

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

Decision No: [2016] NZIACDT 19

Reference No: IACDT 023/15

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**R H**

Complainant

**AND**

**L J**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** Ms A Skadiang and Ms F Mohammed, lawyers, MBIE, Auckland.

**Complainant:** No appearance.

**Adviser:** Mr Moses, Barrister, Auckland.

Date Issued: 4 April 2016

## DECISION

### Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal. The key elements of the complaint are:
  - [1.1] Mr J fraudulently constructed a pretence to allow the complainant and her husband to gain residence visas through forged documentation and lies;
  - [1.2] He took \$30,000, in cash, to construct and implement the fraud.
- [2] Mr J gave evidence to the Tribunal that the complaint is itself fraudulent, and he has never had any contact whatsoever with the complainant.
- [3] The Tribunal convened a hearing. The complainant neither provided evidence nor attended the hearing. The Registrar did not challenge Mr J's response, and accepted it.
- [4] Accordingly, the Tribunal dismissed the complaint.

### The complaint

- [5] The Registrar's Statement of Complaint put forward the following background as the basis for the complaint:
  - [5.1] In February 2012, the complainant received a graduate job search visa. In October of that year, she engaged Mr J to gain a visa so she could remain in New Zealand indefinitely.
  - [5.2] Mr J told the complainant he had a job offer. The complainant paid \$12,000 in cash to Mr J. On 18 October 2012, Immigration New Zealand received a work visa application.
  - [5.3] The application was successful, Mr J assisted with lodging an expression of interest, and on 11 March 2013, Mr J lodged an application for residence visas under the skilled migrant category.
  - [5.4] Mr J had an ongoing series of interactions relating to the complainant's employment, and various immigration processes.
  - [5.5] When investigating the residence visa application Immigration New Zealand asked for documents, which the complainant forwarded to Mr J. On 25 July 2013, an Immigration New Zealand case officer visited the complainant's work place and found the claimed employer was not trading at the address.
  - [5.6] On 14 August 2013, the complainant withdrew her application and told Immigration New Zealand she was the "victim of a scam".
  - [5.7] The complainant paid Mr J \$30,000, and he has since refunded \$5,000.
- [6] The Registrar identified potential infringements of professional standards, the allegations were that potentially:
  - [6.1] Mr J breached clauses 1.5(a), (b) and (d) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). The provisions required him to undertake a client engagement process mandated by the Code. The circumstances were:
    - [6.1.1] The Code mandates a written agreement for immigration services, and other documentation.
    - [6.1.2] Mr J did not complete any documentation.
  - [6.2] Mr J engaged in dishonest or misleading behaviour, which is a ground for complaint under section 44 of the Act. The circumstances were:

- [6.2.1] Mr J created a fraudulent pretence that the complainant had employment, and constructed dishonest answers for her to provide to Immigration New Zealand.
- [6.2.2] Mr J as a licensed immigration adviser and assisted the complainant in an immigration fraud.
- [6.3] Mr J breached clause 8 of the 2010 Code, which required him to set fair and reasonable fees, and document the fees and payment process. The circumstances were:
- [6.3.1] Mr J received \$30,000 in cash.
- [6.3.2] The amount was excessive.
- [6.3.3] He did not document the fees, and did not issue invoices.
- [6.4] Mr J breached clause 3(c) and 26(e) of the 2014 Code, which required him to act in accordance with immigration legislation, and maintain a client file. The circumstances were:
- [6.4.1] The Registrar requested a copy of Mr J's file.
- [6.4.2] He denied he had a file, as he did not represent the complainant.
- [6.4.3] He was required to keep and produce a client file.

### **The responses**

- [7] The complainant filed a statement of reply, and generally agreed with the contents of the Statement of Complaint. She requested that the Tribunal convene an oral hearing.
- [8] Mr J filed an affidavit answering the complaint. He said:
- [8.1] He entirely rejects the allegations against him.
- [8.2] He has never had any contact with the complainant at any time, has no recall of ever meeting her, and did not represent or advise her in any matter immigration or otherwise.
- [8.3] He does not know why the complainant made these false allegations, but surmises he must be the victim of the complainant attempting to blame someone else for their own predicament.
- [9] In short, Mr J's evidence in his affidavit was that the complaint is false and dishonest and without any foundation.

### **Procedure**

- [10] The Tribunal's default position is to hear complaints on the papers<sup>1</sup>. However, in cases such as this, where credibility is in issue the Tribunal will conduct an oral hearing exercising its inquisitorial powers under section 49(4) and, where necessary, the powers in the Schedule of the Act to require the attendance of witnesses and take evidence on oath.
- [11] This complaint against Mr J is one of the most serious lodged by the Registrar. It involved an allegation Mr J was a party to systematic immigration fraud, and did so for a substantial financial gain.
- [12] Mr J's response was a direct challenge to the complainant's credibility. He alleged the complainant constructed a fraudulent complaint.

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<sup>1</sup> Section 49 of the Act

- [13] Depending on the credibility of the polarised accounts, the outcome would be the Tribunal would accept Mr J's claim he was the victim of a false complaint, or make very grave findings against Mr J. That decision turned entirely on the evidence of the parties. Accordingly, the Tribunal indicated to the parties it would hold an oral hearing, and set a timetable for the complainant, the Registrar and Mr J to file briefs of evidence.
- [14] The complainant did not provide a brief of evidence, and she did not attend the hearing.
- [15] Mr J provided his affidavit, which was his evidence in chief. He attended the hearing and he was available for cross-examination.

## **Discussion**

### *The standard of proof*

- [16] As noted, the Tribunal determines facts on the balance of probabilities.

### *The facts*

- [17] The complaint turns on the facts.
- [18] The Registrar attended the hearing through her counsel. She did not cross-examine Mr J.
- [19] The Registrar, through her counsel, accepted the evidence before this Tribunal must result in the Tribunal dismissing the complaint.
- [20] Accordingly, I am in the position where I must determine this complaint on Mr J's unchallenged evidence. His evidence is that the complaint is a dishonest and false allegation in its entirety. For Mr J, Mr Moses submitted the Tribunal ought not to speculate, and simply accept there may be motivations for false complaints.
- [21] Mr J has direct knowledge of the matters to which he deposed, his is the only sworn evidence, and neither the complainant nor the Registrar has challenged the evidence. Accordingly, the Tribunal must accept Mr J's evidence.
- [22] Mr J says he had no contact of any kind with the complainant, so had no relationship that could lead to him having any professional duties or obligations at all; he says he knows nothing of the complainant.
- [23] That is a complete answer to the complaint. I accordingly dismiss the complaint in respect of all of the grounds.

### *Observation*

- [24] It is surprising to deal with a complaint turning on credibility where there is no challenge to the evidence of the adviser that the complaint is dishonest and entirely fabricated, with no explanation at all. I am mindful of two things:
- [24.1] First Mr Moses' submission the Tribunal should not speculate regarding complaints as there can be wrongful motives for false complaints.
- [24.2] Second, the Tribunal has exercised its inquisitorial functions under section 49 of the Immigration Advisers Licensing Act 2007, by requiring Mr J to appear, and address any opposing evidence and cross-examination from the Registrar and the complainant. The Registrar has responsibility for protecting the public interest in the complaints process, investigating complaints, and ensuring the Tribunal has any material information to make decisions.
- [25] The Tribunal has unchallenged evidence given on oath; it is obliged to accept that evidence, it cannot reject it as unbelievable without justification and reasons. The Registrar neither laid a foundation for such a submission through cross-examination, nor made such a submission. On the contrary, through her counsel, she accepted Mr J's explanation, and his evidence.

[26] Mr Moses correctly submitted that the Tribunal must not speculate and go beyond the evidence before it. The parties may be aware of matters they do not, and should not, disclose to the Tribunal. The Registrar protects the public interest in that regard.

[27] Accordingly, the Tribunal accepts Mr J's evidence after weighing those considerations.

**Decision**

[28] The Tribunal dismisses the complaint pursuant to section 50 of the Act.

**DATED** at Wellington this 4<sup>th</sup> day of April 2016

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**G D Pearson**  
Chair