BEFORE THE IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2016] NZIACDT 36

Reference No: IACDT 049/14

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**The Registrar of Immigration Advisers** Registrar
BETWEEN	**Parminder Gill** Complainant
AND	**Daljit Singh** Adviser

DECISION

REPRESENTATION:

Registrar: Ms Carr, lawyer, MBIE, Auckland.

Complainant: Ms K Lakshman, lawyer, Idesi Legal Ltd, Wellington.

Adviser: Ms R Worner, lawyer, Queen City Law, Auckland.

Date Issued: 30 June 2016

DECISION

Introduction

[1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal. The facts alleged in support of the complaint are, in outline:

[1.1] Mr Singh is a licensed immigration adviser. He assisted the complainant to obtain a work visa for a position of employment and later, with the process to seek a residence visa.

[1.2] Through the employer, Mr Singh arranged for the complainant to pay fees of $16,000 but documented his arrangements as though he worked without charging fees. The complainant's family paid most of the fees in India, though the employment was in New Zealand.

[1.3] Mr Singh failed to maintain basic standards of documentation.

[2] Mr Singh disputes the factual allegations and contends he complied with his professional obligations. The most significant aspect of the complaint turns on whether the complainant fabricated the complaint or whether Mr Singh conspired with the employer to solicit fees, which he did not disclose. The Tribunal must decide what probably happened.

[3] In respect of the record keeping, the issues are determined by examining the record Mr Singh was required to maintain.

[4] The Tribunal has upheld the complaint.

The complaint

[5] The Registrar's statement of complaint put forward the following background:

[5.1] The complainant received an offer of employment as an assistant manager in a restaurant. He engaged Mr Singh to submit a work visa application in February 2012. They entered into a written agreement, which states that there was no service fee but that the complainant was responsible for fees and disbursements, including Immigration New Zealand fees.

[5.2] On 21 February 2012, Mr Singh submitted the work visa application. Immigration New Zealand granted it on 27 February 2012 and allowed the complainant to work in the position offered to him.

[5.3] In May or June 2012, the complainant engaged Mr Singh to submit an expression of interest (EOI)[1], which he did on 10 July 2012. The process is an initial selection system which potentially leads to an application for a residence visa. There was no written agreement relating to this service at the time.

[5.4] The complainant became the manager of the restaurant but did not tell Mr Singh of the promotion. The EOI led to an invitation to apply for a residence visa and on 8 November 2012, the complainant and Mr Singh entered into a written agreement for that service. The agreement says there were no service fees, however, the complainant paid fees to Mr Singh. On 9 November 2012, Mr Singh lodged a residence application for the complainant with Immigration New Zealand.

[5.5] Immigration New Zealand undertook verification while processing the residence application. They discovered that the complainant was working as the manager of the restaurant, in breach of his visa conditions since July 2012. Mr Singh prepared an application to vary the complainant's work visa to allow him to be the manager of the restaurant and submitted it to Immigration New Zealand on 19 April 2013. Mr Singh did not enter into a written agreement for that service.

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[1] A preliminary step towards a residence visa.

[5.6] The complainant's residence visa application failed as his employment was not financially sustainable.

[5.7] In July 2014, the Immigration Advisers Authority obtained Mr Singh's client file under its powers of inspection. The file did not contain written correspondence with the complainant, apart from an email saying why Immigration New Zealand declined his residence application. Later, Mr Singh provided file notes not held on his client file, they did not record the details of material discussions with the complainant regarding immigration advice.

[6] The Registrar identified potential breaches of professional standards during the course of Mr Singh's engagement. The allegations were that potentially:

Written agreement

[6.1] Mr Singh breached clause 1.5(a), (b), (d), 3 and 8(d) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code).

[6.2] Those clauses require that a licensed immigration adviser:

[6.2.1] Ensure, before any agreement for providing professional services is entered into, that their clients are made aware, in writing and in plain language, of the terms of the agreement and all significant matters relating to it.

[6.2.2] Have an agreement that contains a full description of the services to be provided.

[6.2.3] Have clients confirm in writing they accept the terms of the agreement.

[6.2.4] Maintain professional business practices in relation to contracts.

[6.2.5] Ensure fees and disbursements, and payment terms and conditions are provided to clients in writing prior to the signing of any written agreement.

[6.3] Mr Singh failed to comply, first in relation to his instructions concerning the EOI, as:

[6.3.1] He received instructions to prepare the EOI about May or June 2012 and submitted it on 10 July 2012. He then submitted an application for residence on 9 November 2012.

[6.3.2] Mr Singh first had an agreement relating to those services on 8 November 2012.

[6.3.3] Accordingly, Mr Singh entered the written agreement some 4 months after submitting the EOI, and a day prior to submitting the residence application. He had performed the majority of the services before entering the agreement, thereby breaching clauses 1.5(b) and 3 of the 2010 Code.

[6.4] Mr Singh also failed to comply in relation to his instructions concerning the variation of the complainant's work visa in April 2013, as:

[6.4.1] Mr Singh submitted the application to vary the conditions in April 2013 without a written agreement to do so.

[6.4.2] Mr Singh potentially breached clauses 1.5(a), (b), (d) and 8(d) as he did not have a written agreement relating to this work.

Fees

[6.5] Mr Singh breached clauses 1.5(e) 8(d) and (e) of the 2010 Code. Those clauses require that a licensed immigration adviser:

[6.5.1] must ensure changes to the terms of agreements are recorded and agreed in writing;

[6.5.2] before commencing work incurring costs, set out the fees and disbursements to be charged;

[6.5.3] set out the payment terms and conditions; and

[6.5.4] issue invoices containing a full description of the services each time a fee is payable.

[6.6] Mr Singh failed to comply for the following reasons:

[6.6.1] His written agreements provide there was no fee for his services, and the complainant paid fees for the work (mainly through his family in India), EOI and residence applications.

[6.6.2] If there was a change relating to fees after the relevant agreements took effect, then clause 1.5(e) and 8(d) required documentation of the change, and clause 8(e) required invoices to issue when fees were payable.

[6.6.3] Mr Singh breached clauses 1.5(e) and 8(d) as he did not document the change to having a fee rather than no fee. He breached clause 8(e) by failing to issue invoices.

Records

[6.1] Mr Singh breached clauses 3(a) and 3(f) of the 2010 Code. Those clauses require that a licensed immigration adviser:

[6.1.1] confirm in writing to clients when applications are lodged, and provide timely updates; and

[6.1.2] confirm in writing the details of material discussions with clients.

[6.2] Mr Singh failed to comply for the following reasons:

[6.2.1] He did not have written communications with the complainant, except for one brief email explaining why Immigration New Zealand declined his client's residence application.

[6.2.2] Mr Singh did not confirm oral immigration advice in writing.

[6.2.3] Mr Singh did not keep a record of material discussions with his client.

[6.2.4] Mr Singh breached clause 3(a) as he did not confirm in writing when applications were lodged. He breached clause 3(f) by not confirming the details of discussions in writing.

[7] The grounds of complaint were wider; the complainant has not filed a statement of reply seeking to pursue the wider grounds of complaint. Accordingly, the Tribunal will only consider the grounds the Registrar considered to have potential support.

The responses

[8] While the Tribunal usually hears complaints on the papers, where necessary it may convene an oral hearing to address any elements of the complaint. As Mr Singh disputed the facts, the Tribunal proposed to hear his response to the complaint in an oral hearing. Ultimately, no party sought an oral hearing to present their case. Accordingly, the Tribunal has decided the complaint on the papers.

[9] The material for the hearing is all the papers before the Tribunal and particularly:

[9.1] The statement of complaint, with the documents attached to it.

[9.2] Mr Singh's statement of reply, which disputed the statement of complaint in these respects:

[9.2.1] Mr Singh said the complainant's employer asked him to prepare an EOI. Mr Singh suggested the complainant complete as much of the form as possible and Mr Singh reviewed it on 10 July 2012. Mr Singh says the complainant did not pay him for this work but says he prepared a written agreement and gave it to the employer when approached to do the work.

[9.2.2] On 8 November 2012 (after the EOI had been lodged, selected, and the residence application was about to be filed), Mr Singh reminded the complainant he had not received the written agreement he gave to the employer to be signed. The complainant signed a new agreement instead.

[9.2.3] When the issue arose regarding the work permit not allowing the complainant to manage the restaurant, the employer instructed Mr Singh to apply for a variation. Mr Singh confirmed the instructions with the complainant by telephone. Mr Singh partially prepared the application and a written agreement and gave them to the employer. They were never returned and Mr Singh says that consequently he did not submit the application.

[9.2.4] Mr Singh received no fees; he does not charge fees for immigration work. Mr Singh says the onus of proof lies with the complainant, who has fabricated allegations against him. He says the complainant has a conviction for dishonesty.

[9.2.5] Mr Singh says he provided written agreements, which were not returned to him; he received oral confirmation but not written confirmation. He contends that it is a minor issue, and is attributable to the complainant for not returning the agreements.

[9.2.6] Mr Singh had file notes adequately setting out his discussions with the complainant. He confirmed lodgements orally as they were his instructions, and sent documents by email to the complainant.

[9.2.7] The statement of reply also forwarded an affidavit from the employer, which said:

[9.2.7] Mr Singh provides free immigration services and that was why the complainant and the employer engaged him.

[9.2.7] He was present at the meeting in February 2012, where the engagement process was completed based on free services.

[9.2.7] The employer was to be the conduit for information, as the complainant did not have internet access.

[9.2.7] The employer remained the main point of contact over the following year. There was direct telephone contact between the complainant and Mr Singh and the complainant met with him in his office in November 2012.

[9.2.7] The employer paid visa fees to Immigration New Zealand on two occasions or more.

[9.2.7] He is not sure what happened to the contract he took to get the complainant to sign.

[9.2.8] The other affidavit generally supported Mr Singh being a person of integrity, and that people familiar with his professional work regard him well.

[9.3] A memorandum from Mr Singh's counsel drew particular attention to an affidavit Mr Singh submitted when the Authority was considering the complaint.

[10] I will determine the complaint on the papers.

Discussion

The standard of proof

[11] 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

[12] The Registrar provided a chronology and supporting documentation. Mr Singh challenged the facts, including providing affidavits, and submissions referring to the written material.

[13] The narrative provided by the Registrar in the statement of complaint is a starting point for consideration. I will address the contentious facts in relation to each of the three grounds of complaint.

Written agreements

[14] The allegation relating to written agreements turns on whether Mr Singh had a written agreement relating to the EOI, and whether he did so in respect of the variation to the work permit.

[15] The short answer is that he did not as he did not have written agreements that his client confirmed in writing. That is the requirement under clause 1 of the 2010 Code. It is an elementary aspect of professional practice as a licensed immigration adviser that there are prescriptive, and important client engagement processes.

[16] The successive versions of the Code have been deliberately prescriptive to ensure licensed immigration advisers undertake a meaningful client engagement process, and document it. The client engagement procedure requires a licensed immigration adviser to communicate with their client, understand their circumstances; and then advise them of their immigration opportunities, risks, and responsibilities. They can then take informed instructions[2].

[17] The adviser must ensure she or he documents the terms of the engagement in accordance with the Code; identifying the work, the fee for the work described, and details of the fees, terms, and a completing a disclosure process.

[18] It is obvious that Mr Singh was less than rigorous. His own description of taking instructions for the EOI is:

> In April 2012 after receiving instructions from [the employer], I prepared a new written agreement in relation to services for lodging an Expression of Interest for residency, and [the employer] came into my office to pick this up for [the complainant].
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> On 9 July 2012, [the employer] contacted me again on behalf of [the complainant]. He informed me that [the complainant] had filled in the Expression of Interest online form and instructed me to review and submit it to Immigration New Zealand (Immigration New Zealand), which I did. I had not received the signed written agreement back from [the complainant].

[19] His description of the application to vary the work visa was:

> I received an email from an immigration officer on the 15 April 2013. The email statement that [the complainant] did not have the correct visa and that a Variation of Conditions was needed in order for his application to proceed. I informed [the employer] the information immediately.
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> On 19 April 2013, [the employer] came to see me and instructed me to lodge a variation of conditions application on behalf of [the complainant]. He advised that [the complainant] could not make it to our meeting as he did not have transport. I was

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[2] Clause 1.1(b) 2010 Code

> reluctant as I normally have applicants present when filing these application forms. [The employer] rang [the complainant] who instructed me over the phone to complete the form with [the employer]. [The complainant] assured me over the phone that he would sign the new written agreement at the same time as the application form. He then asked if I could pay for his application fees and he would pay me back at a later date. I refused and reminded him that I was providing immigration services for free. [The employer] offered to pay the application fees for [the complainant] with his own credit card.
>
> I prepared the application form and the new engagement letter. I gave both of these to [the employer] to give to [the complainant], and asked for the signed forms to be returned to me as soon as possible.

[20] Ultimately, the complainant went through the EOI process and was invited to apply for residency. He failed with his residence visa application though as his employment was not financially stable. Mr Singh should have discussed that issue with his client before lodging the EOI. Evidently, there was a potential conflict between the employer and the complainant, who has subsequently alleged the employer exploited him. Mr Singh gives the impression that completing the form was the main task; it was not. He was required to carry out a meaningful evaluation of the complainant's circumstances, and identify risks. In the circumstances of this case, he plainly needed to ensure the complainant attended his office and complete the client engagement process; some of that ought to have been without the employer present. Had he done so, he would have obtained a signed agreement. The omission was not one of mere form; he fell well short of the required standards of professional practice through not engaging effectively with his client.

[21] In relation to the variation of the work visa, there were significant instructions to take. In particular, the reason for not understanding the variation was required was important, as the issue could have reflected on the complainant. However, there is no doubt Mr Singh was required to ensure he completed the client engagement process for this instruction. In the statement of reply Mr Singh admits he did not file the application for a variation. He implies that the employer never returned the written agreement and that the employer and/or the complainant filed the application for variation. The statement of reply asserts:

> The signed agreement was never returned. Therefore, it cannot be said that the adviser submitted the VOC application.

[22] However, there is no explanation for Mr Singh's letter of 19 April 2013, which purports to submit the application to Immigration New Zealand, and the application form with Mr Singh's licence number. If Mr Singh thought someone submitted the documentation he prepared to Immigration New Zealand without his authority, he ought to have been greatly concerned. Potentially, the employer and/or the complainant filed a document with Immigration New Zealand as though Mr Singh filed it. If Mr Singh did not file the documents he prepared, it was not only the agreement he needed to inquire into. He needed to find out if the documents were filed, what they contained, and whether they falsely suggested he filed them.

[23] My specific findings are:

[23.1] Mr Singh did not have a written agreement containing a full description of the services to be provided, in respect of his instructions to assist with lodging an EOI. Accordingly, he breached clause 1.5(b) of the 2010 Code. He also breached clause 3 of the 2010 Code as he failed to maintain professional business practices in relation to contracts. The second finding is significant as this was more than a minor omission on a form; Mr Singh did not give the client engagement process the attention demanded.

[23.2] Mr Singh did not have a written agreement for the application to vary the conditions on the complainant's work visa. Accordingly, he breached clause 1.5 of the 2010 Code due to not having a complying agreement, as the complainant did not confirm in writing he accepted the terms of any agreement for those services when Mr Singh performed them.

[23.3] For the reasons set out in the following section, Mr Singh's fee taken from the complainant was $16,000. He failed to set out those fees in an agreement or otherwise. Accordingly, he breached clause 8(d) of the 2010 Code.

Fees

[24] The allegation relating to fees turns on whether the complainant paid fees. Mr Singh and the employer say there were no fees. The complainant says he paid fees. He alleges the true position was that his employer said Mr Singh would apply for residence for a fee of $17,000; later reduced to $15,000. He alleged the employer exploited him by paying $120/week and providing food and accommodation, and that the employer later reduced those wages. He also had the complainant pay $1,000 direct to him for fees.

[25] The complainant's parents, he says, paid a total of approximately $15,000 to the employer for immigration fees. They did so by making payments in India to the employer's brother. The particulars using New Zealand dollar amounts as an approximation of the local currency were:

[25.1] In approximately September 2011 a payment of $5,000;

[25.2] In May or June 2012 a payment of $4,000; and

[25.3] In approximately November 2012 a final payment of $6,000.

[26] The initial agreement is consistent with Mr Singh's claim. It says he is "voluntarily working as an Immigration Advisor to the NZ Sikh Society Auckland (Charitable Trust)" … "There [are] no service fees to the clients …".

[27] Through his counsel, the complainant alleged that Mr Singh engaged in the fraudulent exploitation of migrants The complainant provided the following reasoning:

[27.1] Mr Singh purports to be a community leader who offers free immigration services, and has done so for some 7 years.

[27.2] It is implausible that Mr Singh could have done so without an income.

[27.3] Mr Singh and the employer were complicit in exploiting the complainant. When Immigration New Zealand investigated the employment, it became evident manipulation of the complainant's wages was a device to make the business appear viable.

[27.4] Mr Singh's representations of his experience in providing fee immigration services included a period when he must have been illegally providing the services without a licence.

[28] There was also evidence of bank account withdrawals supporting the complainant making withdrawals of approximately $1,000 to pay to the employer.

[29] There is also an indication that the Registrar did not renew Mr Singh's licence, as he was convicted of electoral fraud.

[30] This Tribunal has seen multiple cases where evidence gives cause to suspect a type of dishonesty that exists in the immigration sector. Namely, having payments made in a migrant's country of origin; the money is used in part to "purchase" employment in New Zealand with or without the funds being remitted to New Zealand. Then the parties present that employment to Immigration New Zealand as genuine in order to gain visas fraudulently. In such cases, there is potential tax evasion, immigration fraud, breach of employment laws, and human trafficking issues.

[31] Given the criminal nature of activities of this kind, and the fact that activities occur outside New Zealand, proof is often difficult. Was I to be deciding this complaint treating the complainant as having an onus of proof, the adviser enjoying a right to silence, with 'beyond reasonable doubt' as the standard of proof; Mr Singh could have confidence I could not find he was a party to soliciting and receiving fees of $16,000 for his services, paid indirectly. However, he is not in that position.

[32] His counsel contended:

> … it is not for [Mr Singh] to prove that no fees were received; these allegations must be proved against him on the balance of probabilities. We submit that on the balance of probabilities, it is more likely than not that the complainant has fabricated the allegations against the adviser.

[33] It is true that if there is nothing to respond to, then that may well be the end of the matter. However, there has never been a right to silence on the part of professional persons facing a disciplinary process.[3] If it were otherwise, it would be virtually impossible for many professional services to be subject to effective scrutiny. This Tribunal has power to request information, appearances, and to summons persons to give evidence[4]. Mr Singh filed an affidavit denying receiving any money, and asserting he provides professional services without remuneration, and received nothing from the complainant.

[34] Initially, Mr Singh sought an oral hearing. On examining the papers to ascertain whether the hearing would simply be on the papers, the Tribunal identified that while Mr Singh asserted his position, he failed to provide evidence of a kind that adequately answered the allegations. The Tribunal issued directions on 23 June 2015, which put Mr Singh on notice of its concerns, and stated:

> This direction is an exercise of the Tribunal's inquisitorial power under section 49 of the Act**. If Mr Singh does not file an affidavit in the time allowed, the Tribunal will hear the complaint on the papers before it**. The outcome is likely to be that the Tribunal will uphold the grounds of complaint on the basis:
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> - Mr Singh faces clear allegations,
> - He has failed to provide explanations supported by his own sworn evidence, with records the 2010 Code required him to keep, and
> - Accordingly, the mostly likely position is that he failed to respond to the statutory request from the Tribunal because the allegations against him are true and he has no answer to them.

[35] The Tribunal is mindful of the observations of the Medical Practitioners Disciplinary Tribunal[5], which applied this observation in *Bowen-James v Walten & Ors* [1991] NSWCA 29:]

> In our opinion, there is no right to silence or any privilege against self-incrimination upon which a medical practitioner, answering a complaint before the Tribunal, is entitled to rely. Indeed, we would endorse the observations made by Hope AJA in Ibrahim. There is a public interest in the proper discharge by medical practitioners of the privileges which the community accords to them, and in the due accounting for the exercise of the influence which the nature of the occupation permits them, and indeed requires them, to exert over their patients. …. we are of the opinion that if a medical practitioner fails to answer by giving his or her account of the matters charged, there can be no complaint if the Tribunal draws the unfavourable evidentiary inference which absence from the witness box commonly attracts.

[36] In *Ithaca (Custodians) Ltd v Perry Corporation*[6] the Court of Appeal considered what inferences may be drawn from the absence of witnesses. The Court observed:

> [153] …The absence of evidence, including the failure of a party to call a witness, in some circumstances may allow an inference that the missing evidence would not have helped a party's case. In the case of a missing witness such an inference may arise only when:

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3 *Bowen-James v Walton* (New South Wales Court of Appeal, unreported, 5/8/91), *Belhumeur v. Barreau du Québec (Comité de discipline)* (1988), 54 D.L.R. (4th) 105 (Que. C.A.) at 117; *Re White* Cartwright, PJ, Chair: Medical Practitioners Disciplinary Tribunal (MPDT), 87-98-36C, Aug 20, 1999.

4 Section 49(1), (4), and the schedule to the Act.

5 *Re White Cartwright*, PJ, Chair: Medical Practitioners Disciplinary Tribunal (MPDT), 87-98-36C, Aug 20, 1999 or White [1999] NZMPDT 87 (20 August 1999)

6 [2004] 1 NZLR 731 (CA)

> (a) the party would be expected to call the witness (and this can be so only when it is within the power of that party to produce the witness);
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> (b) the evidence of that witness would explain or elucidate a particular matter that is required to be explained or elucidated (including where a defendant has a tactical burden to produce evidence to counter that adduced by the other party); and
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> (c) the absence of the witness is unexplained.
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> [154] Where an explanation or elucidation is required to be given, an inference that the evidence would not have helped a party's case is inevitably an inference that the evidence would have harmed it. The result of such an inference, however, is not to prove the opposite party's case but to strengthen the weight of evidence of the opposite party or reduce the weight of evidence of the party who failed to call the witness.

[37] The principles are applicable to this complaint.

[38] Mr Singh did not file a further affidavit and did not wish to proceed with an oral hearing when the Tribunal made inquiries. Instead, his counsel referred to an earlier affidavit, which was one of the documents that the Tribunal said did not answer the allegations. Mr Singh elected not to proceed with an oral hearing and invited the Tribunal to hear the matter on the papers. Accordingly, Mr Singh is in a position where:

[38.1] The foundation for his position is the implausible claim he provides professional services without remuneration, and has done so for many years. Mr Singh may be a person of independent means without the need to earn a living, or may have some other occupation and provides immigration services part-time. However, inherently the claim is implausible unless accompanied by an explanation.

[38.2] The next issue is that the employer and Mr Singh engaged over the complainant's affairs in a concerning manner. Mr Singh ought to have been aware of the potential conflict and should have taken direct instructions and explained some of the issues relating to the complainant's employment. Those issues ultimately caused the complainant's attempt to migrate to fail.

[38.3] For the reasons discussed in this decision, Mr Singh's files and documentation fell far short of the minimum professional standards. There is a clear picture of neglect of Mr Singh's professional duties to his client.

[38.4] Mr Singh has not explained the circumstances that led to him not now holding a licence, and instead pointed to a dishonesty conviction against the complainant.

[38.5] When Immigration New Zealand investigated the complainant's employment, it found it was not financially sustainable, which is consistent with the complainant's evidence regarding the minimal payments he received.

[39] There is a coherent claim by the complainant that Mr Singh and the employer together conspired to exploit the complainant, using promises of immigration opportunities, and payments to be made in India. To the extent there are material events in New Zealand, they are consistent with the claim. Mr Singh promotes himself as an unpaid professional, which is implausible unless accompanied by an explanation. In these circumstances it is consistent with the allegation that he required fees to be paid offshore and colluded with employers to manufacture immigration opportunities.

[40] Mr Singh's answer is that he behaves properly, and that the complainant has simply invented the allegations. He uses the employer to support him, which can carry little weight given the allegations, unless tested. He also used an affidavit in the nature of a testimonial from a person who seems unfamiliar with the complaint and its circumstances. None of the persons filing affidavits presented for cross-examination.

[41] On the balance of probabilities; recognising the significance of the finding and accordingly, putting it at the high end of the scale, I find the complainant's account more probable. Mr Singh

has not supported his claim with records. He did not subject himself to cross-examination when the Tribunal attempted to timetable an oral hearing for that purpose.

[42] Mr Singh was on notice that the Tribunal may conclude the most likely reason for him failing to proceed to an oral hearing is that he has no convincing answer to the allegations against him.

[43] Accordingly, I find Mr Singh knew the employer was soliciting his fees, and that he actively participated in this. He did so in part by stating in the agreements that he did not take fees, knowing that the complainant was paying fees. Further, as the fees were taken, Mr Singh failed to amend the agreements or to provide invoices.

[44] I make no finding as to what proportion of the fees Mr Singh received, or had put at his disposal. It is not necessary to do so. He used his licence to solicit the fees and he is personally responsible for accounting for all of them in accordance with the 2010 Code.

[45] Accordingly, I find Mr Singh:

[45.1] breached clause 8(d) by failing to include the fees for his services in agreements; and

[45.2] breached clause 8(e) by failing to issue invoices for fees paid by the complainant.

Records

[46] As with client engagement, the 2010 Code is very clear regarding record keeping. It is an important discipline for licensed immigration advisers and their clients; an understanding of the requirements is necessary to obtain a licence and is an issue routinely signalled to the profession.

[47] The Registrar has alleged Mr Singh's records did not include written correspondence with the complainant or confirmation in writing regarding lodgements and timely updates. Mr Singh claims his records were appropriate, and further, that his communication arrangements were necessarily difficult. He denied he failed to confirm the details of material discussions in writing, as required by clause 3(f) of the 2010 Code. He admitted a possible breach of clause 3(a) as he used oral notification of lodgements.

[48] The obligation under clause 3(f) of the Code is to "confirm in writing the details of material discussions with clients". That means it is necessary to send a letter, email or similar communication to clients. That has a primary purpose of effective communication, ensuring clients have written notice, and allowing them to reflect and ask questions if necessary. It has the secondary purpose of protecting the adviser, as they cannot be accused of making up self-serving file notes after the event (typically an email trail is available). Mr Singh did not communicate with his client as required.

[49] Mr Singh now faces an allegation that he conspired with the employer in relation to fees. He cannot produce the communications he was required to maintain, some of which should have addressed issues relating to the employer. Belatedly, he produced some self-serving file notes. Mr Singh did not comply with clause 3(f) and accordingly, I uphold the complaint on that ground. Mr Singh says it was difficult to communicate in writing with his client. Had he made proper inquiries regarding the reasons for that, he would likely have discovered that this was related to him being exploited by the employer. Where a migrant in a managerial position has no internet access and cannot readily receive letters, is an issue that ought to trigger concern and meaningful inquiries; it is an unusual situation in New Zealand. Mr Singh should have made inquiries in this case.

[50] Mr Singh admits he breached clause 3(a). His justification or excuse of using oral communication is not an answer.

[51] Accordingly, I find Mr Singh breached clauses 3(a), and 3(f) of the Code.

Observation

[52] The grounds of complaint were wider; the complainant has not filed a statement of reply seeking to pursue the wider grounds of complaint. Accordingly, the Tribunal will only consider the grounds the Registrar considered to have potential support.

Decision

[53] The Tribunal upholds the complaint pursuant to section 50 of the Act; Mr Singh breached the 2010 Code in the respects identified they are grounds for complaint pursuant to section 44(2) of the Act.

[54] In other respects, the Tribunal dismisses the complaint.

Submissions on Sanctions

[55] The Tribunal has upheld the complaint and pursuant to section 51 of the Act, it may impose sanctions.

[56] The Authority and the complainant have the opportunity to provide submissions on appropriate sanctions, including potential orders for costs, refund of fees and compensation. Whether they do so or not, Mr Singh is entitled to make submissions and respond to any submissions from the other parties.

Timetable

[57] The timetable for submissions is:

[57.1] The Authority and the complainant may make any submissions within 10 working days of the issue of this decision.

[57.2] Mr Singh is to make any further submissions (whether or not the Authority or the complainant make submissions) within 15 working days of the issue of this decision.

[57.3] The Authority and the complainant may reply to any submissions made by the adviser and provide affidavits in reply to Mr Singh's explanation within 5 working days of him filing and serving his submissions and outline.

DATED at WELLINGTON this 30th day of June 2016.

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G D Pearson
Chair