

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

Decision No: [2015] NZIACDT 49

Reference No: IACDT 067/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

K Q L

Complainant

AND

Trevor John Conquer

Adviser

The name of the complainant and any information identifying him or his wife is not to be published.

**DECISION
(FOLLOWING REHEARING)**

REPRESENTATION:

Registrar: Mr M Denyer, Lawyer, MBIE, Auckland.

Complainant: In person

Adviser: Mr S Laurent, Laurent Law, Auckland.

Date Issued: 12 May 2015

DECISION

Introduction

- [1] The complainant was in New Zealand unlawfully and sought Mr Conquer's assistance to apply for a visa. He accepted the instructions, which changed after the initial phase.
- [2] The complainant says that when the instructions changed Mr Conquer failed to set out new terms in writing, including the new arrangements for fees. When responding to the complaint Mr Conquer provided information that suggested he had lodged a misleading and dishonest application with Immigration New Zealand. It appeared that he had knowingly used a bigamous marriage of convenience as the basis for his client's visa application, and told Immigration New Zealand the marriage was genuine.
- [3] The information that indicated Mr Conquer may have knowingly misrepresented the marriage came from a statement of Ms Sophia Turner (also known as Mary Wang). She is a licensed immigration adviser and she worked in the same practice as Mr Conquer.
- [4] The Registrar gave Mr Conquer notice of the allegation of dishonest or misleading behaviour based on Ms Turner's statement; he did not deny the allegation. The Tribunal upheld the complaint.
- [5] After the Tribunal issued its decision, Mr Conquer applied for a rehearing. He said he did not know about Ms Turner's statement, even though he supplied it to the Tribunal himself. The Tribunal gave Mr Conquer the opportunity to present his case for a rehearing. At that hearing, he accepted the grounds of complaint concerning not having a written agreement and proper disclosure of fees. He denied he had known of a marriage of convenience when he was dealing with Immigration New Zealand.
- [6] The Tribunal has had to decide whether there are grounds for a rehearing. Mr Conquer's application claimed he was unaware of what he submitted to the Tribunal and that he potentially had a defence to the complaint of dishonest and misleading behaviour.
- [7] The Tribunal has granted the application for a rehearing; and then considered Mr Conquer's defence to the allegation of dishonest or misleading conduct. To do so the Tribunal had to determine whether Ms Turner's statement, which it previously relied on, was truthful and what Mr Conquer knew of the statement and its contents at relevant times.
- [8] On the evidence before it, the Tribunal had two possible explanations; either of which excused Mr Conquer. The first was that Ms Turner's statement was true, she withheld information regarding the marriage of convenience from Mr Conquer and he made false, but innocent representations to Immigration New Zealand. Alternatively, Ms Turner fabricated the statement about the marriage of convenience to assist Mr Conquer respond to the complaint, and Mr Conquer did not know about it, until after the Tribunal's decision.
- [9] The Tribunal has accepted Mr Conquer's evidence that Ms Turner did not tell him of a marriage of convenience, and did not tell him of her statement when she drafted it.
- [10] Ms Turner claimed her statement did not convey the meaning it bears on its face, because she was confused. The Tribunal rejected that claim.
- [11] Accordingly, the Tribunal has upheld the complaint in relation to the grounds Mr Conquer admitted, but has otherwise rejected the complaint.
- [12] The Tribunal has recorded that the only information before it, which may be adverse to the complainant and his wife, are Ms Turner's unsubstantiated allegations, and it has found her to be an unreliable witness.

Procedural history

- [13] This matter was the subject of a statement of complaint, Mr Conquer and the complainant both replied. It was evident the Statement of Complaint was not satisfactory as the foundation for the Tribunal's hearing.

- [14] The Tribunal identified the difficulties and issued a direction that the Registrar file an amended statement of complaint so Mr Conquer was on notice of potential findings. Both he and the complainant would then have another opportunity to respond.
- [15] The Registrar undertook further investigation and filed an amended Statement of Complaint dated 27 February 2014. The parties were required to respond if they took issue with the contents of the Statement of Complaint; if not, then no response was required. They did not respond. The Tribunal issued a decision dated 31 March 2014, it upheld the complaint and found Mr Conquer failed to comply with the requirements for client engagement, and that he engaged in dishonest or misleading behaviour.
- [16] Mr Conquer applied for a rehearing. The Tribunal conducted an oral hearing where Mr Conquer presented his application for rehearing, and his response to the complaint.

The Complaint

- [17] The Registrar filed a statement of complaint, with supporting documents, that identified the factual background as being that:
- [17.1] Mr Conquer was a director of a company named NZ Harold Herbert International Communication Exchange Ltd (the company); he conducted his immigration practice through the company. He held 15% of the shares. The other director was Ms Turner and she held 85% of the shares.
- [17.2] The complainant is the husband of the person whose immigration affairs were in issue. His wife (the applicant) had been in New Zealand without a current visa.
- [17.3] The instructions to Mr Conquer were that the applicant sought to get a current visa, so she could apply for residence in New Zealand. She had married the complainant in 2009. The relevant time periods that provide further background to the complaint were:
- [17.3.1] The applicant's visa expired in 2007, and she had been in New Zealand since that time.
- [17.3.2] The complainant and the applicant married in 2009.
- [17.3.3] The complainant and the applicant approached Mr Conquer in June 2011.
- [17.4] On 14 June 2011, the applicant entered into an agreement. She and the company were parties and Mr Conquer was named as the licensed immigration adviser. The agreement related to immigration services relating to an application for "an Australian work visa, a NZ visitor visa and a NZ resident visa."
- [17.5] On 5 July 2011, Mr Conquer instead applied for a work visa in New Zealand. Immigration New Zealand declined the application on 20 October 2011, but approved a second request lodged on 11 November 2011.
- [17.6] On 18 November 2011, the applicant paid Mr Conquer \$3,500 for the successful application for a work visa and a further \$790 application fee for a residence visa.
- [18] The Statement of Complaint identifies the potential grounds for upholding the complaint, with particulars. The key elements and particulars being:
- [18.1] The complainant when originally lodging the complaint identified the potential grounds as incompetence, incapacity, and dishonest or misleading behaviour. However, the Registrar identified the following narrower grounds as arising from the facts after her investigation. The parties have not disputed the Registrar's formulation. The Tribunal is satisfied it is appropriate, and will deal with the complaint on that basis.
- [18.2] The first potential ground identified by the Registrar was a breach of clause 1.5 of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code) – obligations relating to written agreements. The particulars are:

- [18.2.1] The written agreement of 14 June 2011 related to an Australian work visa, New Zealand visitor visa and New Zealand resident visa.
- [18.2.2] There was a change of approach and instead, an application under section 61 of the Immigration Act 2009 for a New Zealand work visa was made.
- [18.2.3] The 2010 Code required Mr Conquer to either:
- [18.2.3.1] Enter into a new agreement setting out the different services (clause 1.5(b)) and have the applicant confirm her acceptance in writing (1.5(d)); or
 - [18.2.3.2] Record a change to the existing agreement and have that agreed in writing (1.5(e)).
- [18.2.4] Mr Conquer says he provided a copy of a new agreement; however, he acknowledged the applicant did not sign it. The complainant says the applicant never saw the new agreement.
- [18.2.5] Mr Conquer neither:
- [18.2.5.1] Entered into a new agreement which his client accepted in writing (clause 1.5(b) and (d)); nor
 - [18.2.5.2] Ensured he changed the existing agreement and recorded the change and the applicant's agreement in writing (clause 1.5(e)).
- [18.3] The second potential ground identified by the Registrar was a breach of clause 8 of the 2010 Code – obligations relating to fees. The particulars are:
- [18.3.1] After signing the initial agreement on 14 June 2011, there was a change of approach.
 - [18.3.2] Mr Conquer and the applicant may have discussed fees for the new approach, but the fees were not set out or agreed in writing.
 - [18.3.3] Mr Conquer and the complainant now dispute the fees.
 - [18.3.4] Clause 8 of the 2010 Code requires that the fees were to be set out in writing.
- [18.4] The third potential ground identified by the Registrar was that Mr Conquer engaged in dishonest or misleading behaviour:
- [18.4.1] Mr Conquer, when responding to the original Statement of Complaint, provided a document to the Tribunal. It was styled a "Witness's letter" and was written by Ms Turner, the fellow director and shareholder in Mr Conquer's practice.
 - [18.4.2] This letter stated that Ms Turner had been present during meetings between the applicant and Mr Conquer. The letter said that during these meetings the applicant had disclosed that:
 - [18.4.2.1] The applicant was using her marriage "purely for her residence".
 - [18.4.2.2] The marriage was bigamous, as she was still married to her first husband in another country.
 - [18.4.2.3] She was not planning to be with her New Zealand husband for long.
 - [18.4.3] However, Mr Conquer had been responsible for submitting an application to Immigration New Zealand that stated the applicant was in a "genuine and

stable partnership". The application was founded on that, and further, Mr Conquer wrote to Immigration New Zealand and said the complainant and the applicant:

"have been living in a loving and stable relationship.

...

This is a stable relationship of over three years ..."

[18.4.4] The information pointed to Mr Conquer engaging in dishonest or misleading conduct, as:

[18.4.4.1] Mr Conquer provided the document written by Ms Turner, and outlined in subparagraph [18.4.1] and [18.4.2] above, as a statement of truth, which would necessarily cause the Tribunal to believe he was aware the applicant's relationship was founded on a bigamous marriage and it was unstable.

[18.4.4.2] Whereas he had, with that knowledge, presented the application outlined in paragraph [18.4.3] above.

[18.4.4.3] It followed that either the application to Immigration New Zealand was not a true or honest representation of the circumstances as he knew them to be, or that the information provided to the Tribunal was false and known to be false.

[18.4.4.4] It followed Mr Conquer engaged in dishonest or misleading behaviour. That is a breach of Section 44(2)(d) of the Act and also breached clause 5.2 of the 2010 Code.

The case against Mr Conquer

[19] Mr Conquer admitted he did not comply with clauses 1.5 and 8 of the 2010 Code; accordingly, it is not necessary to review the issues relating to client engagement further.

[20] Mr Conquer himself provided the letter from Ms Turner outlining her account of a meeting between Mr Conquer and the applicant, which he apparently intended would demonstrate that his former client is of bad character. Ms Turner claimed the applicant was in a bigamous marriage of convenience to gain a visa. There are two obvious possibilities given the fact Mr Conquer provided this information to the Tribunal, either:

[20.1] It is a true narrative of what transpired between Mr Conquer and the applicant; or

[20.2] The claim was a fabricated denigration of the applicant and he knew that it does not accord with the information he held when dealing with Immigration New Zealand.

[21] If the narrative provided in Ms Turner's statement is true, it likely follows Mr Conquer dishonestly misled Immigration New Zealand; if fabricated, it is likely that he misled the Tribunal.

[22] In section Q of the relevant form the applicant was required to declare she had provided true and correct answers to Immigration New Zealand, one of which was that she and the complainant were living in "a genuine and stable relationship". In section S of the form the applicant certified the applicant "agreed that the information provided was correct".

[23] Mr Conquer wrote a letter to Immigration New Zealand in support of the application in which he said the applicant was in a "loving and stable relationship". Ms Turner's statement said Mr Conquer was present in a meeting when the applicant disclosed that she was living in an abusive relationship, entered a bigamous marriage, and she intended to leave the marriage as soon as it had served its purposes for gaining an immigration status.

- [24] If the above is true, it would follow that Mr Conquer engaged in dishonest and misleading behaviour (which is a ground for complaint under section 44(2)(d) of the Act), and knowingly provided false and misleading information to Immigration New Zealand when lodging the applicants application (in breach of clause 5.2 of the 2010 Code).

The application for a rehearing

- [25] Mr Conquer applied for a rehearing, it appears on the following grounds, though the application was in the form of a memorandum not an application setting out grounds:
- [25.1] Mr Conquer did not see the second Statement of Complaint and so did not respond to it;
- [25.2] He had an answer to the alleged dishonest and misleading behaviour ground of the complaint.
- [26] The surprising element in Mr Conquer contending he had an answer to the dishonest and misleading behaviour was that this ground was founded on his own response to the complaint (refer paragraph [18.4] above). Mr Conquer accepted he did supply the key documents namely:
- [26.1] A letter dated 26 September 2013 prepared by Ms Turner (refer paragraph [18.4.1] and [18.4.2]); and
- [26.2] A statement from the applicant in June 2011 that was potentially consistent with Ms Turner's account.
- [27] He accepted his representations to Immigration New Zealand were not consistent with the contents of those documents (refer paragraph [18.4.3]).
- [28] However, he impugned the documents he provided in response to the complaint. He said that when he made the representations to Immigration New Zealand in 2011 he believed the marriage was genuine. He said he was not aware of Ms Turner preparing the document signed by the applicant in June 2011. Of Ms Turner's letter of 26 September 2013, he said he was not aware that Ms Turner had inserted it into the documents he provided in response to the complaint. He said if he knew of the contents, he would have had Ms Turner rewrite the document.
- [29] Mr Conquer said he did understand that Ms Turner's letter of 26 September 2013 would be an adequate foundation for the Tribunal to conclude he had provided false or misleading information to Immigration New Zealand. However, he understood Ms Turner's letter did not correctly present its intended meant.

Discussion – rehearing

- [30] None of the parties challenged the jurisdiction for the Tribunal to grant the rehearing application, the Tribunal was not *functus officio*, as it had not determined penalty. Accordingly, the parties accepted that determining the application fell within the Tribunal's power to regulate its procedures under section 49 of the Act.
- [31] Each application for rehearing turns on its own circumstances, but largely involves balancing the important principle that there must be a point of finality in litigation, against achieving a just outcome.
- [32] I have had the advantage of hearing evidence from Mr Conquer and Ms Turner. For reasons I will discuss I found Ms Turner a wholly unsatisfactory witness. While Mr Conquer did not put the matter so frankly, in reality his application relies on Ms Turner interfering in the process for dealing with the complaint without his knowledge.
- [33] Mr Conquer says Ms Turner added material to his response without telling him, and she failed to pass on the Statement of Complaint. That claim invites some scepticism, given a licensed immigration adviser facing proceedings before the Tribunal should take a close interest in their response. However, what Mr Conquer supplied in the form of Ms Turner's statement of 26

September 2013 is so demonstrably against his interests, I accept his evidence. For the reasons I will discuss, I find:

- [33.1] The 26 September 2013 statement Ms Turner prepared was added to the documents without Mr Conquer's knowledge, and it contains a false allegation against the complainant, or
- [33.2] Ms Turner earlier withheld information from Mr Conquer about his client's circumstances, and he was not aware of the contents of the 26 September 2013 statement when he supplied it to the Tribunal.
- [34] Either possibility establishes the Tribunal should not rely on Ms Turner's statement of 26 September 2013 as a proper basis to find Mr Conquer engaged in dishonest or misleading conduct.
- [35] I find Mr Conquer is a victim of Ms Turner, the Tribunal relied on information she supplied without Mr Conquer's knowledge. The Tribunal cannot rely on the truth of Ms Turner's statement, and accordingly the finding that Mr Conquer engaged in dishonest and misleading conduct, relying on that document, must be set aside; and the issues determined on the evidence heard at this hearing.
- [36] Accordingly, the Tribunal's decision of 31 March 2014 is set aside, and the complaint is determined in this decision.

Discussion – dishonest or misleading behaviour

- [37] The allegation Mr Conquer engaged in dishonest or misleading conduct turns entirely on two documents Ms Turner created:
- [37.1] A statement purporting to be that of the applicant (signed June 2011), originally written in Mandarin, and
- [37.2] Ms Turner's letter of 26 September 2013.
- [38] The critical document is Ms Turner's letter, it is to the general effect that the complainant and the applicant have a bigamous marriage contrived to deceive Immigration New Zealand.
- [39] Mr Conquer says of the statement signed in June 2011 that he knew nothing of it. Similarly, he says he did not know of Ms Turner's letter of 26 September 2013. I accept Mr Conquer's evidence. However, I can only do so by finding, for the purposes of determining the complaint against Mr Conquer that Ms Turner behaved improperly. The existence, particularly of her statement of 26 September 2013, is irreconcilable with Mr Conquer dealing professionally and honestly with the applicant's application to Immigration New Zealand. If Mr Conquer was using Ms Turner as a translator, he should have been aware of the information contained in the two documents.
- [40] The June 2011 statement, which the applicant apparently signed, is ambiguous. It speaks of a family in her country of origin, and some sensitivity regarding the complainant not having met them. The English translation is awkward in its phrasing, and while one construction could be there was an extant marriage in Malaysia Ms Turner took the view it was ambiguous, as did the translator at the hearing. I draw no adverse inference from that document in relation to either Mr Conquer or Ms Turner. I take no more from it than the applicant had a family and former husband or partner in her country of origin, and a reader would not infer anything irregular.
- [41] The letter Ms Turner prepared and dated 26 September 2013 is quite different. She prepared the letter in response to this complaint. It unambiguously impugns the complainant and his wife. It leaves no room for any interpretation other than that Ms Turner believed that the applicant entered a bigamous marriage to gain a visa dishonestly. She said in this letter:

"It became clear [the applicant] was using her marriage ... purely for her residence. [The applicant] disclosed details we found disturbing. Such as that she is still married to her first husband ... She also stated the [the complainant] was

unemployed and always asked for money from her and was abusive. She said she did not mind as she would not be living with him for long.

She stated that she wished to hide this information from [the complainant]. This came to light when we suggested that she should move to [her country of origin with the complainant] and apply for Residency from there.

...

For our own protection we asked [the applicant] to sign a statement explaining why she did not take [Mr Conquer's] advice and move temporarily, with [the complainant], to [her country of origin].

- [42] The statement is unambiguous, it identifies the statement the applicant signed as the June 2011 statement, and attached a copy. Accordingly, the document established very clearly exactly when Ms Turner says she knew of the marriage of convenience.
- [43] In her evidence before the Tribunal, Ms Turner attempted to disclaim what her letter of 26 September 2013 says. The letter says the marriage of convenience "came to light", and that for "our own protection" she prepared the June 2011 statement. However, at the oral hearing where she gave evidence, she said the marriage of convenience only emerged in June 2012, when the complainant and his wife attended the premises where Mr Conquer and Ms Turner had their office.
- [44] The difference is crucial, Mr Conquer made the representations to Immigration New Zealand nearly a year earlier on 30 June 2011; if Ms Turner only became aware of the marriage of convenience in 2012, he made the representations innocently.
- [45] When questioned at the hearing Ms Turner claimed she had not expressed herself clearly.
- [46] However, Ms Turner is a licensed immigration adviser who is required to be able to read and communicate in English, deal with legislation and immigration instructions, and function at an advanced level in the English language. Her statement of 26 September 2013 is set out with a coherent chronological sequence. Her statement explicitly ties the June 2011 statement she says she prepared to the point in time when she became aware of the marriage of convenience. Ms Turner's 26 September 2013 letter is not confused. Ms Turner used clearly written English to impugn the complainant and the applicant; she precisely and deliberately constructed a sequence in relation to the key issue as to when she was first aware of the marriage of convenience.
- [47] I am in no doubt Ms Turner is an unreliable witness. I am satisfied she drafted the 26 September 2013 letter to denigrate the complainant and his wife, as she thought that would assist Mr Conquer. As to the truth of the contents of the document there are two apparent possibilities; either:
- [47.1] Ms Turner fabricated it in whole or in part; or
- [47.2] It is true, and when Mr Conquer represented to Immigration New Zealand the marriage was genuine, Ms Turner and/or Mr Conquer knew that was false.
- [48] Mr Conquer's defence relies on him not knowing of any irregularity down to the time he supplied the statement to the Tribunal on 2 October 2013.
- [49] I must accordingly find Mr Conquer, as he claims, had no knowledge of either the existence of Ms Turner's 26 September 2013 statement or the allegedly contrived marriage down to the time he read the Tribunal's decision upholding the complaint.
- [50] Mr Conquer's claim can only be true if Ms Turner either fabricated the statement and did not tell Mr Conquer or if the statement is true and she withheld information relating to the contrived marriage in June 2011.
- [51] Accordingly, I must either reject Mr Conquer's evidence, or find it is true either because:
- [51.1] Ms Turner acted deceptively by withholding information from Mr Conquer in 2011; or

[51.2] She deceptively crafted a false statement; and in either case

[51.3] She added her statement to Mr Conquer's response to this Tribunal without telling him.

[52] I do not need to prefer one or the other of those possibilities to accept Mr Conquer's evidence. It is sufficient that I find Mr Conquer's extraordinary claim that his response to the Tribunal included a statement from Ms Turner he was not aware of, and Ms Turner engaged in deception of either kind.

[53] I have considered Ms Turner's 26 September 2013 statement, Mr Conquer's evidence and Ms Turner's oral evidence, which relies on disregarding the clear expressions in her 26 September 2013 letter. I am satisfied that for the purposes of this complaint, and on the balance of probabilities, Mr Conquer was a victim of Ms Turner's deception. He was unaware of both the 26 September 2013 letter and the claim of a marriage of convenience until he saw the Tribunal's decision of 31 March 2014.

[54] Ms Turner's evidence that she did not intend her 26 September 2013 statement to mean what it clearly says was wholly unconvincing. I am also satisfied that Mr Conquer would have immediately identified the fact Ms Turner's statement clearly impugned him as dishonest, had he been aware of it.

[55] It follows, that I do not find Mr Conquer engaged in dishonest or misleading conduct.

The Complainant and his wife

[56] This complaint resulted in an unsubstantiated attack on the character of the complainant and his wife. The attack was wholly unacceptable, and relied solely on unsupported allegations of a witness I found to be unreliable, who deceptively put the allegations into the Tribunal's processes.

[57] The Tribunal wishes to acknowledge and thank the complainant and his wife for their dignified and respectful conduct at the hearing.

Decision

[58] The Tribunal grants Mr Conquer's application for a rehearing, and sets aside its decision of 31 March 2014 on this complaint.

[59] The Tribunal upholds the complaint in relation to the admitted breaches of clauses 1.5 and 8 of the 2010 Code, pursuant to section 50 of the Act.

[60] In other respects, the Tribunal dismisses the complaint.

Order restricting publication

[61] The Tribunal prohibits publication of any information that may identify the complainant or his wife.

[62] The Tribunal specifically records that the only information adverse to them is an unsubstantiated account from a witness the Tribunal has found to be wholly unreliable. They should not suffer the embarrassment of publication of their identity in these circumstances.

Submissions on Sanctions

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

[64] 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 Conquer is entitled to make submissions and respond to any submissions from the other parties.

[65] 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

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

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

[66.2] Mr Conquer 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.

[66.3] The Authority and the complainant may reply to any submissions made by Mr Conquer within 5 working days of him filing and serving those submissions.

DATED at WELLINGTON this 12th day of May 2015

G D Pearson
Chair