

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 21

Reference No: IACDT 020/21

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **CT**
Complainant

AND **RUPIKA NANDAN**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 18 August 2022

REPRESENTATION:

Registrar: Self-represented

Complainant: Self-represented

Adviser: Self-represented

PRELIMINARY

[1] Rupika Nandan, the adviser, was engaged by CT, the complainant, to apply for a work visa. He paid her fee, but no application was made. He sought a refund, but none was given.

[2] A complaint by the complainant against Ms Nandan to the Immigration Advisers Authority (the Authority) has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It is alleged that she has breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

BACKGROUND

[3] Ms Nandan was a licensed immigration adviser and director of NZ OZ Immigration Ltd (the immigration consultancy), of Hamilton, until [date].

[4] The complainant, a national of India, had a work visa and was working in New Zealand. It is understood he was a restaurant manager. The complainant says that his employer was the former husband of Ms Nandan.

[5] The complainant exchanged texts with Ms Nandan commencing in about June 2019 as he sought a pathway for residence. She advised him on 11 October he would need to make an application for a work visa.

[6] On 23 October 2019, a services contract was entered into by Ms Nandan ("T/A NZ OZ IMMIGRATION LTD") and the complainant. Ms Nandan agreed to provide "Immigration Services", being an application for an essential skills work visa. The fee was \$2,200.

[7] The complainant paid Ms Nandan \$2,000 on 25 October 2019. He says he subsequently paid the balance of \$200.

[8] Ms Nandan surrendered her immigration adviser's licence on [date], in order to practice law. She has told the Authority that she had an "internal agreement" to move the immigration consultancy's active files to her new law firm.¹

[9] Ms Nandan and the complainant continued to intermittently communicate. He sent a text to her on 5 January 2020 stating that he had instructed her to proceed on 24 October 2019, but at 25 December, the application had not been lodged. He asked for the return of the fees. She replied to say the contract did not allow for refunds. The complainant then responded on 7 January accepting that there would be no refund if he

¹ Letter Nandan to the Authority (17 August 2021) at [1h].

changed his mind, but he had given her his “document” in October and the application had not been lodged. He added that she had wasted three to four months.

COMPLAINT

[10] On about 7 January 2020, the complainant made a complaint against Ms Nandan to the Authority. He said he had paid her fee and sent her all the documents, but she did not file the application. Nor was he given an invoice for either of the two fee payments. On 1 November 2019, he talked to her about his “file” and she said it was uploaded but she did not have time to follow it up.² He then texted her a lot of times but she did not reply.

[11] According to the complainant, he called Immigration New Zealand (Immigration NZ) and was told no application had been made. He waited until 25 December but there was no positive response from her. She was supporting his employer in those three to four months. She did not reply to his texts and calls. This caused mental stress for him and his family. The complainant said he had been left with only three months before his visa was due to expire, to find another job and go through the process again.

Explanation from Ms Nandan

[12] In response to a request from the Authority for the complainant’s file, Ms Nandan sent an email to it on 1 March 2020. She attached the file. In her email, Ms Nandan stated that “the business” was setting up a restaurant and seeking a manager. It did not open until early December. The complainant signed an employment contract on 3 December 2019, at which time the work visa application could have been lodged. Her offices closed “earlier in December” and the visa was due to be filed in early January.

[13] During this period, the employer and the complainant had several disputes. The employer advised Ms Nandan that he might not support the visa and she was to wait for further instructions. The working relationship broke down and the complainant resigned. She could not have filed an application which did not meet the mandatory lodgement requirements. She was bound to file only complete applications which had a chance of success.

[14] As for refunding her fee, Ms Nandan said that the services contract did not allow for this.

[15] On 6 November 2020, the complainant’s new immigration adviser sent an email to Ms Nandan requesting a refund of \$2,500, which the new adviser said were the fees

² Letter complainant to the Authority (undated) sent with the complaint.

paid to Ms Nandan for filing an application with Immigration NZ. Ms Nandan's reply, if any, is not known.

[16] The Authority formally wrote to Ms Nandan on 3 August 2021 setting out the details of the complaint and inviting her explanation.

[17] In her letter of explanation of 17 August 2021, Ms Nandan said that she had surrendered her licence as from [date]. She had an internal agreement for the law firm to acquire all the active client files from the immigration consultancy. She could not give any advice from [date] until obtaining registration as a lawyer. In November 2019, she went to work in a law firm in Fiji. Ms Nandan said she had been in touch with the complainant and had advised him that certain documents were required for his application. The application was not concluded "due to the pertaining issues of mandatory requirements to lodge a visa".

[18] Ms Nandan further stated that she remained in Fiji until late January 2020 by which time the complainant's relationship with his employer had broken down. She had every intention of dealing with the matter in a timely way, but the application would have failed without the supporting documents. She tried to obtain the information on his behalf, but she was unsuccessful.

[19] Ms Nandan agreed that there should have been a new contract referring to the services being provided through a different entity. The complainant was aware she was moving from being a licensed adviser to a lawyer. She apologised for any breach of the Code and agreed it could have been done in a more professional and robust manner. The new contract was overlooked during the transition.

[20] It was also accepted by Ms Nandan that an invoice should have been provided and she could not see any reason why it had not. Over 400 existing and past clients were transitioned and it may have been an administrative mishap. She was not personally in the office though took full responsibility. The monies were paid and later transferred to the law firm where they remained pending return to the complainant.

[21] In her letter to the Authority, Ms Nandan acknowledged that a refund was not provided at the time of the complaint. The relationship between herself and the complainant had broken down in February 2020. She had gone to Fiji in March and then there was the lockdown. By the time she returned there were complaints to the Authority and the Law Society. In accordance with the Code, she could not therefore engage with the complainant. She had major surgery in June 2020 and due to her ongoing therapy, she had not gone back to the matter until recently. Ms Nandan said she had made

contact with the complainant's representative to refund the money, but the representative had advised the complainant wanted the matter to proceed through the Authority.

[22] In conclusion, Ms Nandan agreed that her engagement with the complainant fell short of the standard required by the Code. She apologised to the Authority. The invoice was not on the file and there should have been a new written agreement. The monies remained to be refunded. Due to her shortfalls and the anguish to the complainant, she wished to refund \$2,000 and to pay a further \$500. She pointed out that she did not gain personally, though agreed the complainant had been disadvantaged.

Complaint referred to the Tribunal

[23] The Registrar filed a statement of complaint (5 November 2021) in the Tribunal alleging breaches by Ms Nandan of the Code:

- (1) Failing to inform the complainant of her change in licence status from an immigration adviser to a lawyer, in breach of the obligation to be diligent and conduct herself with due care in cl 1.
- (2) Failing to provide an invoice to the complainant for his payment of \$2,000, in breach of cl 22.
- (3) Failing to provide a refund to the complainant, in breach of cl 24(c).
- (4) Failing to advise the complainant of the termination of the services contract when she surrendered her licence, in breach of cl 28(a).

JURISDICTION AND PROCEDURE

[24] 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 Immigration Advisers Licensing Act 2007 (the Act):

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

[25] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.³

[26] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.⁴ It has been established to deal relatively summarily with complaints referred to it.⁵

[27] 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.⁶

[28] The sanctions that may be imposed by the Tribunal are set out in the Act.⁷ The focus of professional disciplinary proceedings is not punishment but the protection of the public.⁸

[29] 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.⁹

[30] The Tribunal has received from the Registrar the statement of complaint (5 November 2021), with supporting documents.

[31] The complainant filed a response (14 February 2022) to Ms Nandan's statement of reply, with supporting documents. He also produced a response (9 August 2022) to Ms Nandan's further submissions.

[32] Ms Nandan filed a statement of reply (6 December 2021), with supporting documents. She also provided further submissions (9 August 2022).

[33] No party has requested an oral hearing.

ASSESSMENT

[34] 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.

³ Immigration Advisers Licensing Act 2007, s 45(2) & (3).

⁴ Section 49(3) & (4).

⁵ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

⁶ Section 50.

⁷ Section 51(1).

⁸ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

⁹ *Z v Dental Complaints Assessment Committee*, above n 8, at [97], [101]–[102] & [112].

Invoices

22. A licensed immigration adviser must, each time a fee and/or disbursement is payable, provide the client with an invoice containing a full description of the services the fee relates to and/or disbursements that the invoice relates to.

Refunds

24. A licensed immigration adviser must:

...

- c. promptly provide any refunds payable upon completing or ceasing a contract for services.

Client funds

25. A licensed immigration adviser must, if taking payment for fees and/or disbursements in advance of being payable and invoiced:

- a. recognise that these client funds remain the property of the client until payable and invoiced

...

Termination of services

28. A licensed immigration adviser must ensure that:

- a. the termination of services, for any reason, is confirmed to the client in writing

...

(1) Failing to inform the complainant of her change in licence status from an immigration adviser to a lawyer, in breach of the obligation to be diligent and conduct herself with due care in cl 1

[35] The Registrar states that there is no evidence Ms Nandan informed the complainant of the surrender of her immigration adviser's licence as from [date], while she waited for admission and/or a practising certificate as a lawyer. It is not known when she achieved this.

[36] The complainant alleges in his response (14 February 2022) that Ms Nandan never told him she was surrendering her licence.

[37] In her statement of reply (6 December 2021 at [6]), Ms Nandan denies not informing the complainant of the surrender. She refers to her explanation to the Authority of 17 August 2021 where she said the complainant was aware of her move from licensed adviser to a general practice as a lawyer.

[38] Ms Nandan also asserts in the statement of reply (at [7]–[8]) that the complainant confirmed to the Authority on 23 September 2021 that she had told him of her licence renewal, a reference she says to her practising certificate as a lawyer. It is not. It is clear the complainant was referring to her immigration adviser's licence.

[39] It is not possible to resolve on the papers the dispute as to whether Ms Nandan informed the complainant of her move to the practice of law. No contemporary communications as to this have been put before the Tribunal. The nature of Ms Nandan's alleged wrongdoing in this complaint does not warrant an oral hearing. It is also doubted whether such a hearing would resolve this contested fact.

[40] The first head of complaint is unproven.

(2) *Failing to provide an invoice to the complainant for his payment of \$2,000, in breach of cl 22*

[41] The complainant paid Ms Nandan \$2,000 on 25 October 2019. She admits she did not provide him with an invoice. Ms Nandan has breached cl 22 of the Code. The second head of complaint is upheld.

(3) *Failing to provide a refund to the complainant, in breach of cl 24(c)*

[42] Ms Nandan had surrendered her immigration adviser's licence on [date]. This effectively terminated her services contract with the complainant, though neither of them appear to have realised this. Ms Nandan intended to continue providing services in her new capacity of a lawyer and should have entered into another written contract with the complainant complying with her obligations as a lawyer. She could then have transferred the deposit of \$2,000 or \$2,200 to the law firm.

[43] As Ms Nandan did not enter into a new contract and with her services as an immigration adviser at an end, she was obliged to refund the deposit (less the value of work done and invoiced up to the point of termination).

[44] The complainant expressly requested a refund of the fee paid on 5 January 2020, because she had not filed the visa application. She says it was not filed because she did not have all the required supporting documents. Whether or not she was justified in not filing the application is not known and is not material. The complainant, being unaware that the contract had earlier terminated by Ms Nandan's relinquishing of the immigration adviser's licence, was plainly signalling the end of her services and seeking a refund.

[45] Ms Nandan's reply to the request, also on 5 January 2020, was that the services contract did not permit a refund for a change of mind. As the complainant points out, he sought a refund because of apparent inaction, not because of a change of mind. In any event, Ms Nandan's contractual provision is contrary to cl 24 of the Code. He was entitled to a "fair and reasonable" refund, irrespective of her contractual obligation.¹⁰ The monies remained the property of the complainant until she had completed the services and invoiced him for them.¹¹

[46] On 17 August 2021, after the complaint had been made to the Authority and her explanation invited, Ms Nandan offered the complainant a refund of \$2,000 and additional compensation of \$500.¹² According to Ms Nandan, the refund was declined as the complainant preferred to pursue his complaint.

[47] The offer of a refund, while appropriate, was late. It was about 21 months after her contract with him terminated and 19 months after he had requested a refund. Ms Nandan has breached cl 24(c). The third head of complaint is upheld.

(4) *Failing to advise the complainant of the termination of the services contract when she surrendered her licence, in breach of cl 28(a)*

[48] Ms Nandan surrendered her immigration adviser's licence on [date]. As noted above, this terminated the services contract with the complainant in her capacity of an immigration adviser. Ms Nandan did not confirm the termination in writing to the complainant.

[49] Ms Nandan has breached cl 28(a). The fourth head is upheld.

OUTCOME

[50] The second to fourth heads of complaint are upheld, with the first head being dismissed. Ms Nandan has breached cls 22, 24(c) and 28(a) of the Code.

SUBMISSIONS ON SANCTIONS

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

¹⁰ Licensed Immigration Advisers Code of Conduct 2014, cl 24(a).

¹¹ Clause 25(a).

¹² Letter Ms Nandan to Authority (17 August 2021) at [6](d).

[52] 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

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

- (1) The Registrar, the complainant and Ms Nandan are to make submissions by **9 September 2022**.
- (2) The Registrar, the complainant and Ms Nandan may reply to submissions of any other party by **23 September 2022**.

ORDER FOR SUPPRESSION

[54] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹³

[55] There is no public interest in knowing the name of Ms Nandan's client. The Tribunal orders that no information identifying the complainant is to be published other than to Immigration NZ.

[56] Ms Nandan also requests anonymity on the basis of another matter which is currently not linked to her publicly. The Tribunal has not referred to that matter as it is irrelevant. The public interest favours the transparency of judicial bodies. Unless there is a compelling reason otherwise, there is a presumption in favour of the publication of our decisions with the names of all advisers (current or former) in respect of whom complaints have been upheld.¹⁴ The request for suppression of her own name is declined. The Tribunal will, however, delete the month/day of the date of surrender of her immigration adviser's licence.

D J Plunkett
Chair

¹³ Immigration Advisers Licensing Act 2007, s 50A.

¹⁴ *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 at [18], confirmed in *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4 at [3], *Kartikeya v Fernyhough* [2014] NZIACDT 79 at [49].