

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

Decision No: [2015] NZIACDT 65

Reference No: IACDT 003/15

IN THE MATTER

of an appeal under s 54 of the
Immigration Advisers Licensing Act 2007

AGAINST

A decision of **The Registrar of
Immigration Advisers**

BY

Samandeep Singh

Appellant

DECISION

REPRESENTATION:

Registrar: Mr M Denyer, Ministry of Business, Innovation and Employment, Auckland.

Appellant: In person.

Date Issued: 27 May 2015

DECISION

Introduction

- [1] This is an appeal against the Registrar's decision not to refer a complaint to the Tribunal, on the basis that it disclosed only trivial or inconsequential matters. The Registrar made this decision, as it appeared that Mr Singh had not supported his complaint of serious misconduct with facts. Furthermore, that the licensed immigration adviser (the adviser) subject to the complaint had provided an explanation, which indicated he had complied with his professional responsibilities.
- [2] The appellant had the opportunity of providing evidence to support his complaint; he has instead reiterated assertions and allegations.
- [3] The Tribunal has to decide whether the material now before it is sufficient to conclude the complaint should be referred to the Tribunal.
- [4] The Tribunal has rejected the appeal, as the complaint has the appearance of exaggeration and the adviser provided a sensible explanation of what occurred, which was consistent with the adviser meeting professional standards. The complaint does not justify further investigation, or determination.

The grounds of appeal

- [5] This is an appeal under section 54 of the Immigration Advisers Licensing Act 2007, against a decision of the Registrar not to pursue a complaint.
- [6] The Registrar decided Mr Singh's complaint disclosed only a trivial and inconsequential matter, which she should not pursue. She applied section 45(1)(c).
- [7] Mr Singh appeals and says the Registrar ignored important evidence, and his complaint is not trivial. He says the adviser manipulated him, lied to him, and exploited him. He says he was vulnerable, and that aggravates the situation.

The decision appealed against

- [8] The Registrar provided an affidavit and submissions setting out the process she used to evaluate the complaint, which is subject to this appeal, and the information she considered.
- [9] The Registrar received Mr Singh's complaint. The allegations were:
 - [9.1] Negligence,
 - [9.2] Dishonest and misleading behaviour,
 - [9.3] Incapacity,
 - [9.4] Not carrying out lawful informed instructions,
 - [9.5] Failure to submit an appeal in time.
 - [9.6] Not referring the instructions when not available to carry them out.
- [10] The Registrar satisfied herself each of the grounds apparently lacked substance. She did so after making inquiries, and obtained a detailed response to the complaint.
- [11] In essence, Mr Singh's complaint arises as he says he wanted the adviser to lodge an appeal after receiving a Deportation Liability Notice. However, the adviser said he did not consider there were grounds for an appeal, and he made reasonable and appropriate inquiries to investigate Mr Singh's immigration options.
- [12] When she makes a decision under section 45, the Registrar is deciding whether she should commence the process of referring the complaint to the Tribunal. Should she decide to refer

the complaint to the Tribunal, then the Act contemplates the potential for further investigation (section 47 and 48).

- [13] Statutory investigators in roles of this kind are required to exercise their judgement as to whether they pursue a particular matter. This type of role is discussed in *Brierley Investments Ltd v Bouzaid* [1993] 3 NZLR 655 by the Court of Appeal. That case concerned the Commissioner of Inland Revenue, but makes the relevant observation an official in this position must take account of resources and selectively make decisions on what matters to pursue.
- [14] The Registrar was not required to undertake an exhaustive examination of any potential evidence. She reached the view Mr Singh's complaint lacked substance; she was satisfied with the explanations the adviser provided.
- [15] In the course of making inquiries, the Registrar did ascertain there was questionable compliance with an aspect of record keeping. However, she regarded that matter, which was not part of the original complaint, was trivial and inconsequential.

Mr Singh's response

- [16] Mr Singh provided submissions in support of the appeal; they contain assertions of fact, but lack evidence.

Discussion

The issue

- [17] Mr Singh's complaint failed, as the Registrar does not consider evidence will support the complaint if she refers it to the Tribunal. She considers she has taken the matter far enough to make that determination.
- [18] Mr Singh has had the opportunity to provide facts or reasoning to show the Registrar is wrong in her view.
- [19] Section 54 requires the Tribunal to reject the appeal, determine it should hear the appeal, or set in place a process to determine the matter under the adviser's complaints procedure.
- [20] The Tribunal should evaluate the decision in the same manner as the Registrar, but with the advantage of any material supporting the appeal and on a *de novo* basis.

My view of the complaint

- [21] Mr Singh has not supported his complaint with evidence; however, that is not the end of the matter. The complaint also has an appearance of exaggeration and unreliability; however, that may reflect a lack of understanding of immigration issues.
- [22] I consider it was appropriate for the Registrar to make an inquiry of the adviser, and gain a better understanding of the circumstances. He provided an explanation that is consistent with him acting properly and professionally. There is nothing to suggest Mr Singh's extravagant claims have substance or warrant any further investigation; at no point has there been evidence to support them.
- [23] Accordingly, I consider the Registrar reached the correct view on the material she considered. My reconsideration of that material, together with the material filed in the appeal leads to the same view. I do not consider the Tribunal should hear the complaint; it does not disclose statutory grounds for complaint.
- [24] I note the Registrar identified a potential irregularity with record keeping; it was both trivial and not part of the complaint. Were it before the Tribunal a likely outcome would be that it failed to reach the threshold for an adverse disciplinary finding. There is no justification for referring that matter to the Tribunal.
- [25] I am satisfied I must reject the appeal.

Decision

[26] The Tribunal rejects the appeal.

DATED at Wellington this 27th day of May 2015

G D Pearson
Chair