

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

Decision No: [2015] NZIACDT 5

Reference No: IACDT 010/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Tania Hayley Allen

Complainant

AND

Gregory Francisco Smith

Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: In person

Date Issued: 3 February 2015

DECISION

Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal. The grounds alleged in the Statement of Complaint are that the adviser breached elements of the Immigration Advisers Code of Conduct 2010 (the Code).
- [2] The grounds put forward in the Statement of Complaint are uncomplicated. Mr Smith as a licensed immigration adviser is required to have a written agreement for professional engagements, and also issue invoices. Each document must contain details of the relevant professional services. The complainant engaged Mr Smith and he failed to include details of the services he agreed to provide in the agreement, and the services to which the fees in the invoice relate.
- [3] Mr Smith has not responded to the complaint with an explanation explaining why the required information was missing from the documents.
- [4] The Tribunal has concluded it must uphold the complaint, as the material before it establishes Mr Smith did not have an agreement with the required information, and issued a non-complying invoice. There is no information before the Tribunal that justifies or excuses those deficiencies.

The complaint

- [5] The Registrar filed a statement of complaint, she put forward the following background as the basis for the complaint:
 - [5.1] On 29 January 2012 the complainant's husband entered into a written agreement with Mr Smith (the agreement). The agreement provided for Mr Smith to supply his professional services.
 - [5.2] The agreement did not specify the professional services Mr Smith was to provide; however it appears they related to arranging an offer of employment, and submitting an application for a visa. The visa application depended on the offer of employment meeting Immigration New Zealand's criteria.
 - [5.3] On 31 January 2012 Mr Smith invoiced the complainant for a fee of \$1,250 (the invoice), and on 3 February she paid \$1,223 of that fee.
 - [5.4] Mr Smith undertook some work, but did not advance matters to the point where it was possible to lodge a visa application. On 22 May 2012 the complainant and her husband terminated Mr Smith's professional engagement.
 - [5.5] Mr Smith has not refunded the fee he received.
- [6] The Registrar identified potential infringements of professional standards. The Licensed Immigration Advisers Code of Conduct 2010 (the Code of Conduct) has the status of a statutory regulation. Clause 1.5(b) is to the effect that for each professional engagement a licensed immigration adviser must have a written agreement containing a full description of the services they agree to provide for their client. Clause 8(e) provides each time a fee is payable the adviser must provide an invoice containing a full description of the services the invoice relates to. In relation to this engagement, Mr Smith:
 - [6.1] Failed to set out a description of the immigration services he was to provide in the agreement.
 - [6.2] The invoice also lacked details of the services to which the fee related.
 - [6.3] Mr Smith accordingly breached clauses 1.5(b) and 8(e) in those respects.

The responses

- [7] Mr Smith sought and was granted a series of adjournments to give him time to respond to the Statement of Complaint. The adjournments were granted on the basis the other parties did not object. After the fourth application, the complainant did object.
- [8] The Tribunal issued a minute indicating Mr Smith could either file a statement of reply, or lodge a formal application for a further adjournment by 30 January 2015. Mr Smith took no steps.
- [9] The complainants did not respond to the Statement of Complaint. 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

- [10] 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].

Evaluation of the material before the Tribunal

- [11] The Registrar provided a chronology, and supporting documentation. The parties have not disputed this record or added to it.
- [12] I am satisfied this material supports the grounds of complaint alleged.
- [13] It is clear beyond doubt that the documents the Registrar identified as the relevant agreement, and invoice do not contain the information relating to services required by clauses 1.5(b) and 8(e) of the Code of Conduct.
- [14] Mr Smith has had repeated opportunities to provide an explanation, and has wholly failed to explain the manifest deficiencies on the face of the documents. I am satisfied that the material before the Tribunal establishes Mr Smith failed to provide the information required in the documents; and the material does not establish circumstances that amount to justification or excuse for the failure.
- [15] Accordingly, I am satisfied Mr Smith breached both clauses 1.5(b) and 8(e) of the Code of Conduct in the manner set out in the Statement of Complaint.

Decision

- [16] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [17] The adviser breached the Code of Conduct in the respects identified.

Submissions on Sanctions

- [18] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [19] 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 Smith is entitled to make submissions and respond to any submissions from the other parties.
- [20] 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

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

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

[21.2] 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.

[21.3] 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 3rd day of February 2015

G D Pearson
Chair