

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

Decision No: [2016] NZIACDT 9

Reference No: IACDT 040/15

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Salesh Ram

Complainant

AND

Theresa Aasa

Adviser

DECISION

REPRESENTATION:

Registrar: In person.

Complainant: In person.

Adviser: In person

Date Issued: 4 February 2016

DECISION

Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal.
- [2] The complaint is that Ms Aasa accepted instructions to assist the complainant to respond to a query regarding his work visa application:
- [2.1] The Registrar has provided evidence, and Ms Aasa has not sought to dispute it before this Tribunal, that:
- [2.1.1] Ms Aasa failed to respond to Immigration New Zealand;
- [2.1.2] She had instructions and taken substantial fees;
- [2.1.3] She did not inform her client when his application for a work visa inevitably failed;
- [2.1.4] She did not tell her client what had happened for the following 18 months, though he did make active inquiries, she also retained his and his family's passports.
- [2.2] If the evidence establishes Ms Aasa failed to provide services, report, and return passports, those matters are breaches of the Licensed Immigration Advisers Code of Conduct 2010. The Tribunal has to evaluate whether, if the evidence does show Ms Aasa acted as the Registrar alleges, that the conduct was dishonest and misleading behaviour.
- [3] Ms Aasa has not responded to the statement of complaint with an explanation or justification addressing the grounds of complaint. The Tribunal reviewed the material before it, and it is satisfied the evidence does establish Ms Aasa did not meet her professional obligations, both by breaching the 2010 Code, and engaging in dishonest and misleading behaviour.
- [4] Accordingly, the Tribunal has concluded it must uphold the complaint, on the grounds the Registrar identified.

The complaint

- [5] The Registrar filed a statement of complaint, she put forward the following background as the basis for the complaint:
- [5.1] The complainant engaged Ms Aasa as a licensed immigration adviser. Her associate also attended the meeting on 21 October 2010, when Ms Aasa received her instructions from the complainant. The complainant paid her \$1,850.
- [5.2] The work the complainant required was to have Ms Aasa assist him to respond to a letter from Immigration New Zealand regarding his work visa application. On 24 December 2010, Immigration New Zealand declined that application; Ms Aasa had not taken steps to respond to Immigration New Zealand's letter. The complainant tried to follow up his case with Ms Aasa, but she never told him Immigration New Zealand declined his application.
- [5.3] In December 2010, Immigration New Zealand returned the passports the complainant submitted with his work visa application. Ms Aasa did not return the respective passports until June and July 2013.
- [6] The Registrar identified potential infringements of professional standards during the course of Ms Aasa's engagement. Namely:

Dishonest and misleading behaviour

- [6.1] That on 21 October 2010 Ms Aasa met with the complainant, and accepted instructions regarding a letter from Immigration New Zealand dated 12 October 2010. It required a response by 26 October 2010. On the due date, Ms Aasa sought a two-week extension to reply, which Immigration New Zealand granted to 9 November 2010; she sought and gained an additional extension to 23 November 2010, then a third extension until 30 November 2010.
- [6.2] On 2 December 2010, Ms Aasa emailed Immigration New Zealand, and said she would fax the response “tomorrow afternoon”; she did not do so and Immigration New Zealand declined the visa application on 24 December 2010, and wrote to Ms Aasa informing her of that development, and returning the complainant’s documents.
- [6.3] Ms Aasa did not tell the complainant what had happened, and did not return the documents to him. Later she left the practice where she worked, and took the file with her, she did not inform the complainant of that either.
- [6.4] On June 2012 the complainant emailed Ms Aasa and asked her to follow-up on his case, Ms Aasa said she would do so and get back to him. She did not do so, and the complainant followed up with further emails, after exchanges of emails, the complainant visited Ms Aasa’s home on 22 January 2013, but could not find her.
- [6.5] In mid 2013, the complainant contacted a licensed immigration adviser at the practice where Ms Aasa formerly worked, and he took steps to retrieve passports from Ms Aasa. On 13 June 2013, Ms Aasa returned three of the four passports she held, through staff in her former practice; and the fourth passport on 27 June 2013.
- [6.6] Dishonest or misleading behaviour is a ground for complaint under section 44(2)(d) of the Immigration Advisers Licensing Act 2007.
- [6.7] The potential dishonest or misleading behaviour allegedly lay in:
- [6.7.1] Ms Aasa not performing the services she promised, and took payment to perform.
- [6.7.2] That she did not tell the complainant, she had not performed the services.
- [6.7.3] She did not tell the complainant Immigration New Zealand declined his application.

Breaches of the Licensed Immigration Advisers Code of Conduct

- [6.8] The Registrar also identified the same conduct potentially amounted to breaches of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). In particular:
- [6.8.1] Failing to perform services with due care, diligence, and professionalism (clause 1.1(a) of the 2010 Code);
- [6.8.2] Failing to confirm in writing to clients when applications have been lodged with timely updates (clause 3(a) of the 2010 Code).
- [6.8.3] Failing to confirm in writing when she ceased working part way through the immigration process (clause 3(b) of the 2010 Code).
- [6.8.4] Failing to return passports and other personal documents, on request, and without delay in a secure manner (clause 1.3(b) of the 2010 Code).

The responses

- [7] Neither Ms Aasa nor the complainant responded to the statement of complaint. The standard notice to the parties does not require a response if they accept the Registrar’s statement of complaint.

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 material before the Tribunal

- [9] The Registrar provided a chronology, and supporting documentation. The parties have not disputed this record or added to it. I am satisfied this material supports the grounds of complaint.
- [10] Ms Aasa has had the opportunity to provide an explanation, and has not filed a statement of reply. It is not a complicated complaint, and the Registrar has provided the documentation supporting it.

The facts

- [11] The facts are uncomplicated, and essentially rely on the documentation the Registrar presented to the Tribunal. The principal issue is evaluating the material; the Tribunal sits as a specialist Tribunal and is required to evaluate the work of licensed immigration advisers¹.

Evaluation of the evidence

- [12] The allegation against Ms Aasa is that she failed to prepare a response to Immigration New Zealand, when she had instructions to do so, and had received payment. She did engage with Immigration New Zealand, but failed to follow through. The instructions were important to her client, as he and his family relied on their immigration status to remain in New Zealand.
- [13] The status of being in New Zealand unlawfully is an invidious one, it precludes a person applying for a visa, and only a request under section 61 is possible. Immigration New Zealand may decline a section 61 request without giving reasons, and has discretionary powers that are wider than they have for other applications. The disadvantages of being in New Zealand also extend to potential long-term adverse consequences for future immigration prospects in New Zealand. Accordingly, if a client is about to lose their lawful status in New Zealand a licensed immigration adviser has a duty to advise of the consequences, and act with urgency. The greater the delay after a client is in New Zealand unlawfully, the more problematic their circumstances become. Accordingly, Ms Aasa accepted responsibilities that would profoundly affect the complainant and his family.
- [14] Ms Aasa allowed this family's application to fail because she took no action. She did not tell them what happened, and ignored their repeated requests for information. Some 18 months after the application work a work visa failed, Ms Aasa still failed to tell them what happened when asked; and she retained their passports.
- [15] In the absence of an explanation, the facts speak for themselves. Ms Aasa took her client's money and promised to provide services. She did not provide the services. She kept the money. She did not tell her client she had not provided the services. In taking those actions, she was acting in flagrant violation of the 2010 Code, which had the force of law, and before the Registrar granted her a licence, she was required to show she understood those obligations.
- [16] On the basis Ms Aasa did what she intended to do, the clear implications of the evidence are:
- [16.1] She dishonestly took money through a pretence she would provide services when she would not provide the services,
- [16.2] She then perpetuated the deception after failing to provide the services by failing to inform her client of the inevitable and serious consequences of that failure, and

¹ *Loh & Gu-Chang v IACDT & IAA* [2014] NZHC 1166, at Para.[64]

[16.3] She retained the passports she held for her client, again to prevent her client detecting her deception.

[17] As Ms Aasa has not provided the Tribunal with another explanation, on the balance of probabilities under the sliding scale, I am satisfied Ms Aasa intended to do what she did, from the outset; and her subsequent actions were to further her dishonesty.

[18] I am accordingly satisfied that Ms Aasa was dishonest, and engaged in conduct that was misleading and dishonest and uphold the complaint on that ground.

The 2010 Code

[19] The various breaches of the 2010 Code were part of Ms Aasa's course of conduct; and she breached each of the provisions identified in paragraph [6.8] above. Accordingly, I find those grounds of complaint established. However, they do not materially add to the finding of dishonest and misleading conduct.

Decision

[20] The Tribunal upholds the complaint pursuant to section 50 of the Act.

[21] Ms Aasa 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.

Submissions on Sanctions

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

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

[24] 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.

[25] The Registrar is requested (before the time for Ms Aasa to file submissions expires) to report on the extent to which Ms Aasa has complied with previous orders the Tribunal has imposed in respect of sanctions, and the steps she has taken to enforce the orders.

Timetable

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

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

[26.2] 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.

[26.3] The Authority and the complainants may reply to any submissions made by the adviser within 5 working days of her filing and serving those submissions.

DATED at Wellington this 4th day of February 2016

G D Pearson
Chair