.

## The responses

### *Ms Navarette-Scholes*

- [7] Ms Navarette-Scholes responded to the Registrar when she investigated the complaint. In a written statement, Ms Navarette-Scholes set out her view of the complaint, and the relevant facts. The key elements of her response were:
- [7.1] She never accepted instructions to lodge a visa application, never received any money and accordingly had no professional relationship in respect of the applicant's immigration affairs.
- [7.2] She accepted the associate was a student recruitment agent for AISL during the period from 2 February 2012 until 18 October 2012.

- [7.3] She also accepted that in July 2012 she travelled with the associate to Cambodia on a trip to explore market opportunities. She paid for her own travel costs. The associate had her partner and friends travelling with her, including the niece.
- [7.4] The associate left documents in Ms Navarette-Scholes's office, in Auckland, after returning from Cambodia. At the time, Ms Navarette-Scholes was away on business and the associate later told Ms Navarette-Scholes the documents were for safekeeping. The documents related to immigration matters for the applicant, but were incomplete.
- [7.5] Ms Navarette-Scholes later questioned the associate and the niece regarding the applicant applying for a visa and that the information she received caused her concern. She decided not to proceed with providing any assistance or services.
- [7.6] On 4 September 2012, Ms Navarette-Scholes received a message from the niece saying she had paid money to the associate intending the money was for Ms Navarette-Scholes' fees. During that month, Ms Navarette-Scholes received more information, which caused Ms Navarette-Scholes to be concerned.
- [7.7] Ms Navarette-Scholes arranged a meeting with the niece and the complainant in September 2012 to discuss a financial problem with the associate; she told them she would not proceed with the applicant's visa application.
- [7.8] The delay in delivery of the applicant's document after the 1 October 2012 request was due to the associate and the niece not collecting the documents. Ms Navarette-Scholes did not consider she had professional obligations relating to them, as they were simply deposited for safekeeping.
- [8] Through her counsel, Ms Navarette-Scholes lodged a statement of reply in the form of a submission. It did not contain an application for an oral hearing.
- [9] The first element in the response was that Ms Navarette-Scholes did not have a client relationship and, accordingly, clause 3 of the 2010 Code could have little application. Mr Laurent contended there could be no client relationship unless there is an agreement supported by consideration. He referred to *Marsland v J Walter Thompson New Zealand Ltd* HC Wellington CP.338/86, 29/11/1989, and in particular Gallen J's observation that the existence of a client relationship "must in the end depend upon the placing of business or the giving of instructions." Mr Laurent said, in the absence of a contractual relationship "there must be very good evidence of a *de facto* creation of a client relationship".
- [10] Mr Laurent then addressed potential breaches of clause 3 of the 2010 Code, he said:
- [10.1] In relation to the retention of documents, Ms Navarette-Scholes was out of New Zealand when the documents were deposited in her office. Furthermore, she was told they were for safekeeping, and refused to lodge the proposed application. She actively tried to return the documents.
- [10.2] She did not document meetings, as she was not providing immigration advice. The meetings did concern money paid to the associate, but did not involve any client relationship. Ms Navarette-Scholes had no further obligations regarding documentation, due to the absence of a client relationship.
- [10.3] In relation to the alleged failure to take charge of payments, Mr Laurent said there was no reliable evidence any money was paid to the associate, and if there was the quantum was doubtful. Ms Navarette-Scholes was not responsible for failing to account for something that did not exist.
- [11] The complainants did not file a statement of reply, or respond to Ms Navarette-Scholes's Statement of Reply. She was not required to file a statement of reply if she accepted the contents of the Statement of Complaint. The complaint was originally on wider grounds, however the complainant has not sought to pursue grounds beyond those the Registrar considers may have support. Accordingly, the wider grounds will not be considered further.

## Discussion

### *The standard of proof*

- [12] 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 facts*

- [13] The Registrar provided a chronology and supporting documentation. Ms Navarette-Scholes has provided her account of matters.
- [14] The grounds of complaint in the Statement of Complaint limit the scope of the material facts. The Registrar has not alleged there are potential grounds for concluding Ms Navarette-Scholes failed to go through the process of client engagement, that she did not carry out instructions of a client, that she failed to account for client funds, or that she failed to return documents.
- [15] The scope of the Statement of Complaint is limited to clause 3 of the 2010 Code, which provides:
- “A licensed immigration adviser must maintain professional business practices relating to finances, records, documents, contracts and staff management...”
- [16] The provision goes on to include specific obligations.
- [17] The Statement of Complaint identifies four particular issues:
- [17.1] Retaining a visa application and supporting documents for some two and a half months.
- [17.2] Attending meetings and not documenting them.
- [17.3] Failing to confirm details of material discussions, and
- [17.4] Failing to take charge of payments made in respect of Ms Navarette-Scholes's services.
- [18] For reasons I will discuss, many of the facts Ms Navarette-Scholes relies on are neither contentious nor relevant to the Registrar's grounds of complaint. Ms Navarette-Scholes says money may not have been paid to the associate for her fees, documents were placed with her only for safe keeping, for good reasons she would not accept instructions. It is not necessary reject any of those claims.
- [19] The critical facts are not contentious:
- [19.1] Ms Navarette-Scholes accepts the associate and her travelled to Cambodia on a business trip.
- [19.2] She accepts the associate was not a licensed immigration adviser, but did undertake immigration work within the limits permitted, and was associated with the enterprise in which Ms Navarette-Scholes was a director.
- [19.3] She accepts the associate placed immigration documents in her office, and that she understood they were incomplete immigration documents, which were outside the area where the associate could provide services without a licence.
- [19.4] She also accepts that the complainant and the niece told her the associate had accepted money for Ms Navarette-Scholes's services, and they wanted Ms Navarette-Scholes to account for the money. She had meetings with them to discuss the issue.
- [19.5] Ms Navarette-Scholes accepts that, knowing of those matters, she did not treat the issues as involving professional responsibilities; she did not take any steps regarding

the documents, did not document the meetings and took no steps relating to the payments beyond discussing the matter.

*Ms Navarette-Scholes's responsibilities pursuant to clause 3 of the 2010 Code*

[20] Taking Ms Navarette-Scholes's account of events, I accept that down to 4 September 2012 she reasonably believed nothing more significant had occurred than she held immigration documents for safekeeping. The complainant contends Ms Navarette-Scholes did have information that required her to act on the obligation. However, little turns on the point and it is a matter where miscommunication was possible, particularly as some of the information Ms Navarette-Scholes had came from the associate.

[21] I accordingly proceed on the basis Ms Navarette-Scholes thought the documents were prepared by the applicant, properly, for his own immigration application, and that they were in her office only for safekeeping. That could have led to instructions being given, or not, at some later point. Accordingly, there was nothing of concern until 4 September 2012.

[22] The situation changed on 4 September 2012. Ms Navarette-Scholes says in her written statement:

“On 4 September 2012 [I] received [a] SMS message from [the niece] which stated that she paid money to [the associate] for the apparent purpose of handing payment's over to [me].”

[23] At that point Ms Navarette-Scholes knew she was dealing with an allegation that a person in her practice had received money intended as fees for Ms Navarette-Scholes's services. Ms Navarette-Scholes says she never received any money. Had she done so, she would have been obliged to bank the money as client funds, as clause 4 of the 2010 Code provides:

“A licensed immigration adviser must:

a) establish and maintain a separate clients' bank account for holding all clients' funds paid in advance for fees and/or disbursements;”

[24] Ms Navarette-Scholes says she does not know whether, and if so how, much money the associate held.

[25] Accordingly at this point:

[25.1] Ms Navarette-Scholes knew she had a complaint that a person in her practice had taken money paid as fees for Ms Navarette-Scholes.

[25.2] She had not personally received the money.

[25.3] She could readily ascertain the money was not in her client account, as it should have been if she had not provided services to earn the fees.

[26] Accordingly, Ms Navarette-Scholes had to address a complaint that a person she had presented as one of the personnel associated with her had potentially used the association with her to solicit funds, and was holding those funds without banking them into a client funds account. In short an extremely serious complaint of potential employee misconduct. Of course, there could have been innocent explanations; or explanations that did not involve any liability or responsibility on Ms Navarette-Scholes's part.

[27] Ms Navarette-Scholes says she does not know if her associate held the money or not.

[28] However, it was possible that the associate in Ms Navarette-Scholes's practice had used her position to solicit funds in the course of her work, and accordingly:

[28.1] Ms Navarette-Scholes was responsible for the associate's conduct, and

[28.2] Obligated to account for the funds as the licensee in her practice.

- [29] Ms Navarette-Scholes's duty to inquire into her associate's conduct did not turn on whether a client relationship existed. Indeed, the complaint was in essence that a person in her practice who Ms Navarette-Scholes was required to control had solicited funds without Ms Navarette-Scholes having established a client relationship.
- [30] Clause 3 of the 2010 Code required that Ms Navarette-Scholes "maintain professional business practices", and dealing with this complaint engaged that obligation.
- [31] When dealing with a potential personnel irregularity of this kind, there are no simple guidelines. However, the professional obligations outlined in the 2010 Code generally provide some guidance. Without suggesting that there was a single way of addressing the issues, obvious steps Ms Navarette-Scholes should have taken were:
- [31.1] Finding out what understanding the complainant and the niece had regarding the immigration application that Ms Navarette-Scholes had in her office. She had relied on what the associate said, but now she could not rely on that. Ms Navarette-Scholes ought to have been on inquiry that the complainant and the niece potentially understood she was under instructions to deal with the application. Ms Navarette-Scholes was obliged to put on record what the true position was. As a minimum, a written communication was appropriate.
- [31.2] Ms Navarette-Scholes, to her credit, did meet with the complainant and her aunt. Those meetings were critical meetings, dealing with a serious complaint. As a minimum, professional business practices relating to records required that Ms Navarette-Scholes confirm in writing what was discussed at those meetings. That had two purposes, first making a written record, which may have been required by the Immigration Advisers Authority, a lawyer or adviser for the complainants, or another party; second, written confirmation would have ensured that the complainant and the niece had a clear communication of Ms Navarette-Scholes's response and acknowledgement of their complaint.
- [31.3] Ms Navarette-Scholes had to take appropriate steps to find out what the true position was in relation to the funds the niece said she paid to the associate. It was entirely possible Ms Navarette-Scholes had an obligation for client funds, and she had to take responsibility for that possibility.
- [31.4] I accept Ms Navarette-Scholes's claim she terminated the associate's relationship with AISL; however, that also serves to suggest the complaint had some substance.
- [32] Ms Navarette-Scholes has not claimed she took any of those steps. Instead, she says she has no records, no professional obligations in relation to the services the associate allegedly promised to provide, or the fees allegedly solicited in her name, and did not see why she should be put to the expense of courier fees to return personal documents.
- [33] I am satisfied Ms Navarette-Scholes failed to deal professionally with the complainant and the niece; she breached clause 3 of the 2010 Code as:
- [33.1] She failed to maintain professional business practices relating to records, as she did not communicate in writing regarding her position in relation to their complaint.
- [33.2] She failed to maintain professional business practices in relation to finances and records, as she did not inquire into and document a response in writing to a complaint that potentially established her associate had solicited and misappropriated client funds, for which Ms Navarette-Scholes was responsible.
- [33.3] She failed to return the documents she held, when they were potentially in her possession because of her associate's promises. When Ms Navarette-Scholes received a request from the complainant's lawyer, she was already aware of the complaint. The lawyer identified reasons for urgency; and accordingly Ms Navarette-Scholes's failure to act promptly was a breach of her obligation to maintain professional business practices in relation to documents.

## Decision

- [34] The Tribunal upholds the complaint pursuant to section 50 of the Act; Ms Navarette-Scholes's breached clause 3 of the 2010 Code in the respects identified, and that is a ground for complaint pursuant to section 44(2) of the Act.
- [35] In other respects, the Tribunal dismisses the complaint.

## Submissions on Sanctions

- [36] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [37] The Authority and the complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs and compensation. Whether they do so or not, Ms Navarette-Scholes is entitled to make submissions and respond to any submissions from the other parties.
- [38] 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.
- [39] The Tribunal requests that the Registrar pursuant to section 49(4), to report on the extent to which Ms Navarette-Scholes has complied with previous orders the Tribunal has imposed in respect of sanctions, and the steps she has taken to enforce the orders.

## *Timetable*

- [40] The timetable for submissions will be as follows:
- [40.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision. The Registrar is requested to also report in that time, if practicable and if not indicate when she can do so.
- [40.2] 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.
- [40.3] 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.

**DATED** at Wellington this 29<sup>th</sup> day of April 2015

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**G D Pearson**  
Chair