

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2020] NZIACDT 2

Reference No: IACDT 024/18

**IN THE MATTER** of a referral under s 48 of  
the Immigration Advisers  
Licensing Act 2007

**BY** **THE REGISTRAR OF  
IMMIGRATION ADVISERS**  
Registrar

**BETWEEN** **TSO**  
Complainant

**AND** **OLGA ANATOLIEVNA  
(OLIA) ESSINA**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
Dated 16 January 2020

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**REPRESENTATION:**

Registrar: Self-represented  
Complainant: Self-represented  
Adviser: Self-represented

## PRELIMINARY

[1] Ms Olga Anatolievna (Olia) Essina, the adviser, represented Mr TSO, the complainant, on an unsuccessful work visa application.

[2] The Registrar of Immigration Advisers (the Registrar), the head of the Immigration Advisers Authority (the Authority), alleges that Ms Essina has been dishonest or misleading in information given to either Immigration New Zealand or the complainant, satisfying a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act) and breaching the Licensed Immigration Advisers Code of Conduct 2014 (the Code). It is also alleged that Ms Essina acted unprofessionally in offering the complainant money if he withdrew his complaint against her.

## BACKGROUND

[3] Ms Essina was at the relevant time a licensed immigration adviser. She was a director of Approved Immigration Ltd (Approved Immigration) of Auckland. Her licence expired on 21 October 2018 and has not been renewed. At the relevant time, Ms Essina was also a director of Job Placement Consultants Ltd (Job Placement), which provided job search and recruiting services.

[4] The complainant is a national of India residing in Singapore.

[5] On 10 December 2015, Immigration New Zealand received an application for a visitor visa from the complainant. It was to enable him to travel to New Zealand and attend an interview with a client of Job Placement. It was Ms Essina of Job Placement who had issued an invitation to the complainant to attend the interview. She advised Immigration New Zealand on 18 November 2015 of the invitation and provided certain undertakings required of a sponsor. It is understood Ms Essina issued similar invitations and provided identical undertakings to four other Indian nationals, all welders residing in Singapore, at the same time.

[6] Immigration New Zealand declined the visitor visa application on 22 December 2015, as it was not satisfied the complainant was a genuine visitor. It was noted in the letter to him that he was working in Singapore as a welder. He appeared to lack strong commitments in India and Singapore. Immigration New Zealand was not satisfied that he was a *bona fide* temporary entrant to New Zealand with sufficient incentive to return on the conclusion of his visit. No definitive interviews had been arranged. There were no letters from clients who would be interviewing him or supporting his application for a visa. He had not provided evidence that he would be granted leave by his employer.

[7] The agency said in the letter that it was not satisfied he would return to his job in Singapore. As he had a relatively low salary, there were concerns as to his commitment to his employment. Immigration New Zealand regarded the sponsorship from Ms Essina, a recruitment agent who was assisting with his application, as unusual since sponsorship was usually provided by family or friends.

[8] On 23 December 2015, Ms Essina, describing herself as a licensed immigration adviser from Job Placement, sent an email to the complainant expressing sympathy at the decline of his visa. If he wanted a job, he would have to sign an agreement with Job Placement. She had invited or would invite (the tense is not clear) him to New Zealand as a visitor at the request of Anthony (also described in documentation as Antony), who had a job for him. He was asked to send his CV. If he had the skills, they would bring him to New Zealand via a work visa.

[9] The complainant then entered into a service contract on 24 December 2015 with Job Placement, for recruitment services. The consultants agreed to use their best endeavours to assist him to find his first job in New Zealand. They would interview him and assess his skills and qualifications, assist him in the preparation of job interviews and promote him as a candidate. The fee payable was \$10,000, with \$1,000 (not refundable) to be paid immediately. While signed by the complainant, the place for the signature of a named person from Job Placement (not Ms Essina) was left blank in the copy provided to the Tribunal.

[10] A receipt was issued to the complainant by Job Placement on 28 January 2016 for \$1,000 for a "job search contract agreement".

[11] A staff member of Job Placement advised the complainant by email on 4 May 2016 to seek an evaluation of his qualification with the New Zealand Qualifications Authority (NZQA).

[12] NZQA issued an assessment on 14 August 2016 stating that the complainant's national trade certificate from India had been assessed as a qualification at Level 1.

[13] On 25 August 2016, an administrator from Job Placement sent an email to the complainant advising they were not satisfied with the NZQA result, so Ms Essina was "asking" (again, the tense is not clear) NZQA to reconsider. He was asked to provide evidence of the hours spent on his course.

[14] On 15 September 2016, Radio New Zealand reported that Asian welders in Singapore were being charged \$6,000 for fake jobs in New Zealand. The article

mentioned Anthony and Ravi, who were unlicensed agents. Immigration New Zealand was reported to be investigating. There was no reference to Ms Essina or her company.

[15] On 1 November 2016, Ms Essina, who described herself as a licensed immigration adviser from Job Placement, sent an email to the complainant referring to her conversation with him that day and advising that he had a job offer with an Auckland company as a welder. While he had had a negative experience in relation to his visa application, this meant more work for her as an immigration adviser to make sure he received the work visa this time. The minimum fee for the visa was being charged. The rest of the fee would be payable in one lump sum on his arrival in New Zealand. An invoice was attached. She also asked him to sign a service agreement for a visa application with Approved Immigration, which was sent with the email.

[16] A Job Placement invoice (dated 1 November 2016) for \$1,298 (plus \$298 for Immigration New Zealand fee) was sent to the complainant.

[17] The service contract between Approved Immigration and the complainant was dated 1 November 2016. It was signed by Ms Essina and the complainant. It stated that Ms Essina, the managing director and a licensed immigration adviser, would use her best endeavours to assist the complainant to obtain a work visa. Approved Immigration would interview him and assess his skills and qualifications, advise him of all the necessary documents for obtaining a work permit and advise the employer regarding the contract and job offer in order to smooth the visa process. It stated that no extra payment was required if he had a service agreement with Job Placement. The complainant would, however, be responsible for incidental expenses, such as the fees charged by Immigration New Zealand and NZQA.

[18] A formal job offer to the complainant was made by the employer on 9 November 2016. Both parties signed it that day.

[19] On 23 November 2016, Ms Essina filed a work visa application on behalf of the complainant with Immigration New Zealand (application signed by the complainant on 9 November 2016). He was to work as a welder at the Auckland company. In respect of his qualification, Ms Essina stated (*verbatim*):

Our client did not receive NZQA evaluation of his education, so we cannot claim that his background is one hundred percent match the requirements.

[20] On 31 January 2017, Ms Essina advised the complainant that no decision had been made by Immigration New Zealand, but she expected a negative decision.

[21] On 1 February 2017, the complainant was advised by a staff member of Job Placement that his visa had been granted, but the employer had yet to be approved by Immigration New Zealand. She sought his consent to send his application to other employers.

[22] Ms Essina advised Immigration New Zealand on 2 February 2017 that the employer was not willing to cooperate in providing further information. However, the recruitment adviser already had another employer.

[23] On 13 March 2017, Ms Essina advised the complainant that she had requested the withdrawal of his work visa application. As the complainant had queried cancelling his agreement with her company, she asked him for a formal letter seeking to finalise the agreement. She would consider a refund after checking how much work had been done and why his application had been rejected.

[24] Immigration New Zealand wrote to Ms Essina on 13 March 2017 confirming that the work visa application had been withdrawn by email that day.

[25] Ms Essina sent an email to the complainant on 14 March 2017 explaining a number of matters regarding his application. In relation to the decline of his earlier visitor visa application, she said (*verbatim*):

That was unsuccessful, but [Anthony] did try his best. You simply started that visa application when Immigration NZ was in process of changing of few rules and regulations. I have done everything according to the acting regulations, but it was evaluated by the new regulations.

[26] In her email of 14 March 2017, Ms Essina told the complainant she thought it would be helpful if he got some money back from Anthony. He should get 50 per cent of it back. She was very happy with his education and experience as a welder and he would get a final report about how many employers he had been introduced to and their comments. His request to cancel the agreement with them would be discussed with her team.

[27] The complainant replied by email to Ms Essina on the same day noting the withdrawal of his application. He wanted to know how long it would take to get a job if he proceeded with Job Placement. He would like to “stop [his] contract” and get back his certificates and money.

[28] An employee of Job Placement sent an email to the complainant on 23 March 2017 reviewing their job search efforts for him. The employers had said his English was not good enough, and nor were his welding skills and experience. He was advised to look for vacancies using his other work experience, such as a waterproofer, machinery

operator or hammer hand. He would pay only \$6,000 for immigration support if he wanted to continue with them. A visa could be issued fast. If he wanted to continue seeking a job as a welder, he would need to upskill and work on that for at least one year. They were looking to refund 50 per cent of his deposit if he followed “this” path (which appears to be a reference to the welding path).

[29] The complainant replied on 27 March 2017 to say he did not have the skills for the other jobs. He asked for his certificates and deposit back.

[30] In a text to Ms Essina on 24 April 2017, the complainant confirms receiving \$1,000. This is understood to be a refund from her. In the event that she was in contact with Anthony, he asked her to tell him to return his money.

[31] On 6 May 2017, Ms Essina sent an email to the complainant advising that at his request the agreement had been cancelled on 14 March 2017. The email recorded that he had received a final communication and a refund.

## **COMPLAINT**

[32] The complaint against Ms Essina was lodged with the Authority by the complainant on 13 May 2017. He alleged that on 27 January 2015, he met Anthony in Singapore and paid him \$1,500 for a job offer in New Zealand, but once he went back to New Zealand, Anthony would not answer his calls. Then in November 2015, he met Ravi who said he had been sent by Anthony and paid him another \$1,500. Immigration New Zealand declined his visitor visa on 22 December 2015. He had paid \$3,000 and it was lost as Anthony would not answer his telephone calls.

[33] According to the complainant, he then sent an email to Ms Essina of Job Placement, as she had issued the invitation. She said she was sorry to see the decline letter and if he wanted a job, he would need an agreement with her company. He was then invited to New Zealand as a visitor.

[34] The complainant said he had lost money and been deceived by unlicensed and licensed advisers. He paid \$1,000 to Job Placement and talked to them about his skills and experience. They advised him to get his qualifications evaluated by NZQA, which cost him \$1,250. His qualification was assessed as only Level 1, which he thought was not enough. He then received a job offer on 1 November 2016 and paid the second instalment of \$1,300. In the same month, Ms Essina applied to Immigration New Zealand.

[35] In his complaint, the complainant stated that Ms Essina advised him that the visa was still being processed, but she expected a negative decision. She then told him that Immigration New Zealand had approved his work visa and it could be transferred to a new employer. This was followed by advice that she would probably withdraw the application as it did not seem she could get another job for him in such a short period of time. He instructed her the next day to withdraw the application.

[36] The complainant alleged that he had lost around \$4,000, including fees for the NZQA application and medical certificate. The only refund he had received from Ms Essina was \$1,000 on 22 March 2017. His dream of working in New Zealand had not come true.

[37] It was alleged by the complainant that Ms Essina was associated with Anthony and did some illegal work. Many people had lost money through him. The complainant said he wanted his money back.

[38] On 9 October 2017, the Authority advised Ms Essina of the complaint and sought her explanation.

[39] Ms Essina sent a text message to the complainant on 19 October 2017 (*verbatim*):

Hello [the complainant's name], how are you? I wonder, how much your complaint worth to you? I am about to pay a lawyer the money to protect me...but I would rather pay it to you, if you withdraw your complaint. Are you interested to talk about it?

*Explanation to Authority from Ms Essina*

[40] A barrister, Mr Y Lukas, wrote to the Authority on 13 November 2017. He regarded the grounds of complaint as presented by the Authority as very different from those set out in the original complaint. The Authority could prepare a complaint which had been submitted, but it did not have the power to modify the complaint or make its own complaint. The original complaint had only two grounds, negligence and dishonest/misleading behaviour, both of which were denied. Ms Essina would cooperate with the Authority by answering all the grounds raised. He enclosed her detailed explanation.

[41] There is a letter of explanation from Ms Essina to the Authority, dated 10 November 2017. The complaint as to the NZQA assessment being dishonest or misleading was denied. An NZQA assessment was not required for an Essential Skills work visa application. Furthermore, the complainant had five years of experience in the

trade. The evaluation was not therefore relevant. Additionally, Ms Essina genuinely believed NZQA had made a mistake. Ms Essina expressed the view that she had to ensure a mistake by a third party did not harm her client.

[42] Ms Essina advised the Authority in her letter of 10 November 2017 that Anthony was a recruiter who worked in the same field. She had a business relationship with him in the recruitment field. They exchanged information regarding vacancies and referred prospective candidates to each other. Anthony had originally approached her regarding sponsorship of a number of welders who had already been checked. She had no relationship with the complainant apart from providing the sponsorship form.

[43] According to Ms Essina, the request for sponsorship was not unusual. Anthony's company was new and her company had more credibility. It did not mean she was providing immigration advice. The agreement with Anthony was that if he could not find jobs for them, she could offer them to her employer clients. If that was successful, she received a commission from the employer. She did not know Ravi and had never met him.

[44] Ms Essina advised the Authority that the complainant phoned her on 24 December 2015, having found her contact details on the website. He was not happy with Anthony and wanted to instruct her, initially only for recruitment services.

[45] A further letter was sent to Ms Essina by the Authority on 4 July 2018 advising new grounds of complaint. Her explanation was invited.

[46] Ms Essina sent further information to the Authority on 18 July 2018. She said she was acting for her recruitment company when the five welders were invited to New Zealand. The candidates had been interviewed by Anthony and their documents had been checked. She did not have any agreements with them at that stage. As the inviting company, Ms Essina said she had the advantage of introducing the welders to her clients first and if they rejected them, they would go to Anthony's employers. She was not a licensed adviser in this scenario and her advice to Anthony was not about the visa.

#### *Complaint referred to Tribunal*

[47] On 25 July 2018, the Registrar referred the complaint to the Tribunal. It was alleged that Ms Essina's conduct satisfied a statutory ground of complaint and/or was a breach of the Code in the following respects:



- (1) advising Immigration New Zealand that the complainant did not receive an NZQA evaluation of his education when in fact he had, thereby acting dishonestly or in a misleading way;
- (2) alternatively, advising Immigration New Zealand that the complainant did not receive an NZQA evaluation of his education when in fact he had, in breach of cls 1, 3(c), 29(d) and 31(a);
- (3) advising the complainant that his visitor visa had been declined because of changes in rules and regulations when in fact it had been declined on *bona fide* grounds, thereby acting dishonestly or in a misleading way;
- (4) alternatively, advising the complainant that his visitor visa had been declined because of changes in rules and regulations when in fact it had been declined on *bona fide* grounds, in breach of cl 1;
- (5) offering the complainant money on condition that he withdrew his complaint against her, thereby acting unprofessionally in breach of cl 1.

## **JURISDICTION AND PROCEDURE**

[48] The grounds for a complaint to the Registrar made against an immigration adviser or former immigration adviser are set out in s 44(2) of the Act:

- (a) negligence;
- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour; and
- (e) a breach of the code of conduct.

[49] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>1</sup>

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<sup>1</sup> Immigration Advisers Licensing Act 2007, s 45(2) & (3).

[50] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.<sup>2</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>3</sup>

[51] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.<sup>4</sup>

[52] The sanctions that may be imposed by the Tribunal are set out in the Act.<sup>5</sup> The focus of professional disciplinary proceedings is not punishment but the protection of the public.<sup>6</sup>

[53] It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.<sup>7</sup>

[54] The Tribunal has received from the Registrar a statement of complaint, dated 25 July 2018, with supporting documents.

[55] Ms Essina provided a statement of reply dated 29 August 2018, with supporting documents.

[56] None of the parties request an oral hearing.

## ASSESSMENT

[57] The Registrar relies on the following provisions of the Code:

### General

1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

### Legislative requirements

3. A licensed immigration adviser must:

...

- c. whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act

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<sup>2</sup> Section 49(3) & (4).

<sup>3</sup> *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

<sup>4</sup> Section 50.

<sup>5</sup> Section 51(1).

<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).

<sup>7</sup> *Z v Dental Complaints Assessment Committee*, above n 6, at [97], [101]–[102] & [112].

2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.

### **Advisers**

29. A licensed immigration adviser must not misrepresent or promote in a false, fraudulent or deceptive manner:

...

d. the client

...

### **Applications**

31. A licensed immigration adviser must:

a. not deliberately or negligently provide false or misleading documentation to, or deliberately or negligently conceal relevant information from, the decision maker in regard to any immigration matter they are representing, and

...

(1) *Advising Immigration New Zealand that the complainant did not receive an NZQA evaluation of his education when in fact he had, thereby acting dishonestly or in a misleading way*

(2) *Alternatively, advising Immigration New Zealand that the complainant did not receive an NZQA evaluation of his education when in fact he had, in breach of cls 1, 3(c), 29(d) and 31(a)*

[58] Ms Essina advised Immigration New Zealand on 23 November 2016 when lodging the work visa application that the complainant had not received an evaluation of his “education” (qualification) by NZQA. This was incorrect, as his national trade certificate had been assessed by NZQA on 14 August 2016 as being at Level 1. This is a low level of qualification.

[59] Ms Essina takes issue with these grounds of complaint, as they were not raised by the complainant in his complaint to the Authority. That is not material. Misconduct identified by the Authority in investigating a complaint can be the subject of a complaint referred to the Tribunal. A person complaining to the Authority will not necessarily know what conduct by the adviser was contrary to the Act or the Code. The Registrar even has the power to refer a complaint to the Tribunal of his or her own motion.<sup>8</sup>

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<sup>8</sup> Immigration Advisers Licensing Act 2007, s 46.

[60] In her explanation to the Authority on 10 November 2017, Ms Essina says the NZQA assessment was irrelevant and mistaken. It is plainly relevant, as she recognised herself when advising Immigration New Zealand that there was not one. If it was irrelevant, she would not have mentioned it. Ms Essina had even explained to the complainant in her email of 14 March 2017 why it was important to obtain an assessment by NZQA.

[61] What is irrelevant is her expressed belief that the assessment was mistaken. That could not possibly justify her failure to advise Immigration New Zealand. It is noted that there is no evidence that NZQA's assessment was ever contested.

[62] In her statement of reply to the Tribunal, Ms Essina has another explanation. She says she overlooked the NZQA result. She did not intend to mislead anybody. She is getting older and her attention to detail is not great. I do not accept the reason given to the Tribunal, as it is not consistent with her explanation to the Authority.

[63] It is clear from Ms Essina's explanation to the Authority that she made a deliberate decision to withhold the NZQA assessment from Immigration New Zealand. Her advice to the agency that there was no evaluation was, at best, misleading, if not actually dishonest. This was no honest mistake or forgetfulness on her part. The first head of complaint is upheld. It is therefore not necessary to consider the second head.

(3) *Advising the complainant that his visitor visa had been declined because of changes in rules and regulations when in fact it had been declined on bona fide grounds, thereby acting dishonestly or in a misleading way*

(4) *Alternatively, advising the complainant that his visitor visa had been declined because of changes in rules and regulations when in fact it had been declined on bona fide grounds, in breach of cl 1*

[64] On 14 March 2017, Ms Essina advised the complainant that his visitor visa had been declined because Immigration New Zealand had changed the rules and regulations. This is not correct, as it was declined in Immigration New Zealand's letter of 22 December 2015 because he was not regarded as a *bona fide* or genuine visitor. In its letter, Immigration New Zealand expressed mild criticism of Ms Essina's sponsorship.

[65] In her statement of reply to the Tribunal, Ms Essina says she was not the licensed adviser for this visitor visa application. She expected the complainant had read Immigration New Zealand's letter and knew the facts. She was also puzzled as to why "it was brushed off".

[66] Ms Essina may not have been formally representing the complainant in the capacity of licensed adviser at the time of the visitor visa application, but she was involved in his application as she was the sponsor. Her involvement is confirmed by her email of 14 March 2017 to the complainant where she stated she did everything according to the then regulations. Ms Essina would have been well aware of why the visa had been declined. Her statement to the complainant is wrong. It is noted that in her communications with the complainant, she did not say how the rules had changed to the complainant's disadvantage, and even now she does not try to justify the truth of this statement.

[67] I find this to be another illustration of deception on the part of Ms Essina. Her advice to the complainant was dishonest. The third head of complaint is upheld, so there is no need to consider the fourth head.

(5) *Offering the complainant money on condition that he withdrew his complaint against her, thereby acting unprofessionally in breach of cl 1*

[68] On 19 October 2017, Ms Essina offered the complainant an unspecified sum of money if he would withdraw the complaint against her.

[69] In her statement of reply to the Tribunal, Ms Essina says the complainant himself had said in earlier communications that he had lost money as a result of Anthony's conduct. She therefore thought money was all that he wanted. She had had a similar experience of blackmail from another client.

[70] It is entirely appropriate for an adviser to offer a refund or compensation in response to a complaint. It does not become inappropriate because the client then withdraws the complaint, which may even have been the adviser's motive. However, such an offer becomes unprofessional when it is expressly linked by the adviser to a withdrawal, as Ms Essina did.

[71] The offer of money by Ms Essina, even if it is only a refund or compensation for loss, in the event that a complaint is withdrawn, is unprofessional. This is a breach of cl 1 of the Code. The fifth head of complaint is upheld.

## OUTCOME

[72] The first, third and fifth heads of complaint are upheld. Ms Essina has been dishonest or misleading. She has also breached cl 1 of the Code.

## SUBMISSIONS ON SANCTIONS

[73] As the complaint has been upheld, the Tribunal may impose sanctions pursuant to s 51 of the Act.

[74] A timetable is set out below. Any request for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim.

### *Timetable*

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

- (1) The Registrar, the complainant and Ms Essina are to make submissions by **10 February 2020**.
- (2) The Registrar, the complainant and Ms Essina may reply to submissions of any other party by **24 February 2020**.

## ORDER FOR SUPPRESSION

[76] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>9</sup>

[77] There is no public interest in knowing the name of Ms Essina's client.

[78] The Tribunal orders that no information identifying the complainant is to be published other than to Immigration New Zealand.

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D J Plunkett  
Chair

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<sup>9</sup> Immigration Advisers Licensing Act 2007, s 50A.