

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

Decision No: [2015] NZIACDT 71

Reference No: IACDT 005/15

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Karan Jhanji

Complainant

AND

Mayank Kumar

Adviser

DECISION

REPRESENTATION:

Registrar: In person.

Complainant: In person.

Adviser: In person.

Date Issued: 3 June 2015

DECISION

Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal. The facts on which the complaint is based are that Mr Kumar agreed to provide immigration services, and he:
- [1.1] Created a false agreement where the fees are only \$100, required his client to pay \$4,500, and provided a falsified invoice for \$100.
 - [1.2] He dishonestly attempted to take \$4,400 from his client, by pretending he had only paid \$100, and not the \$4,500 in fact paid; he also falsified an acknowledgement the fee was in fact \$100.
 - [1.3] Mr Kumar dishonestly attempted to mislead the Registrar by providing only part of his file when she made inquiries regarding this complaint.
 - [1.4] Mr Kumar then repaid the \$4,400 and lied to the Registrar about doing so.
- [2] Aside from the dishonesty, the complaint includes that Mr Kumar was unprofessional, failed to provide a refund and did not document his fees properly.
- [3] Mr Kumar did not file a response to the allegations. The Tribunal upheld the complaint.

The complaint

- [4] The Registrar's Statement of Complaint put forward the following background as the basis for the complaint:
- [4.1] On 29 July 2013, the complainant engaged Mr Kumar to assist him with an application for a residence visa. The agreement provided for a fee of \$100 + GST, and for the complainant to pay Immigration New Zealand's fees. An invoice was issued for \$100. However, the complainant said he paid \$4,500 in cash for the services, and did not receive a receipt for that amount.
 - [4.2] On 31 July 2013, the complainant terminated Mr Kumar's engagement, and sought a refund. Mr Kumar forced him to sign an acknowledgement the fee was \$100, swore at him, pushed him, and refused to pay the refund of the true amount of the fees (he paid \$100).
 - [4.3] On 15 May 2014, the Registrar required Mr Kumar to provide a full copy of his file; the Registrar required the information to investigate this complaint. Mr Kumar provided documents he claimed were his file, and was no reference to the \$4,500 or other material correspondence relating to the true fee.
 - [4.4] On 27 June 2014 the Registrar queried apparent discrepancies in the file Mr Kumar provided to her; he forwarded further information that did include references to the true fee and the cash payment. Mr Kumar subsequently refunded a further \$4,400 to the complainant; but later denied doing so.
- [5] The Registrar identified potential infringement of professional standards during the course of Mr Kumar's engagement, the allegations were that potentially:
- [5.1] Mr Kumar engaged in dishonest or misleading behaviour, which is a ground for complaint under section 44(2) of the Immigration Advisers Licensing Act 2007 (the Act). The circumstances were:
 - [5.1.1] The written agreement dishonestly said the fee was \$100, when it was in fact \$4,500 (subject to GST and disbursements).
 - [5.1.2] Mr Kumar withheld documents from the Registrar in an attempt to mislead her regarding the true fee, and his failure to refund the true amount.

- [5.2] Mr Kumar breached clauses 1.5(e) and 3(c) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). The provisions required him to agree and record in writing changes to the terms of an agreement, and any increase in fees. The circumstances were:
- [5.2.1] The written agreement provided for fees of \$100, and Mr Kumar then demanded a fee of \$4,500.
 - [5.2.2] Mr Kumar did not obtain agreement in writing for the increase.
 - [5.2.3] He accordingly breached his obligations in clauses 1.5(e) and 3(c) of the 2010 Code.
- [5.3] Mr Kumar breached clause 1.1(a) of the 2010 Code. The provisions required him to perform his services with respect and professionalism. The circumstances were:
- [5.3.1] When the complainant came to retrieve his documents and discuss a refund, Mr Kumar swore at him, pushed him, and refused to provide a refund.
 - [5.3.2] His conduct was unprofessional, in breach of clause 1.1(a) of the 2010 Code.
- [5.4] Mr Kumar breached clause 3(d) of the 2010 Code. The provision required him to provide any refunds payable on ceasing a contract for services. The circumstances were:
- [5.4.1] Mr Kumar refunded \$100, not the full amount of fees he should have refunded. He later refunded the balance, but denied doing so.
 - [5.4.2] Mr Kumar breached his duty to refund fees, when he initially refunded only \$100 of the \$4,500 due.

The responses

- [6] The complainant did not file a statement of reply, and was not required to do so if he agreed with the contents of the Statement of Complaint.
- [7] Mr Kumar did not file a statement of reply, and he was not required to do so if he accepted the Statement of Complaint accurately set out the material information.

Discussion

The standard of proof

- [8] 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

- [9] The Registrar provided a chronology and supporting documentation; and Mr Kumar has not challenged the information.

Dishonest and misleading conduct

- [10] Mr Kumar faced a complaint of gross and systematic dishonesty in his dealings with the complainant, and then the Registrar when she investigated this complaint. The allegations are that he:
- [10.1] Created a false agreement where the fees are only \$100.
 - [10.2] He required his client to pay \$4,500, and provided a falsified invoice for \$100.

- [10.3] He attempted to dishonestly take \$4,400 from his client, effecting a pretence he had only paid \$100, and not the \$4,500 in fact paid. He relied on his falsified agreement and invoice; and created a further falsified document namely an acknowledgement the fee was in fact \$100.
- [10.4] Next Mr Kumar dishonestly attempted to mislead the Registrar by providing only part of his file when required under the Registrar's statutory powers to provide the whole file. He removed materials that referenced the true fee from the file he supplied to the Registrar.
- [10.5] Mr Kumar then repaid the \$4,400 and lied about doing so.
- [11] Mr Kumar has not challenged the allegations; they are consistent with and supported by the material before the Tribunal. I am satisfied Mr Kumar engaged in systematic dishonesty and attempted to mislead the Registrar. Accordingly, the Tribunal must uphold the complaint on the grounds Mr Kumar engaged in dishonest and misleading behaviour, and they are grounds for complaint pursuant to section 44(2)(d) of the Act.

Mr Kumar's failure to obtain agreement to an increase in fees

- [12] Mr Kumar failed to record the changes to the agreement, and increase in fees. Clauses 1.5(e) and 3(c) of the 2010 Code requires agreement in writing to changes to the agreement, and any material increase in fees. The increase of \$4,400 (subject to GST and disbursements) was material, and the written agreement was inconsistent with Mr Kumar's demand for fees of \$4,500. Accordingly, Mr Kumar breached both clauses 1.5(e) and 3(c) of the 2010 Code.

Unprofessional conduct

- [13] Clause 1.1(a) of the 2010 Code required Mr Kumar to perform his services with respect and professionalism. Instead, when the complainant came to retrieve his documents and discuss a refund, Mr Kumar swore at him, pushed him, and refused to provide a refund. He accordingly breached that provision in the Code.

Mr Kumar did not refund fees

- [14] Mr Kumar was obliged to refund the fees in full; he was not entitled to take the fees. The 2010 Code requires that all matters relating to fees must be documented. Mr Kumar engaged in a fraudulent scheme to take fees, and hide the cash payment he received. He received the money as fees, and as he had no right to take the fees clause 3(d) of the 2010 Code required that he refund the fees when the complainant properly terminated his professional engagement. The professional engagement was founded on Mr Kumar's dishonesty. Accordingly, Mr Kumar breached his obligation to pay the refund under clause 3(d) of the 2010 Code.

Decision

- [15] The Tribunal upholds the complaint pursuant to section 50 of the Act; Mr Kumar engaged in dishonest and misleading behaviour, and breached the 2010 Code in the respects identified they are grounds for complaint pursuant to section 44(2) of the Act.
- [16] In other respects, the Tribunal dismisses the complaint.

Submissions on Sanctions

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

[19] 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

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

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

[20.2] 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.

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

DATED at Wellington this 3rd day of June 2015.

G D Pearson
Chair