

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

Decision No: [2012] NZIACDT 51

Reference No: IACDT 039/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

**Rachel Yerbury-Wilson and Stephen
Wilson**

Complainants

AND

Glen William Standing

Adviser

DECISION

REPRESENTATION:

Complainants: In person

Adviser: In person

Date Issued: 30 August 2012

DECISION

Introduction

- [1] Ms Yerbury-Wilson and Mr Wilson engaged Mr Standing to provide immigration services.
- [2] They paid money to him in advance for professional fees.
- [3] They were induced to pay the fees by Mr Standing dishonestly claiming he could guarantee them permanent residence in New Zealand.
- [4] They relocated to New Zealand with their family. They gained temporary access to New Zealand, but discovered being able to remain in New Zealand was dependent on them establishing a profitable business. They are very concerned they will not be able to meet the requirement, and may lose the money they have invested as they will not have time to fully establish their business. They will then have to leave New Zealand; having disrupted their lives in reliance on Mr Standing's misrepresentation. The cost of migration and establishing their business has been approximately \$100,000.
- [5] Mr Standing also misappropriated client funds he was required to hold on trust, and did not refund the fees he received due to his misrepresentation.
- [6] The evidence supporting the complaint, and the potential conclusion that he was dishonest, was put to Mr Standing by the Tribunal. He has neither answered nor explained that evidence.
- [7] The Tribunal has upheld the complaint. The evidence supporting the complaint requires that the Tribunal conclude Mr Standing obtained funds dishonestly through misrepresentations, that he was indifferent to the grave consequences for his clients and their family, that he misappropriated funds he held on trust, and that he failed to repay the money he gained dishonestly.

The Complaint and the Response

The complaint

- [8] On 3 October 2009 Ms Yerbury-Wilson signed an agreement with Mr Standing for the provision of immigration services. Mr Standing was a licensed immigration adviser, and he is identified in the agreement as being licensed.
- [9] The agreement provided for a company through which Mr Standing apparently conducted his immigration practice at the time (Golden Sands Migration (NZ) Ltd) to provide assistance "with every aspect of [Ms Yerbury-Wilson and her family's] New Zealand Permanent Residency application". The application was to be made on the basis of seeking a "Long Term Business Visa".
- [10] The professional fee for the services was £8,000, and it included fees to be paid to third parties. The fee was invoiced but the invoices did not identify the party issuing the invoice. The first was dated 21 October 2009, and the second dated 8 November 2009. They were both paid.
- [11] The agreement contained what it described as a "Performance Guarantee". The terms stated:

"Golden Sands provides a Performance Guarantee. That is, in the event that Golden Sands fails to achieve [Ms Yerbury-Wilson's] goal of Permanent Residency of New Zealand, Golden Sands will issue a full refund of its professional fees to [Ms Yerbury-Wilson] – less the cost of any Government fees, translation costs or disbursements paid."
- [12] Mr Standing expanded on this in an email dated 9 October 2009 in which he said "in a nut shell, I am guaranteeing your residency of New Zealand via the LTBV route".

- [13] There were various qualifications relating to the performance guarantee in the agreement, none of which appear relevant.
- [14] The immigration work involved arranging temporary visas for Ms Yerbury-Wilson and her family in addition to seeking residence.
- [15] Ms Yerbury-Wilson and Mr Wilson's complaint has two elements:
- [15.1] first, that Mr Standing gave Ms Yerbury-Wilson and Mr Wilson incorrect advice regarding their entitlement to residence visas; and
- [15.2] second, that they are entitled to a refund of some or all of the fees they paid, and Mr Standing has not honoured that. Further, the component of the fee that related to money paid in advance for fees due to third parties was trust funds, and required to be kept in a separate bank account. It appears the funds have been misappropriated, and were not kept separate from Mr Standing's personal property or accounted for.
- [16] The detail of the complaint Ms Yerbury-Wilson and Mr Wilson make regarding incorrect advice is:
- [16.1] An element of their entitlement to a visa was that they were to start a business in New Zealand, and Mr Standing advised that having done so, they would be guaranteed residence after three years.
- [16.2] They understood from Mr Standing's undertakings, this was "100% guaranteed", and relied on that to commit to migrating, and taking the risk of commencing a business in New Zealand.
- [16.3] Ms Yerbury-Wilson and Mr Wilson committed approximately \$100,000 to migrating and establishing a business.
- [16.4] They have now learned their residence is not 100% guaranteed but rather, among other things, it depends on their business being profitable or "clearly [having] the potential to be trading profitably within 12 months after the application is made". They are concerned about the implications for them and their family.
- [17] Mr Standing had his licence cancelled by this Tribunal on 15 August 2011. Ms Yerbury-Wilson and Mr Wilson sought a refund of fees, including fees of \$2,800 (it appears it should be £2,800 as Mr Standing's invoice was for that amount, and that figure will be relied on subject to any further information) that they paid to Mr Standing on account of fees payable to Immigration New Zealand when an application for residence is lodged.
- [18] No application for residence has been lodged, and Mr Standing is no longer entitled to provide immigration services.
- [19] Ms Yerbury-Wilson and Mr Wilson expected Mr Standing to:
- [19.1] Account for Government fees of \$2,800 (or £2,800) which he received on trust.
- [19.2] Refund professional fees to the extent that he is not entitled to them.
- [20] Mr Standing has indicated they cannot expect repayment of any money.

The response

- [21] Mr Standing's response to the complaint was a letter dated 22 November 2011, addressed to the Authority. This letter is written in the context of multiple complaints to the Authority separate from this complaint. The letter states:

"Living New Zealand Limited is now in liquidation and as such, I no longer hold the files for [Ms Yerbury-Wilson and Mr Wilson]."

I can however conclusively state that in each complaint, there was no dishonesty, breach of the code of conduct or any other matter that I would be concerned about.

As previously mentioned within other complaints, had my license not been cancelled, many of these applicants would not have lodged complaints.”

Context and Scope of Evidence and Mr Standing Failing to Respond to Questions

Other complaints

- [22] The Tribunal issued a Minute dated 20 July 2012, which identified the grounds of complaint, response, the issues arising, and indicated conclusions that may be reached on the basis of the information held at that point by the Tribunal.
- [23] The Minute made it clear to the parties they could provide further information, and that would be considered by the Tribunal.
- [24] The Minute also requested further information from Mr Standing, and put him on notice any response should take account of the fact that he was facing multiple complaints, some of which had strikingly similar components.
- [25] The Minute explained to Mr Standing:
- [25.1] He had himself raised the fact this complaint is not in isolation. There were other complaints before the Tribunal where Mr Standing is alleged to have misrepresented a potential client's immigration requirements, and provided "guarantees" of entitlement to a residence visa. That has, it was alleged, been for the purpose of procuring the payment of fees in advance. Mr Standing was alleged to have refused to repay fees when he could not perform the "guarantee".
- [25.2] This Tribunal is an inquisitorial body, and is required to pursue issues raised by complaints, where necessary requesting further information and requiring persons with information to appear before the Tribunal.
- [25.3] The approach this Tribunal would take was that it would not unnecessarily use evidence in one complaint to support another complaint. However, multiple complaints which involve strikingly similar features where fees have been procured by a misrepresentation may be probative evidence when the Tribunal determines whether there was systematic dishonesty, incompetence, or a set of circumstances amounting to an innocent explanation.
- [25.4] At that point, subject to further submissions, the Tribunal considered it sufficient to put Mr Standing on notice that this complaint should be addressed in a context where he faced multiple complaints that include the features of:
- [25.4.1] Misrepresenting a potential client's immigration prospects and requirements.
- [25.4.2] Demanding and receiving fees in advance amounting to several thousands of dollars.
- [25.4.3] Refusing to refund the fees paid in advance when called to account for the promises that induced the payment of fees.
- [25.5] If the Tribunal were to find a pattern of conduct of this kind, it could potentially be taken into account as evidence of a system through which Mr Standing dealt dishonestly with clients. It could potentially find this complaint was an instance of that pattern of behaviour, rather than incompetence.
- [25.6] Incompetence could be more readily accepted if this complaint was viewed as an isolated lapse from acceptable standards.

- [25.7] Mr Standing was invited to take that into account when he responded.
- [26] As it has transpired, Mr Standing has not provided any explanation, beyond the response to the Authority identified above.
- [27] The Tribunal is required to determine the complaint 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). I am mindful that the complaint involves an allegation of dishonesty, and deception. That is at the highest end of the scale, and I must be sure the evidence requires such a finding.
- [28] I am satisfied this complaint is made out on the evidence presented in support of it, and it is not necessary to refer to the other complaints to find this complaint is made out. However, that evidence is probative and should be given some weight.
- [29] The other potentially relevant complaints are published in the series of this Tribunal's decisions: [2012] IACDT 46 to 58. In that series of decisions, there are other examples of complaints that are similar to this complaint (outlined in para [25.4], above), and those complaints have been upheld.
- [30] The complaints when viewed together show Mr Standing was systematically using misrepresentations to have multiple clients pay him money in advance. As indicated in the Tribunal's Minute, this is potentially probative evidence in relation to whether I can be sure that Mr Standing was dishonest rather than incompetent when he told Ms Yerbury-Wilson and Mr Wilson they were "100% guaranteed" permanent residence, when in fact that was far from the true position. The issue is discussed further in relation to this particular finding.

Request for further information from Mr Standing

- [31] The Licensed Immigration Advisers Code of Conduct (clause 3) requires Mr Standing to maintain complete client records for seven years, and confirm in writing the details of material discussions with clients. Accordingly, he should be in a position to present a fully documented record of the professional engagement which is subject to the complaint. He has not produced that material to the Authority or the Tribunal.
- [32] He says he does not have the material, and refers to the liquidation of the company Living New Zealand Ltd, claiming the liquidator holds his files.
- [33] Pursuant to section 49(4)(a), the Tribunal's Minute requested Mr Standing to:
- [33.1] Explain the roles of Living New Zealand Ltd and Golden Sands Migration (NZ) Ltd, as they relate to the complaint and the availability of records.
- [33.2] Provide a full and complete copy of his client records relating to his professional engagement with Ms Yerbury-Wilson, Mr Wilson, and their family.
- [33.3] Explain and document how he dealt with the fees paid to him, and took into account his obligation to deal with the receipts in whole or in part as trust funds and keep them in a separate bank account in accordance with clause 4 of the Code.
- [33.4] Respond to each of the issues raised in Ms Yerbury-Wilson and Mr Wilson's complaint, with reference to his client record.
- [34] Mr Standing was required to maintain client records for seven years and be in a position to make them available. The Code has the force of law (see sections 37–39 and 44 of the Act). It is implausible that any responsible liquidator would impede Mr Standing from obtaining a copy of his client record to respond to a complaint, given the legal duties on Mr Standing.
- [35] Mr Standing produced no evidence that he has attempted to obtain the record.

- [36] Accordingly, the Tribunal's Minute gave Mr Standing notice that if any person is withholding his client record, he should notify the Tribunal of the circumstances and the Tribunal would consider issuing a summons to that person, to secure the production of the client record.
- [37] Mr Standing was further put on notice that unless he demonstrated he has taken the steps available to secure the production of his client record, the Tribunal would potentially take the view that he has chosen to withhold his record, and reach conclusions adverse to him on that basis.

The Issues to be Determined

- [38] Mr Standing is bound by the Immigration Advisers Licensing Act 2007 and the Licensed Immigration Advisers Code of Conduct.
- [39] Clause 1 of the Code of Conduct requires a licensed immigration adviser to act with professionalism. In doing so they must ensure that the terms of professional engagements are fair and appropriate.
- [40] Professionalism requires Mr Standing to honour agreements, such as refunding fees, where applicable.
- [41] Clause 1 of the Code also requires that a licensed immigration adviser must discharge professional engagements with due care, diligence and respect. This requires them to ensure that their professional service delivery meets proper standards.
- [42] Clause 4 of the Code treats receipts of funds, to the extent they are held on behalf of clients, as trust funds, and a licensed immigration adviser must bank them separately.
- [43] Clause 5 requires that a client's immigration opportunities are not misrepresented.
- [44] Clause 8 of the Code prohibits a licensed immigration adviser from setting a fee that is not "fair and reasonable".
- [45] Section 44 of the Act provides that breaches of the Code, negligence, incompetence, dishonesty, and misleading behaviour are all grounds for complaint.
- [46] The issue for determination by the Tribunal is whether it is satisfied Mr Standing breached any of these professional standards, having regard to the standard of proof.

Decision

- [47] The regime in the Act is one where individuals are licensed as immigration advisers, and it is not possible for a corporate entity or a practice to be licensed. It follows that individual licensed immigration advisers are the subject of complaints, and personally face disciplinary sanctions and orders for compensation.
- [48] Mr Standing was personally responsible for professional service delivery in relation to this complaint.

Lack of care, negligence, incompetence, or dishonest misrepresentation

- [49] I am satisfied Mr Standing's immigration advice was delinquent, because either:
- [49.1] he failed to provide adequate and proper advice on the requirements for residence; or
- [49.2] he misrepresented Ms Yerbury-Wilson and Mr Wilson's entitlement to residence.
- [50] The record indicates that Mr Standing induced them to believe that if they commenced a business, they were assured of gaining residence. Accordingly, they committed to migration and major expenditure.

- [51] Commencing a small business potentially involves a high level of risk as to profitability, and all the more so when profitability must be achieved within a limited timeframe. The profitability requirement was central to the issues Ms Yerbury-Wilson and Mr Wilson needed to understand and take into account before committing to life-changing steps, and substantial expenditure.
- [52] Mr Standing was required to obtain his client's informed consent to the course of action advised. He was also required to maintain a full record of that process (clause 3 of the Code). If the record before the Tribunal is incomplete or creates a wrong impression, Mr Standing should have been able to provide evidence to demonstrate what his advice was.
- [53] The Tribunal's Minute gave Mr Standing notice that the Tribunal would potentially conclude Mr Standing's advice to Ms Yerbury-Wilson and Mr Wilson was:
- [53.1] unprofessional and careless;
- [53.2] negligent;
- [53.3] reflected incompetence; or was
- [53.4] dishonest and misleading, as the promise of "guaranteeing" residence was to induce Ms Yerbury-Wilson and Mr Wilson to pay fees, and Mr Standing knew he could provide no such guarantee and withheld critical advice regarding the requirements for being granted a residence visa.
- [54] I am satisfied that the evidence before the Tribunal requires me to find Mr Standing was unprofessional, dishonest and misleading. As noted, I am conscious of the standard of proof. The evidence which requires that I find dishonesty, rather than carelessness or recklessness, has four elements.
- [55] First, the issue of business profitability is elementary for a licensed immigration adviser dealing with a business migrant. For a licensed immigration adviser not to be aware of this issue and address it with their client, who was making such a commitment in terms of money and life circumstances, would be reckless at best. Accordingly, the very nature of the error itself points to the most serious end of the scale. On that basis alone, I would find Mr Standing was unprofessional to the level of being reckless, given the absence of any explanation.
- [56] Second, the Code of Conduct is very clear in terms of the requirements on a licensed immigration adviser. The adviser is required to keep proper records of all advice (clause 3), act on **informed** instructions (clause 1.1), and they must accurately represent their client's immigration opportunities (clause 5). It follows that a licensed immigration adviser in Mr Standing's situation in relation to this instruction, should be able to produce a client records showing that he:
- [56.1] Evaluated his clients' eligibility for residence visas.
- [56.2] Informed them of any reasonably material risks associated with their entitlement to gain residence visas.
- [56.3] Informed them of the process for applying for a residence visa.
- [56.4] Informed them of the terms and requirements, including in this case the requirements for business profitability.
- [57] The Tribunal asked Mr Standing to produce his client record. He has not produced any record, and the material before the Tribunal is sufficient to conclude that Mr Standing made no attempt to take informed instructions from his client; rather he withheld from them vital information that he must have known if he was practising in this area.
- [58] Third, I am satisfied I must give some weight to the series of complaints the Tribunal has upheld against Mr Standing. The series of complaints where those findings have been made have already been referred to above (para [29]).

- [59] I emphasise that I give weight to the evidence in the other complaints with caution, and only to the extent they truly have probative value in this complaint. I accept there is probative value, as the other complaints evidence a distinctive *modus operandi* (*R v Tukuafu* [2003] 1 NZLR 659 (CA)).
- [60] The key features of these complaints evidence a willingness to make whatever false representations were required to secure the payment of fees, regardless of the potential clients' immigration prospects. The representations were tailored to fit Mr Standing's perceptions of what his prospective clients may believe, and take as assurance. In some cases grossly extravagant promises were made in writing, and provided to the Tribunal in support of complaints.
- [61] For example, among the fabrications he presented to prospective clients in writing were that:
- [61.1] he provided his professional services as "an immigration law firm";
- [61.2] prospective clients were "100% guaranteed" a residence visa; and
- [61.3] if Mr Standing did not deliver a residence visa to a client, he could be prosecuted for the failure to do so.
- [62] This conduct is distinctive, and it is only necessary to refer to the standards required in the Code of Conduct to see how aberrant such behaviour is for a licensed immigration adviser.
- [63] The present case is not identical to the other complaints, as in other cases Mr Standing typically wholly failed to provide the services promised. However, there is considerable similarity in Mr Standing's willingness to make whatever representations he thought may induce his client or prospective client to pay money to him; indifferent as to the fact he could not deliver what he promised. In this case and others, the promise of a "100% guarantee" was made. That was highly distinctive, and any licensed immigration adviser must be well aware such a promise exaggerates a person's immigration opportunities and breaches clause 5 of the Code of Conduct. It is never possible to give such an undertaking.
- [64] Fourth, as discussed below, in the course of this instruction Mr Standing has misappropriated client funds, which he was obliged to hold on trust. While I could not accept one example of dishonesty proved another, I do accept this is a further indication that Mr Standing was not simply incompetent. It adds some weight to the conclusion that Mr Standing embarked on a dishonest enterprise, where he had no regard to his professional obligations, or the harm he was causing to his clients. Part of his objective was to access funds, which he misappropriated.
- [65] Giving weight to the four factors, I am sure the only proper finding is that Mr Standing was dishonest and he misrepresented his clients' immigration opportunities for the purpose of his own financial gain; in part accessing funds which he was obliged to hold on trust, which he misappropriated.
- [66] Accordingly, this aspect of the complaint must be upheld. Mr Standing's behaviour was both misleading and dishonest, and accordingly grounds for complaint under section 44(2)(d) of the Act. It was also in breach of the Code of Conduct (clauses 1 and 5), which is also grounds for complaint pursuant to section 44(2)(e) of the Act.

Misappropriation of trust funds

- [67] The information before the Tribunal establishes that at least some of the money paid to Mr Standing was for fees to be paid to Immigration New Zealand. The first invoice on which fees were paid refers to "Government Fees" on a residence application of £2,600. The second refers to "Government Fees" for a migrant levy of £220.
- [68] The evidence does not show the extent to which Mr Standing was entitled to the professional fee component when he received it. To the extent he was not entitled to those fees when paid, they too were client funds.

- [69] The Code (clause 4) requires that client funds are banked in a “separate clients’ bank account”, as those funds are trust funds.
- [70] At least in respect of “Government fees”, and potentially some unearned fees, they should have been banked in his client account, and they were not.
- [71] Short of misappropriation of funds, it is very difficult to understand why Mr Standing would not be able to account for the funds when his engagement ended.
- [72] The fact he did not do so required an explanation, and in the absence of an explanation the inevitable inference is that he failed to deal with the funds as trust funds and has failed to account for them. That inference has been put to Mr Standing pursuant to the Tribunal’s statutory process for making inquiries, and he has not responded.
- [73] Where trust funds are received by a professional and they are not banked into the appropriate account, and then are not accounted for, the probable reason involves misappropriation of the funds. There is no discretion in relation to dealing with client funds.
- [74] I am satisfied Mr Standing dishonestly misappropriated client funds. Given the fruitless and repeated efforts to have Mr Standing account for this money, which he was obliged to hold in a designated bank account, I am satisfied he took his client’s money for his own purposes.
- [75] I am satisfied this aspect of the complaint must be upheld, as a breach of the Code (clause 4), and it also involved a dishonest failure to deal with, and account for funds. Section 44(2)(d) and (e) provide these circumstances are grounds for complaint.

Demanding and retaining excess fees

- [76] I am satisfied Mr Standing did not provide professional services that reflected the fees he demanded and retained. Further, he guaranteed the full refund of professional fees if he did not deliver residence visas for Ms Yerbury-Wilson, Mr Wilson, and their family.
- [77] What he had in fact done was put them into an invidious position through misleading them as to their immigration opportunities; he had no right to any professional fee. He had failed to deliver the service to which they were entitled, and was obliged to return the fees they paid.
- [78] Mr Standing was put on notice by the Tribunal’s Minute that the Tribunal may conclude:
- [78.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.
- [78.2] The fee was not fair and reasonable when his engagement terminated.
- [78.3] Clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.
- [78.4] The fees were repayable in part as they were not fair or reasonable; they were in fact wholly repayable, as he failed to deliver his guarantee of residence.
- [78.5] He breached the Code by failing to refund fees.
- [79] Mr Standing has not responded.
- [80] I am satisfied on the material before the Tribunal that Mr Standing was not entitled to retain any of the money he received, and he should have returned it in full. That was a direct consequence of the dishonesty that induced the payment of fees in the first place.
- [81] I uphold the complaint in this respect also. Mr Standing’s breach of the Code (clauses 8 and 3(d)) is a ground for complaint under section 44(2)(e) of the Act.

Submissions on Sanctions

Issues

[82] As the complaint has been upheld, section 51 allows the Tribunal to impose sanctions. The section provides:

“Disciplinary sanctions

- (1) The sanctions that the Tribunal may impose are —
 - (a) caution or censure:
 - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
 - (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
 - (d) cancellation of licence:
 - (e) an order preventing the person from reapplying for a licence for a period not exceeding two years or until the person meets specified conditions:
 - (f) an order for the payment of a penalty not exceeding \$10,000:
 - (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
 - (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
 - (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.”

[83] The Authority and Ms Yerbury-Wilson and Mr Wilson have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees and compensation. Whether they do so or not, Mr Standing is entitled to make submissions and respond to any submissions from the other parties.

[84] 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.

[85] The Tribunal will make any decision on the refund of fees based on the amount of fees identified in this decision, subject to any submissions from the parties.

[86] It appears that the appropriate approach, if there is an order for the refund of fees, is that the amount paid should be converted to New Zealand dollars at the rate for the day it was paid, and an order made of a refund of that amount of New Zealand dollars.

[87] That would be on the basis that the payment was intended to be for services in New Zealand and could be expected to be converted when paid. The parties may contend for some other basis.

Mr Standing’s circumstances

[88] This Tribunal is an inquisitorial body and is required to pursue issues raised by complaints, where necessary requesting further information and requiring persons with information to appear before the Tribunal.

[89] This Tribunal is currently dealing with other complaints against Mr Standing, and has previously dealt with complaints against Mr Standing.

- [90] Mr Standing is not presently a licensed immigration adviser, as his licence was cancelled by this Tribunal, and limitations placed on him seeking another licence.
- [91] Mr Standing has also informed the Tribunal that the company through which he most recently conducted his practice had gone into liquidation (Living New Zealand Ltd – now struck off, as liquidation has been completed).
- [92] In this and other complaints Mr Standing is alleged to have failed to meet financial obligations to clients. The Tribunal is aware of the liquidator's reports, and draws Mr Standing's attention to those reports which state:
- [92.1] Mr Standing has been referred to the National Enforcement Unit in relation to suspected criminal offences, which apparently relate to Mr Standing's conduct and the absence of funds to pay creditors.
- [92.2] The company had assets that could be realised of \$8,078, and liabilities and liquidation expenses of \$497,422. Creditors received no distribution from the liquidation.
- [92.3] Overseas clients had paid \$635,769.49 in deposits for work that had not been completed.
- [93] The Tribunal is aware this company did not operate all the time Mr Standing was operating his practice, and the fees received relate only to clients where work was incomplete. Accordingly, the fees received from overseas clients \$635,769.49 are less than the total fees Mr Standing received.
- [94] Mr Standing is facing complaints before this Tribunal that he procured the payment of fees and failed to perform work; in many cases those fees were deposited into offshore bank accounts.
- [95] This information is sufficient to raise a concern that Mr Standing has received a substantial body of fees which have not been accounted for.
- [96] Accordingly, the Tribunal puts Mr Standing on notice that if he claims he does not have the means to pay penalties, and compensation:
- [96.1] He is expected to explain to the Tribunal the circumstances identified in the liquidator's reports.
- [96.2] He should consider making arrangements for a chartered accountant to prepare a source and application of funds statement in relation to his practice, and producing that to the Tribunal.
- [96.3] He will be expected to fully explain his personal financial circumstances, including providing a statement of assets and liabilities.
- [97] If Mr Standing does not respond, the Tribunal may proceed on the basis that Mr Standing has the means to meet the financial sanctions that fully reflect the findings against him.

Timetable

- [98] The timetable for submissions will be as follows:
- [98.1] The Authority and Ms Yerbury-Wilson and Mr Wilson are to make any submissions within 10 working days of the issue of this decision.
- [98.2] Mr Standing is to make any further submissions (whether or not the Authority or Mr Wilson and Ms Yerbury-Wilson make submissions) within 15 working days of the issue of this decision.
- [99] Any party may apply to extend the timetable. If Mr Standing seeks to have time to have the assistance of a chartered accountant, he should provide a written statement from that person identifying the work they are undertaking, and the likely time required to complete it.

[100] The parties are notified that this decision will be published with the names of the parties after five working days, unless any party applies for orders not to publish any aspect.

DATED at WELLINGTON this 30th day of August 2012.

G D Pearson
Chair