

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

Decision No: [2015] NZIACDT 51

Reference No: IACDT 002/15

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**I T M**

Complainant

**AND**

**E T**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** In person.

**Complainant:** In person.

**Adviser:** In person

Date Issued: 13 May 2015

## DECISION

### Preliminary

- [1] This is a complaint regarding Mr T's professional engagement with the complainant. The key elements were that:
- [1.1] His written service agreement was not consistent with the fees he charged,
  - [1.2] He lodged an application for a visa and failed to assess the circumstances, and evidence in support of it, and
  - [1.3] He disclosed information to his client's employer.
- [2] Mr T provided affidavits in response, which challenged the factual foundation for the complaint.
- [3] The Tribunal issued directions, which gave the Registrar and the complainant the opportunity to answer Mr T's evidence, and to challenge his evidence by cross-examination of the witnesses who provided affidavits.
- [4] The Registrar did not seek to pursue those opportunities, and said the Tribunal should decide the complaint on the material currently before it. The complainant appeared to be outside New Zealand, and potentially had difficulties pursuing the complaint; he did not respond.
- [5] Accordingly, the Tribunal decided the complaint on the information before it. Mr T provided sworn testimony, which the other parties have not challenged. It provides an answer to the grounds of complaint.
- [6] Accordingly, the Tribunal has dismissed the complaint.

### Discussion

#### *The material before the Tribunal*

- [7] The Registrar filed a statement of complaint with supporting documentation. She expressed the view the material potentially supports the following grounds of complaint:
- [7.1] A written agreement, which states no fees are chargeable, whereas fees were paid, and not invoiced.
  - [7.2] Lodging an application for visas, which relied on a genuine relationship between the two applicants. The allegation against Mr T is that he failed to assess the applicants' circumstances and the evidence they could provide to prove the relationship.
  - [7.3] Mr T received an information request from Immigration New Zealand, and disclosed it to the complainant's employer without authority from the complainant.
- [8] Mr T filed a statement of reply, in short his response is:
- [8.1] The written agreement was correct, and no money was paid.
  - [8.2] The relationship was, at the time, genuine. Mr T had sufficient evidence of the relationship to rely on.
  - [8.3] Any disclosure of information to the employer was authorised.
- [9] Mr T supported his response with an affidavit from the employer, and a statutory declaration from the complainant's wife and her brother.
- [10] The complainant is located in India, and he filed a statement of reply. He supports the grounds of complaint.

#### *The Tribunal's direction*

- [11] The Tribunal issued a direction dated 10 April 2015. It identified that the resolution of the complaint would primarily turn on factual issues. It noted Mr T filed sworn evidence in support of his position. Further, that the complainant was not in New Zealand and likely faced significant obstacles to pursuing his complaint.
- [12] The direction noted it was likely the Registrar would have to determine what, if any, additional evidence the Tribunal should have when determining the complaint; given the complainant's circumstances.
- [13] The Tribunal invited the parties to review the material before the Tribunal, and consider whether to apply to cross-examine Mr T's witnesses, answer the evidence with sworn evidence, and apply for an oral hearing if appropriate.
- [14] The Registrar indicated she was satisfied it is appropriate to determine the complaint on the material now before the Tribunal. The complainant did not respond to the direction.

*The complaint is dismissed*

- [15] The grounds of complaint are set out in paragraph [7] above, and a summary of the evidence in reply at paragraph [8]. The affidavit evidence supports the reply. Accordingly:
- [15.1] The first ground of complaint is that Mr T had a written agreement, which states no fees are chargeable, whereas fees were paid, and not invoiced. The unchallenged sworn evidence is that no fees were paid. Accordingly, the Tribunal must dismiss this ground of complaint on the evidence before it.
- [15.2] The second ground of complaint is that Mr T lodged an application for visas, which relied on a genuine relationship between the two applicants. The complaint is Mr T failed to assess the applicants' circumstances and the evidence to prove the relationship. The unchallenged sworn evidence is that at the material time, the relationship was genuine, and they had evidence to support the position. Accordingly, the Tribunal must dismiss this ground on the evidence before it.
- [15.3] The third ground of complaint is that Mr T received an information request from Immigration New Zealand, and disclosed it to the complainant's employer without authority from the complainant. The unchallenged sworn evidence is that Mr T did have authority to disclose the information to the employer. It follows the Tribunal must also dismiss this ground of complaint on the evidence before it.

**Decision**

- [16] The Tribunal dismisses the complaint.

**DATED** at Wellington this 13<sup>th</sup> day of May 2015

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**G D Pearson**  
Chair