

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

Decision No: [2016] NZIACDT 59

Reference No: IACDT 011/15

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

D D D

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 her professional obligations under the Licensed Immigration Advisers Code of Conduct 2010. In particular, that she backdated her written agreement for the provision of professional services.
- [2] Ms O provided a complete answer, being that she dated the agreement properly, and did not commence any chargeable work until the complainant signed the agreement. Her response is unchallenged by the Registrar and the complainant.
- [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 1.5(b) and 8(b) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code).
 - [4.2] The short point being that when Ms O commenced work on the complainant's instructions she did not have the mandatory written agreement, or set out her fees and disbursements in writing.
 - [4.3] The Registrar's statement of complaint alleges Ms O entered into an agreement dated 28 May 2013, but the date is false and the complainant signed it on 30 August 2013, by which time Ms O had already done the work to prepare the application.

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] The complainant engaged Ms O to provide professional services, and signed the agreement to do so on 28 May 2013. She completed the other paperwork at the same time.
 - [6.2] The agreement included a fee to process the work visa, and on 31 May 2013, the complainant made an initial payment by money transfer. Then, on 1 October, he made a second instalment by bank transfer.
 - [6.3] Ms O only commenced work after the complainant signed the agreement on 28 May 2013.

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 had a written agreement at the relevant time. I note there is some material dated 20 May 2013, but an absence of evidence indicating how it

came into existence, and it is potentially preliminary work in the course of gaining the complainant's informed instructions prior to having him commit to a written agreement.

Decision

[10] The Tribunal dismisses the complaint.

DATED at Wellington this 21st of September 2016.

G D Pearson
Chair