

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2022] NZIACDT 9

Reference No: IACDT 018/21

**IN THE MATTER** of an appeal against a decision  
of the Registrar under s 54 of  
the Immigration Advisers  
Licensing Act 2007

**BY** **NL**  
Appellant

**AND** **THE REGISTRAR OF**  
**IMMIGRATION ADVISERS**  
Registrar

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 2 May 2022**

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**REPRESENTATION:**

Appellant: Self-represented

Registrar: S Watson-Hughes, counsel

## INTRODUCTION

[1] This is an appeal against the decision of the Registrar of Immigration Advisers (the Registrar) of 19 August 2021 rejecting a complaint by NL (the appellant) against ES (the adviser), on the ground that it did not disclose any of the statutory grounds of complaint.

[2] The adviser was also the appellant's employer in a separate business. The appellant says the adviser had a conflict of interest, but primarily complains about the underpayment of his wages.

## BACKGROUND

[3] The adviser is a licensed immigration adviser and director of [Redacted], of Auckland.

[4] The appellant is a national of Fiji. He arrived in New Zealand on a visitor's visa. An application for a work visa was declined on 18 May 2017, as Immigration New Zealand (Immigration NZ) was of the view that he was undertaking paid employment (which he denies). The appellant's immigration status became unlawful on about that date.

[5] The appellant went to see the adviser on 23 May 2017. At the conclusion of the meeting, the adviser handed him a letter signed by the adviser on the letterhead of his immigration company. The letter stated he would not charge for the meeting, but there would be a fee for any further work. The appellant was advised to leave New Zealand immediately. When back in Fiji, he could make a work visa application. Another option available to him was to make an application under s 61 of the Immigration Act 2009 (for a discretionary visa available to a person unlawfully in the country).

[6] In the letter, the adviser disclosed that he was a director of a construction company and that he was happy to offer the appellant employment as a carpenter. However, the immigration matter would have to be sorted out first.

[7] The letter noted that the adviser "highly recommend[s]" the appellant discuss the immigration matter with another adviser or a family member in order to obtain independent advice. It further noted that the appellant insisted that he wanted the adviser to look after his immigration interests.

[8] At the same meeting on 23 May 2017, the appellant signed the adviser's client agreement for the provision of immigration services. The adviser agreed to prepare a work visa application in the essential skills category. The fee was \$2,500.

[9] There was a clause in the agreement which stated that the adviser could not represent the appellant if there was a potential or actual conflict of interest, including the existence of any financial or non-financial benefit. If so, he could not continue to represent the appellant in any circumstances. The agreement further stated that the adviser was not aware of any actual or potential conflict of interest.

[10] The appellant and the adviser signed an "Applicant Acknowledgment" at the meeting on 23 May 2017. The appellant thereby acknowledged being furnished with the written agreement, the immigration company's complaints procedure, a summary of the "Code of Conduct" and how to access it, and "Material discussion/Immigration Advice in regard to my visa application". The latter is presumably the letter of 23 May 2017. The acknowledgement stated these documents had been explained to the appellant and that he understood his rights.

[11] The appellant may have gone back to Fiji, but in any event the adviser successfully made an application for a work visa on his behalf. The appellant then worked for some years in the adviser's construction company in New Zealand.

[12] In due course, a dispute arose between the appellant and the adviser largely concerning his wages as a carpenter.

#### *Complaint to the Authority*

[13] On 12 April 2021, the appellant made a complaint to the Immigration Advisers Authority (the Authority). It is noted that the form was signed on 8 March 2021 and the accompanying letters are both dated 6 March 2021. The appellant alleged dishonest or misleading behaviour by the adviser, or a breach of the Licensed Immigration Advisers Code of Conduct 2014 (the Code). He stated that he had been underpaid. He advised that he had found another employer.

#### *Registrar's letter dismissing complaint*

[14] On 19 August 2021, the Registrar wrote to the appellant rejecting the complaint under s 45(1)(b) of the Immigration Advisers Licensing Act 2007 (the Act), on the ground that it did not disclose any of the statutory grounds of complaint.

[15] The Registrar noted that the appellant had a work visa sponsored by a company in which the adviser was a director. The appellant had alleged the adviser was dishonest or misleading, but the Registrar found there was no evidence of this when providing his services. The adviser's client file had been reviewed by the Authority and found to be satisfactory. He appeared to have complied with his professional obligations in the service supplied for the visa application.

[16] According to the Registrar, a conflict of interest had been noted by the adviser and was addressed in the letter sent after the initial consultation. The appellant had subsequently signed an acknowledgment form stating that he understood and accepted its contents. Nor were there any adverse effects on the outcome of his successful visa application, due to the conflict.

[17] The appellant's employment related concerns did not relate to the adviser's immigration services. Other avenues could more appropriately address them.

## **JURISDICTION AND PROCEDURE**

[18] The grounds for a complaint against a licensed adviser are listed 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.

[19] Section 45(1) provides that on receipt of a complaint, the Registrar may:

- (a) determine that the complaint does not meet the criteria set out in section 44(3), and reject it accordingly;
- (b) determine that the complaint does not disclose any of the grounds of complaint listed in section 44(2), and reject it accordingly;
- (c) determine that the complaint discloses only a trivial or inconsequential matter, and for this reason need not be pursued; or

- (d) request the complainant to consider whether or not the matter could be best settled by the complainant using the immigration adviser's own complaints procedure.

[20] In accordance with s 54 of the Act, a complainant may appeal to the Tribunal against a determination of the Registrar to reject or not pursue a complaint under s 45(1)(b) or (c).

[21] After considering the appeal, the Tribunal may:<sup>1</sup>

- (a) reject the appeal; or
- (b) determine that the decision of the Registrar was incorrect, but nevertheless reject the complaint upon another ground; or
- (c) determine that it should hear the complaint, and direct the Registrar to prepare the complaint for filing with the Tribunal; or
- (d) determine that the Registrar should make a request under section 45(1)(d).

[22] The adviser against whom the complaint is made is not a party to the appeal and has not been served. The appeal itself cannot result in the Tribunal upholding the complaint against the adviser.

[23] The appeal filed here was late. The Tribunal issued a Minute on 28 October 2021 accepting it had jurisdiction and setting out a timetable for submissions and supporting information.

#### *Submissions of the appellant*

[24] The appellant's submissions of 29 September 2021 were accompanied by considerable supporting material largely related to his employment complaint. The appellant repeats his allegation about underpayment of his wages working for the adviser's construction company. He says none of this was investigated by the Authority.

[25] The appellant contends that he was never given the opportunity to read the contents of anything he signed. It was never explained. It was maliciously taken away from him in split seconds. He also says in his submissions that he cannot recall signing the letter.

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<sup>1</sup> Immigration Advisers Licensing Act, s 54(3).

[26] According to the appellant, the adviser had a conflict of interest running both the construction and immigration businesses at the same time. He relies on cls 5 to 7 of the Code.

#### *Submissions of the Registrar*

[27] There are submissions (16 December 2021) from Ms Watson-Hughes, counsel for the Registrar, together with supporting documents.

[28] As for the potential conflict of interest, it was referred to by the adviser in the letter of 23 May 2017 sent to the appellant following an initial consultation. It does not use the words “potential or actual conflict of interest”, however the adviser’s relationship as a director of the construction company was made clear. The appellant was highly recommended to seek independent advice, but the letter noted that he insisted on the adviser representing him. The appellant signed an acknowledgement form stating that he understood his rights.

[29] The appellant alleges he was not given the opportunity to read the document before signing. Counsel contends that some of the responsibility for this lies with the appellant as the person who signed the document. The appellant does not say he was unaware of the adviser’s directorship of the construction company. The adviser made no attempt to conceal his relationship with the company employing the appellant.

[30] The potential conflict was dealt with in accordance with the Code. The visa application made through the adviser was granted, so the adviser did not suffer any adverse effects due to the conflict.

[31] The main issues in the complaint are employment related, rather than concerning the adviser’s professional immigration service. The Registrar is aware that a complaint made to the labour inspectorate by the appellant is being assessed.

#### **ASSESSMENT**

[32] The appellant’s employment related claims are not within the jurisdiction of the Authority or the Tribunal.

[33] The adviser’s dual roles as both an adviser and an employer certainly created a conflict of interest, though whether actual or potential is less clear. He had a financial interest in the appellant’s employment.

[34] The Code imposes obligations on advisers where there are such conflicts:

**Conflicts of interest**

5. Where a licensed immigration adviser is aware that there is a potential or actual conflict of interest relating to the client, including the existence of any financial or non-financial benefit the adviser will receive as a result of the relationship with the client, the adviser must disclose the potential or actual conflict to the client in writing.
6. Where a licensed immigration adviser is aware that there is a potential or actual conflict of interest relating to the client, the adviser may only represent or continue to represent the client where the client gives written consent.
7. A licensed immigration adviser must not in any circumstances represent or continue to represent the client where they are aware that there is an actual conflict of interest that means:
  - a. the adviser's objectivity or the relationship of confidence and trust between the adviser and the client would be compromised, or
  - b. the adviser would breach the confidentiality of a client.

[35] The reason for rules against a conflict of interest is the critical need for the adviser to remain objective and hence to be free from outside influence, including the conscious or unconscious influence arising from his or her own interests. This is also a requirement of the Code:

**Client Care**

2. A licensed immigration adviser must:
  - a. maintain a relationship of confidence and trust with the client and provide objective advice

...

[36] The conflict was recognised by the adviser. He disclosed his role in the construction company at the outset. He did so in writing in the letter of 23 May 2017. The appellant signed an acknowledgement stating that he received a copy of the letter. He confirmed in the acknowledgment that he understood his rights. This included the right to seek independent immigration advice, as was pointed out in the letter.

[37] The acknowledgment signed by the appellant is not, expressly, written consent by the appellant to representation by the adviser (as required by cl 6). It is, expressly, an acknowledgment only of receipt of the letter (which discloses the adviser's other role) and that he understood his rights.

[38] Nonetheless, I agree with the Registrar that the adviser has satisfied his professional obligations concerning conflicts in this case. In reality, by signing the

acknowledgement, the appellant consented in writing to the adviser's representation of him for immigration purposes notwithstanding the conflict.

[39] However, the adviser's process could not be described as best practice. This would require the client, in clear and express terms, to consent in writing to representation despite the conflict. The nature of the conflict and the fact that it is a conflict should be expressly recorded, so that it is clear what the client is consenting to.

[40] The disclosure and written consent could occur in the client agreement itself. The standard conflict clause used by the adviser here paraphrased the Code provisions, which is helpful, but then went on to make the incorrect statement that there was no conflict. Plainly there was, but as it had been disclosed in the letter and in effect consented to in the acknowledgement, the failure to also record it in the agreement is not a breach of the Code.

[41] The agreement also stated, in the concluding "Acknowledgments", that if any conflict was disclosed, the client acknowledged it and agreed that the adviser could act for him or her. This is arguably a meaningless statement by the client if no conflict is disclosed in the agreement itself. The adviser has carelessly used a template agreement without adapting it to the client's circumstances.

[42] The appellant contends that the documents were not explained to him on 23 May 2017 and he was given only split seconds to read them before signing them, whereupon they were taken away. He has also said, inconsistently, that he cannot recall signing the letter (but, if he did, it was taken away in a split second).

[43] As to whether the appellant's allegations are reliable, it is noted:

1. The appellant's submissions are inconsistent as to whether he signed the letter or not (actually, he signed the acknowledgement document accompanying the letter, not the letter itself).
2. The acknowledgment states that he was given a copy of the agreement, that it was explained to him and that he understood his rights.
3. The agreement signed by him contains an acknowledgment that he had read it.
4. The appellant displays a high standard of English in his written communications. He would have understood what he was signing.



5. The complaint was made about four years after the event on which the complaint is based. It is really about his wages as a carpenter in the subsequent years, not the immigration services provided in 2017.

[44] I conclude that the appellant plainly knew at all times about the adviser's role in the employing company. He signed the acknowledgement and the client agreement. In doing so, he consented to the adviser representing him on the work visa, knowing he was also the employer.

## **OUTCOME**

[45] The appeal is rejected.

## **ORDER FOR SUPPRESSION**

[46] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>2</sup>

[47] There is no public interest in knowing the name of the adviser against whom the complaint is made. Nor is there any public interest in knowing the identity of the appellant.

[48] The Tribunal orders that no information identifying the adviser or appellant is to be published other than to Immigration New Zealand.

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D J Plunkett  
Chair

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<sup>2</sup> Immigration Advisers Licensing Act 2007, s 50A.