

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

Decision No: [2016] NZIACDT 58

Reference No: IACDT 016/15

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

F B C

Complainant

AND

S O

Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: In person

Date Issued: 21 September 2016

DECISION

Introduction

- [1] The allegation in the Registrar's statement of complaint is that Ms O breached one aspect of her professional obligations under the Licensed Immigration Advisers Code of Conduct 2010. In particular, that she advised her client to complete medical tests too early, so the tests expired and he had to complete new tests.
- [2] Ms O provided a complete answer; in that she gave appropriate advice, circumstances changed, and she generously reduced her fees to offset the costs of the second medical examination. Neither the Registrar nor the complainant challenged this explanation.
- [3] The Tribunal dismissed the complaint.

The complaint

- [4] The statement of complaint identified the Registrar considered there was potential support for the Tribunal to conclude:
 - [4.1] Ms O breached clause 1.1(a) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code).
 - [4.2] The short point being that Ms O allegedly advised her client to complete medical tests for his work visa in May or June 2013. Those tests expired before the application was ready, and the applicant had to complete a second set of tests.
 - [4.3] Advising her client to complete the tests before the application was ready was potentially the result of performing her services without due care and diligence.

Request for Ms O to respond

- [5] Pursuant to section 49(4)(a) the Tribunal requested that Ms O file an affidavit responding to the allegations.
- [6] Ms O filed an affidavit to the effect:
 - [6.1] She advised the complainant to complete a medical test in May or June 2013. At the time, Ms O had a position of employment arranged, but the prospective employer withdrew it after the complainant completed the medical examination.
 - [6.2] Ms O explained the position to the complainant, and found alternative employment, but by that time, the medical examination had expired.
 - [6.3] Ms O agreed to deduct the cost of the new medical examination from her fees; notwithstanding that, her advice to complete the medical was sound at the time, given the state of negotiations with the first offer of employment.
 - [6.4] The complainant was successful in obtaining the second position of employment, and a visa. Ms O and her family then gave exceptional support to the complainant when he came to New Zealand.

The Registrar and the complainant take no issue with Ms Os' explanation

- [7] The Tribunal gave the Registrar and the complainant an opportunity to apply to cross-examine Ms O, and to provide submissions or evidence in reply. Neither the Registrar nor the complainant took any steps.

Discussion

- [8] Ms O has provided a complete answer to the complaint, and neither the Registrar nor the complainant opposes it.
- [9] Accordingly, the evidence establishes Ms O gave appropriate advice regarding the medical examination, and there was later an unforeseeable change of circumstances. There was no lack of care or diligence on Ms Os' part; on the contrary, the evidence is that she provided her services appropriately. Accordingly, the Tribunal must dismiss the complaint.

Decision

- [10] The Tribunal dismisses the complaint.

DATED at Wellington this 21st day of September 2016

G D Pearson
Chair