

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

Decision No: [2016] NZIACDT 60

Reference No: IACDT 015/15

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Marino P Kho

Complainant

AND

Rosemarie (Rose) Navarette-Scholes

Adviser

DECISION

REPRESENTATION:

Registrar: In person.

Complainant: In person.

Adviser: In person.

Date Issued: 22 September 2016

DECISION

Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal. The facts on which the complaint is based are:
- [1.1] Ms Navarette-Scholes promised to provide immigration services, and accepted payment to do so. She failed to provide the services;
 - [1.2] She did not maintain complete records; and
 - [1.3] When the Registrar required an explanation she provided a false explanation, and withheld a document to support her false explanation.
- [2] The issue is a factual one, and it appeared that documents before the Tribunal established the position. The Tribunal asked Ms Navarette-Scholes for an explanation, but she has not explained the documents that appear to support the complaint as anything other than what they appear to be.
- [3] Accordingly, the Tribunal must examine the material before it and reach conclusions regarding the three grounds of complaint.
- [4] The Tribunal has found Ms Navarette-Scholes did offer immigration services and not provide them, and then dishonestly misrepresented what happened to the Registrar. Consistent with those finding, the Tribunal found Ms Navarette-Scholes probably did maintain a complete file, but withheld part of it from the Registrar to support her dishonest explanation.

The issues

- [5] The allegations in the Registrar's statement of complaint are that Ms Navarette-Scholes breached aspects of her professional obligations. The key elements are:
- [5.1] That Ms Navarette-Scholes failed to perform services;
 - [5.2] She did not maintain complete records; and
 - [5.3] She engaged in dishonest or misleading behaviour, in her response to this complaint.
- [6] The Registrar included with the statement of complaint a document dated 14 July 2012, apparently printed on the letterhead Ms Navarette-Scholes used in her practice. It says she assessed the complainant as eligible to apply for a "working visa" after interviews. The document authorised Ms Navarette-Scholes to proceed with lodging the visa application.
- [7] Ms Navarette-Scholes did not address this document in her statement of reply; but she said she had no immigration instruction from the complainant. This incongruity led to the Tribunal asking Ms Navarette-Scholes for an explanation.

Request to Ms Navarette-Scholes to respond

- [8] The Tribunal told Ms Navarette-Scholes it had undertaken a preliminary evaluation of the statement of complaint and responses, and asked her to file an affidavit setting out:
- [8.1] Why the Tribunal should conclude the complainant did not engage her to apply for a work visa, and if he did so, then why she failed to do so;
 - [8.2] Whether she failed to provide important parts of her record to the Registrar in response to the complaint, and if so why; and
 - [8.3] Whether she misrepresented her instructions and made a false claim she had no immigration instructions.

The responses

- [9] Ms Navarette-Scholes provided an affidavit which said:
- [9.1] The complainant initially engaged Ms Navarette-Scholes to provide assistance to seek employment;
- [9.2] At an initial meeting she said she would need to find an offer of employment before she could advance an application for a visa;
- [9.3] She is not sure whether the terms of engagement related to the specific circumstances or not.
- [9.4] The search for employment was unsuccessful and she refunded PHP 45,000 and retained PHP 15,000 of the fees paid to her. She was never in a position to apply for a visa due to the absence of an offer of employment.
- [9.5] She did not intend to mislead or deceive the complainant or anyone.
- [10] She also provided a copy of a deposit slip, agreement, invoice and receipt, which were already part of the statement of complaint.
- [11] The complainant replied that Ms Navarette-Scholes promised that on signing an agreement she would deliver an offer of employment immediately, and he paid PHP 60,000. He said Ms Navarette-Scholes said she could process the documents immediately, and he provided all the documents Ms Navarette-Scholes requested from him.
- [12] The complainant said Ms Navarette-Scholes did nothing, and the agreement apparently made fees non-refundable if there was no job offer. The complainant said he had formed the view Ms Navarette-Scholes was operating a scam.
- [13] The Registrar did not seek to provide any further material.

Discussion

The standard of proof

- [14] 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

- [15] The Registrar provided a chronology and supporting documentation. The Tribunal has told Ms Navarette-Scholes what the issues are; and that the material the Registrar lodged provided a foundation for the Tribunal to uphold the complaint.
- [16] Ms Navarette-Scholes' response simply fails to provide evidence to answer the complaint. The Tribunal told Ms Navarette-Scholes she could apply for an oral hearing and have legal representation. Her response has been to deny the allegations, but provide no evidence or explanation that sensibly answers the allegations.
- [17] The Tribunal will accordingly determine the complaint on the papers before it.

Failure to provide services

- [18] The Registrar alleged that Ms Navarette-Scholes failed to perform her services with care, diligence, respect and professionalism. Clause 1.1(a) of the Licensed Immigration Advisers Code of Conduct 2010 required her to do so.
- [19] The foundation for the allegation is that the Registrar produced a declaration apparently on Ms Navarette-Scholes's letterhead stating:

I [the complainant] understand that I have been assessed as eligible to apply for a working visa based on interviews and documented submissions assessed in consultation with Rosemarie Scholes (New Zealand Licensed Immigration Adviser, Licence Number: 200900123). On this basis I authorise her to act as my representative to proceed with the lodgement of my visa application for the purpose of processing and determination by Immigration New Zealand (INZ) without guarantee of approval. I also acknowledge and declare that Rosemarie does not guarantee the successful outcome of any future visa applications and/or job offers.

- [20] Ms Navarette-Scholes has not provided any explanation that the document is anything other than what it appears to be. It appears to be a document she presented to the complainant, and it is designed to assure him that he is qualified to apply for a visa to work in New Zealand, he instructs Ms Navarette-Scholes to do so, but she does not guarantee the outcome.
- [21] Ms Navarette-Scholes' explanation is that; she had no firm instructions to apply for a visa, the complainant did not qualify for a visa without a job offer, but she solicited money from him and kept most of the money. However, she claims she did not intend to mislead or deceive him.
- [22] Ms Navarette-Scholes' explanation has no sensible connection with the declaration that shows she solicited money using her status as a licensed immigration adviser, failed to do what she promised and her admissions she did not give back all the money. The complainant's description that Ms Navarette-Scholes operated a scam is amply justified; as the evidence establishes Ms Navarette-Scholes' representations were false and she must have known they were false at the time. Ms Navarette-Scholes has not provided evidence of any reasonable attempt to honour what she promised.
- [23] Accordingly I find that Ms Navarette-Scholes failed to provide her services with professionalism, through dishonestly misrepresenting the complainant's circumstances. She then acted without care, diligence, and respect as she failed to take the steps required to secure an employment offer and put the complainant in a position to seek a visa.
- [24] It follows Ms Navarette-Scholes breached clause 1.1(a) of the 2010 Code.

Failure to maintain complete records

- [25] The Registrar alleges Ms Navarette-Scholes breached clauses 3 of the 2010 Code, and Clause 26(a)(iii) of the Licensed Immigration Advisers Code of Conduct 2014 (the 2014 Code). They respectively required Ms Navarette-Scholes to maintain professional business practices relating to records, and maintain a client file.
- [26] The Registrar required Ms Navarette-Scholes to provide her full client file to deal with this complaint, using her statutory power under section 57 of the Immigration Advisers Licensing Act 2007 (the Act). The records Ms Navarette-Scholes produced did not include:
- [26.1] The declaration that misrepresented the complainant's immigration position and the services Ms Navarette-Scholes would provide¹;
- [26.2] Records of Skype communications she had with the complainant; and
- [26.3] The complainant's email of 23 August 2014.
- [27] Ms Navarette-Scholes has not explained the absence of the records. However, on the balance of probabilities I do not find this ground of complaint established. The probable explanation is that Ms Navarette-Scholes had the records, and did not provide them to the Registrar as they were not consistent with the dishonest and false explanation she provided to the Registrar.

Dishonest and misleading behaviour when responding to this complaint

- [28] The third ground of complaint is that Ms Navarette-Scholes provided dishonest and misleading information to the Registrar when responding to the complaint, which is a ground for complaint under section 44(2) of the Act, and a breach of clause 1 of the 2014 Code that requires a licensed immigration adviser to be honest and professional.

¹ Paragraph [19] above.

- [29] Ms Navarette-Scholes provided documents relating to seeking employment for the complainant, and said in an email to the Registrar's office that she had no instructions relating to immigration services from the complainant.
- [30] However, Ms Navarette-Scholes did not disclose the declaration that shows she did accept immigration instructions, and made false representations to the complainant in respect of them. That is the declaration referred to above².
- [31] Ms Navarette-Scholes has not provided a sensible explanation; indeed she has inexplicably repeated the same false account when the Tribunal asked her to provide an affidavit. Accordingly, the material establishes that Ms Navarette-Scholes probably withheld the declaration to assist the dishonest explanation she gave to the Registrar.
- [32] I accordingly uphold this ground of complaint, Ms Navarette-Scholes engaged in dishonest and misleading behaviour when providing information to the Registrar; and she was not honest and professional. Accordingly, this ground of complaint is upheld under section 44(2)(d) of the Act and Clause 1 of the 2014 Code.

Decision

- [33] The Tribunal upholds the complaint pursuant to section 50 of the Act; Ms Navarette-Scholes breached clause 1 of the 2014 Code, and she engaged in dishonest and misleading behaviour. They are grounds for complaint pursuant to section 44(2)(d) and (e) of the Act.
- [34] In other respects, the Tribunal dismisses the complaint.

Submissions on Sanctions

- [35] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [36] The Authority and the complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs and compensation. Whether they do so or not, Ms Navarette-Scholes is entitled to make submissions and respond to any submissions from the other parties.
- [37] 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.

Timetable

- [38] The timetable for submissions will be as follows:
- [38.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.
- [38.2] Ms Navarette-Scholes 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.
- [38.3] The Authority and the complainant may reply to any submissions made by the adviser within 5 working days of her filing and serving those submissions.

DATED at WELLINGTON this 22nd day of September 2016

G D Pearson
Chair

² Ibid.