

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

Decision No: [2013] NZIACDT 37

Reference No: IACDT 045/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

NQE

Complainant

AND

Alyssa Lopez Tan

Adviser

THE COMPLAINANT'S NAME IS NOT TO BE PUBLISHED

DECISION

REPRESENTATION:

Complainant: In person

Adviser: In person

Date Issued: 13 June 2013

DECISION

Introduction

- [1] Ms Tan is a licensed immigration adviser; she has a practice in the Philippines.
- [2] The complainant approached the practice where Ms Tan works, and entered an agreement with Ms Tan to provide immigration services. The agreement referred to lodging an expression of interest, a residence application, and potentially an appeal in the event of an adverse decision.
- [3] The complainant was not satisfied with how Ms Tan's practice was conducted. He said:
- [3.1] The agreement he had with Ms Tan did not set out the arrangements between them in a satisfactory way.
- [3.2] He and his family were invited to apply for residence in New Zealand by Immigration New Zealand, and Ms Tan withheld this information, and did so as part of a strategy to extract fees to which she was not entitled.
- [3.3] Ms Tan attempted to demand fees of US\$1,000 to prepare for an interview, which was part of the professional service agreed. In addition, Ms Tan sought other fees to which she was not entitled.
- [3.4] Ms Tan was a party to an unlicensed person providing immigration services.
- [4] Ms Tan said that none of the allegations were true, and she had at all times conducted herself in a professional manner.
- [5] The issue for the Tribunal is essentially one of credibility. The Tribunal issued a minute that identified the views that were open on the material presented when the complaint was lodged with the Tribunal, and invited further submissions and evidence.
- [6] The Minute also invited the parties to seek to deal with issues orally if necessary. The parties responded, but did not seek an oral hearing. Accordingly, the decision has been made on the papers, as required by section 49(3) of the Immigration Advisers Licensing Act 2007 (the Act).
- [7] The Tribunal has been satisfied that the complainant's allegations are well founded, and reached an adverse view of Ms Tan's credibility. Accordingly, the complaint has been upheld.

The complaint

- [8] The complainant has made a complaint in the following terms.
- [9] Ms Tan is a licensed immigration adviser. She has been a licensed immigration adviser since 11 March 2009. Her practice is located in the Philippines.
- [10] Ms Tan's practice is associated with the New Zealand company Asia & New Zealand Consultants Ltd, and the Philippines company Mheta Immigration Consultancy.
- [11] The complainant was dealing with Ms Tan's office in Davao in the Philippines. There were three people in that office with whom he had dealings:
- [11.1] Mr Kim Andrian Lopez Tan (also known as Andre Tan),
- [11.2] Mr Kuldeep Mehta, and
- [11.3] Ms Tan.
- [12] Of the three people only Ms Tan was a licensed immigration adviser.

- [13] The essence of the complainant's complaint is in the following terms.
- [14] The complainant attended a seminar conducted by Mr Mehta in the Davao office. The complainant primarily dealt with Mr Mehta. He provided immigration advice at the seminar, and also personally assessed the complainant's immigration opportunities in relation to New Zealand's requirements, and provided advice regarding English language requirements.
- [15] At this seminar Mr Mehta coached people on how to evade New Zealand immigration requirements. An example was a person said they had diabetes and hypertension. Mr Mehta advised that it would be necessary to ensure that a medical examination was procured which did not identify those issues.
- [16] The complainant saw Ms Tan's licence on the wall of the office. However, he found that Mr Mehta was acting as though he was licensed and provided immigration advice.
- [17] The complainant was not given a copy of the Code of Conduct, he only discovered the Code when he came to make the complaint.
- [18] Ms Tan's only contact with the complainant was when there was an issue regarding attempts to have him pay additional fees.
- [19] The complainant paid fees but he found additional fees were being added as matters progressed. No receipts were issued. The complainant found the process of making payments did not meet proper business practice, as he was instructed to write cheques to "Cash", rather than in the name of Ms Tan's practice.
- [20] In May 2010, the complainant was informed that he had been invited to apply for residence on 10 January 2010. This was used as an excuse to cause the complainant to pay additional fees.
- [21] He was told that it was not possible to proceed further in applying for residence unless he paid Ms Tan's practice additional fees; without that, Immigration New Zealand would not provide material to commence medical examinations, which were necessary to apply for residence. The complainant later discovered that the relevant forms could be downloaded from Immigration New Zealand's website, and he could see a doctor in Davao. Immigration New Zealand placed no obstacles to his application for residence, and the process of applying for residence was routine.
- [22] On 10 August 2011, Immigration New Zealand communicated with Ms Tan's office and indicated that to progress the complainant's residence an interview would be conducted, either in person at Immigration New Zealand's Beijing office, or by telephone. The three outcomes that were signalled were that the complainant would have his residence application approved, declined (subject to an opportunity to respond to concerns), or have it deferred.
- [23] Ms Tan's office told the complainant he would have to pay an additional USD 1,000 for full professional preparation for the interview. The interview was deferred after Immigration New Zealand made arrangements for the interview.
- [24] The issues that appeared to arise from the complainant's complaint are the following allegations:
- [24.1] Ms Tan allowed Mr Mehta to give immigration advice to her clients, when he was not a licensed immigration adviser. This was both unlawful, and in breach of her professional duties. Furthermore, her clients were adversely affected as Mr Mehta gave advice that was unprofessional and irresponsible.
- [24.2] Ms Tan actively hid the role Mr Mehta was playing, as she would sign official correspondence, though she had only met with the complainant once, and Mr Mehta was primarily providing professional services.
- [24.3] Ms Tan failed to ensure she controlled her office and remain accessible to deal with her client's complaints and concerns.

- [24.4] Ms Tan failed to report to the complainant regarding the steps in the immigration process, including failing to report the invitation to lodge an application for residence.
- [24.5] Ms Tan directly, or through Mr Mehta, provided false information to add to the fees the complainant agreed to pay, and Ms Tan failed to properly invoice and identify services. This included falsely claiming that there were expenses imposed by Immigration New Zealand for freely available information relating to medical examinations, and trying to claim additional services relating to preparation for an interview, when the complainant had already paid for a full professional service.
- [25] The complainant says this conduct has caused him to lose interest in migrating to New Zealand.

The response

- [26] Ms Tan responded to the complaint in a written explanation provided to the Authority, it is dated 5 December 2011.
- [27] The key elements in the response are as follows.
- [28] Asia & New Zealand Consultants Ltd is a company incorporated in New Zealand, and Mheta Immigration Consultancy is the Philippines branch of that company. Ms Tan is a licensed immigration adviser employed in the Philippines.
- [29] Mr Mehta is the representative or business manager of Asia & New Zealand Consultants Ltd in the Philippines. He is responsible for all the business activities and investments in the Philippines, and “also for giving information to clients about New Zealand”. The Davao office was a second office in the Philippines. Mr Andre Tan was located there to liaise with clients. Ms Tan would give immigration advice, and Mr Mehta would provide information relating to New Zealand.
- [30] Ms Tan attended every seminar conducted at the Davao office; they were held fortnightly.
- [31] Ms Tan’s first contact with the complainant was at a seminar he attended, which she conducted with Mr Mehta. The complainant was assessed for eligibility to migrate to New Zealand, and given a detailed fee structure. The complainant was requested to write out the details of the fees to ensure he fully understood. The fees are explained by three different people to ensure that there is no misunderstanding (once in English, and twice in the local language).
- [32] The complainant paid half of the fees in November 2009, and at that time signed an agreement. The complainant’s application was lodged, and he was invited to apply for residence in January 2010. The complainant did not pay the second half of his consultancy fees. He eventually paid the fees in May 2010, shortly before the invitation to apply expired. Ms Tan’s view is that she was cheated by the complainant’s slowness to pay the second half of the fees.
- [33] Ms Tan said “[w]e are unashamed to say that we did not hand over the invitation to him because he did not pay us”.
- [34] The complainant’s medical and NZQA assessments were completed. Ms Tan complains of delays in payment affecting this process.
- [35] Ms Tan said clients required assistance to prepare for interviews with Immigration New Zealand as it is a crucial part of the process. Ms Tan provides different levels of assistance to prepare as the process is often difficult; clients are required to sign a “bond”.
- [36] The “bond” document provides for the client to take responsibility for interview preparation with “general guidance” from Ms Tan’s office; and says that her office is not responsible for any negative outcome of the interview. The alternative is to pay a fee of USD 1,000 for interview

practice and training and again the document says Ms Tan's office is not responsible for a negative outcome.

- [37] Ms Tan had agreed to fly to Davao if the complainant required the paid service. That option would provide computer access and assistance. This was explained by Mr Andre Tan, the complainant was angered, and took the material he had been shown. The complainant was not cooperative, and failed to make appropriate arrangements for the interview. Ms Tan eventually had to leave the complainant to make his own arrangements in relation to the interview.
- [38] In relation to the interview fees, they had been raised from USD 650 to USD 1,000; that was an appropriate change to reflect the cost of providing the service.
- [39] The complainant's complaint is "blackmail", he is dishonest, and "using the Authority to extort money from us". The complainant was interviewed on 14 October 2011 without assistance from Ms Tan's office, despite saying he was not going to proceed with migration. This, Ms Tan says, demonstrates "his deceitful and dishonest intentions".
- [40] The agreement, Ms Tan says, clearly identified the options relating to the interview.
- [41] Ms Tan provided immigration services as "team work", she said:

"By making the [unlicensed] representative work strictly under the guidance of the adviser shows the precautions the adviser is taking to ensure that the provisions of the Immigration Advisers Act are strictly followed. I feel the complainant should be happy that he has been looked after personally with a representative in his own city. At least he had somebody to interact with personally and not from a long distance. I as an adviser am not required to be personally present to collect documents and take people for medicals or collect police clearances. This is the job of the representative and this activity does not come under the description of immigration advice."

- [42] The complainant's claim that he only met Ms Tan once is fabrication, as she had repeated personal contact with him.
- [43] The complainant is a liar, and he dishonestly said he was not given a copy of the Code of Conduct. He is also delusional in his expectations that Ms Tan's office would meet identified and necessary costs of third parties (Immigration New Zealand and NZQA).
- [44] The complainant's complaint about hidden charges was in fact simply his refusal to pay the second half of the fees he had agreed to pay. The complainant was not charged fees for his medical requirements; he was simply expected to pay the doctor for the work required. The same applies to NZQA; the complainant was only expected to meet the costs of the NZQA, and was not charged professional fees. Other clients have no difficulty in understanding the fee structure and the complainant is not impeded by lack of business experience, or skill in the English language.
- [45] The complainant has had second thoughts about migrating, and is using the complaints process to try and recover the costs of services he regrets procuring.
- [46] Ms Tan produced a document dated 17 November 2009 being the document she relied on as the agreement for the provision of services. Features of the document include:
- [46.1] The agreement identifies the services as providing "consultancy, advice and assistance ... in order to procure an approval for a permanent residence visa for New Zealand";
- [46.2] The fees were two instalments of Philippine Pesos each of 99,000, totalling 198,000. The first instalment before lodging the expression of interest, and the second "being the full and final payment to the Company, before being handed over the application for Invitation to Residence ...";

- [46.3] The agreement refers to the interview process, and says that if the client is not successful there will be no refund of fees. However, the agreement makes no reference to additional fees for preparation for the interview; and
- [46.4] The agreement repeatedly refers to fees not being refundable, and says that Ms Tan's company is not responsible for the outcome of the professional services provided.

The Tribunal's Minute

- [47] On 3 December 2012, the Tribunal issued a Minute which explained that the Tribunal had conducted a review of the material then before the Tribunal. The Minute identified apparent issues, potential factual findings, and emphasised that the parties would have the opportunity to respond, and that the Tribunal had reached no conclusions at that point.
- [48] The key elements of the complaint, and the response identified in the Minute, were as outlined above.
- [49] The Authority and the complainant do not lay charges, and are not responsible to prove them. The Tribunal is an expert inquisitorial body, which receives complaints, and determines whether the proof before it is adequate to uphold the complaint, and if so in what respects. Accordingly, the Minute identified issues and potential conclusions on the material presented before the Tribunal in order to give the parties the opportunity to consider their positions and provide submissions and further proof if they wish.

The issues to be determined

- [50] The Minute identified clauses 1, 2, 3, and 8 of the Code of Conduct as potentially relevant, and also Section 44 of the Act in relation to negligence, incompetence and misleading behaviour.
- [51] The Minute discussed the following particular issues as potentially leading to adverse findings on the information then held, and gave Ms Tan the opportunity to respond (with corresponding rights for the complainant to reply):
- [51.1] Ms Tan, it appeared, had responded to the complaint with a personal attack on the complainant, rather than with evidence and reason;
- [51.2] Ms Tan appeared to both regard and apply the agreement as a device to extract payments, without any, or adequate, regard to her professional obligations;
- [51.3] On the information then available, the services provided, the fees paid, and invoices issued were not adequately documented;
- [51.4] It appeared that Ms Tan had chosen not to inform the complainant of a communication from the Immigration New Zealand regarding an invitation to lodge an application for residence;
- [51.5] The evidence indicated that Ms Tan had sought to charge the complainant fees for services he had already paid for; and
- [51.6] The complainant had claimed that an unlicensed person had given him immigration advice, which is not lawful; and that occurred as part of the way in which Ms Tan conducted her practice.

Ms Tan's response to the Minute

- [52] Ms Tan responded to the Minute in a submission dated 3 April 2013.

Explanation of documentation of fees and the services to be provided

- [53] Ms Tan responded to a request in the Minute to explain the services to be provided, the fees to be paid, and the receipting of payments.
- [54] The explanation, and the documents supporting it are:
- [54.1] The complainant signed a handwritten agreement, which shows:
- [54.1.1] a pre-consultation fee,
 - [54.1.2] a Immigration New Zealand fee,
 - [54.1.3] the first half of a consultation fee,
 - [54.1.4] the second half of a consultation fee,
 - [54.1.5] the total fees to be paid before an expression of interest is lodged,
 - [54.1.6] the fees to be paid after receiving an invitation to apply for residence, and
 - [54.1.7] further administrative charges.
- [54.2] A receipt was issued dated 17 November 2009 for PHP 29,000 as part payment against a "pre-qualification assessment application fee". This was apparently for the fee referred to in paragraph [54.1.1] above, with PHP 1,000 outstanding.
- [54.3] A receipt was issued dated 17 November 2009 for PHP 32,600 as payment of the Immigration New Zealand lodgement fee. This document also states that there will be a payment of PHP 50,000 on 7 December 2009, and a further PHP 50,000 on 7 January 2010.
- [54.4] The total of the amounts identified in the preceding sub-paragraph was PHP 161,600 (excluding the PHP 2,500 administrative charge, and the additional PHP 1,000 relating to the first instalment).
- [54.5] Copies of a cheques from the complainant were provided: a cheque for PHP 61,600 dated 17 November 2009, a cheque for PHP 50,000 dated 9 December 2009, and a cheque for PHP 50,000 dated 11 December 2009 (in total PHP 161,600).
- [54.6] Copies of receipts for the two PHP 50,000 cheques were provided. Ms Tan said they recorded the service provided for the fees. The notation was "consultancy fees payable to affiliate company in New Zealand". There was no reference to the services provided other than that.
- [54.7] A "post-dated" cheque for PHP 102,625 dated 25 May 2010. Ms Tan said that cheque was for the "second half consultancy fee of PHP 99,000, and an administration charge of PHP 3,625.
- [54.8] A receipt dated 7 May 2010 for the post dated cheque of PHP 102,625. It had no notation regarding the services to which the payment related.
- [54.9] A "declaration" to the effect that the complainant and his wife had no claims against Mheta Immigration Consultancy or Asia & New Zealand Consultants Ltd.
- [54.10] A client agreement dated 17 November 2009. It appears this was signed at the outset of the engagement. The agreement provides:
- [54.10.1] No statement that identifies the services that will be provided to the complainant.

- [54.10.2] It contains a great deal of comment to the effect the licensed immigration adviser can retain fees, and says the complainant is responsible for various matters.
- [54.10.3] The agreement mentions services, and implies they are to be provided:
- [54.10.3.1] An expression of interest;
 - [54.10.3.2] An application for Residence; and
 - [54.10.3.3] An appeal to the Residence Review Board in the event of an adverse decision.
- [54.10.4] The agreement is in the name of Asia & New Zealand Consultants Limited “a New Zealand based Company”.
- [54.10.5] The agreement refers to an interview after a residence application is lodged and says, while performance at the interview is the complainant’s responsibility, he will be provided with “enough information [and] materials for the interview”.
- [54.10.6] The agreement records there will be disbursements that the complainant would pay for.
- [54.10.7] Ms Tan claimed that a reference to “interview materials” as a potential disbursement justified a further cost for preparation for an interview. This Ms Tan said justified a demand for USD 1,000 for assistance with preparation for an interview.

The personal attack on the complainant

- [55] Ms Tan sought to justify and further her personal attack on the complainant.
- [56] She said “[t]o date no one has ever complained about misbehaviour from our side except [the complainant]”.
- [57] She said that matters were friendly and cordial until the complainant was expected to pay USD 1,000 to prepare for the interview.
- [58] Ms Tan said that her attack on the complainant was misunderstood by the Tribunal as it is in New Zealand, as:

“New Zealand is a peaceful country with law abiding citizens and strict laws which are implemented and followed to keep the law and order situation under control. The scenario in Davao, Philippines is very different. It is a place where people are assaulted, threatened and even killed for petty sums and disagreements and the killer or the person behind the killer is never found.”

- [59] Ms Tan said the complainant:
- [59.1] Threatened Mr Andre Tan with “bodily harm and severe consequences”; and
 - [59.2] “... people like him ... are capable of carrying out criminal acts ...”

The agreement and professional relationship

- [60] Ms Tan referred to the binding nature of agreements, and emphasised the complainant’s obligations. She said she and the company worked on a basis of trust and faith with the complainant.

- [61] Ms Tan said the complainant should have paid the sum he paid on the second instalment of fees prior to the expression of interest being lodged, but it was lodged regardless, evidencing the trusted relationship.
- [62] The complainant's expression of interest resulted in an invitation to apply for residence on 2 December 2009, having been lodged the day before; and he was informed immediately of the selection.
- [63] The complainant was reminded of his fee obligation when told he was selected to apply for residence.
- [64] Ms Tan said:
- [64.1] The complainant breached the agreement by not paying.
- [64.2] He then completed the application himself.
- [64.3] After being invited to apply for residence Mr Andre Tan, who is not a licensed immigration adviser advised the complainant.
- [64.4] The complainant finally paid on 25 May 2010 after Immigration New Zealand accepted his application.
- [64.5] Ms Tan continued to provide services regardless of not being paid when she was entitled to be paid.
- [65] Ms Tan said the Minute was not accurate in its description of the distinction between fees and disbursements, and what was at the complainant's cost. She said the following clause in the agreement put the complainant on notice of the claim for an additional USD 1,000 for preparation for an interview:
- "Any other expenses or any other fees related to the Expression of Interest or Residence application shall be borne by the client. Expenses in connection with PAR & QAR NZQA assessment, New Zealand Government applications fees, IELTS examination band score 6.5 in General Training module for the main applicant and or the partner, Police Clearance, Medicals and Interview materials or any other issue if so required by the Immigration New Zealand shall be borne by the client."
- [66] Ms Tan said it was appropriate for her to offer the complainant an inferior professional service without payment to prepare for the interview, or demand USD 1,000 for optimal professional assistance.

Unlawful provision of immigration advice

- [67] Ms Tan said Mr Mehta had a good knowledge of New Zealand, but only conducted seminars providing general information about New Zealand, not immigration advice. People who had immigration questions would discuss them with Ms Tan.
- [68] The complainant attended a seminar on 8 November 2009 conducted by Mr Mehta, immediately after that Ms Tan undertook an eligibility assessment, and gave him the fee structure which he signed.

The complainant's response to the Minute

- [69] The complainant did not wish to respond to the Minute. He did reply to Ms Tan's response to the Minute.
- [70] The key elements in his reply were:
- [70.1] He did not consider Ms Tan's response was honest.

- [70.2] Ms Tan was not a party to the initial client engagement process; that was Mr Mehta without Ms Tan being present.
- [70.3] The complainant was not properly informed of the availability of medical forms.
- [70.4] His dealings with Ms Tan were limited to one occasion and Mr Andre Tan was providing most of the immigration advice.
- [70.5] He was misled in relation to the interview process.
- [70.6] Ms Tan had fabricated the claim that Davao was a lawless place where people are killed with impunity.
- [70.7] The allegations that he would inflict violence against Mr Andre Tan were fabricated.
- [70.8] Ms Tan's claim that she informed the complainant of the invitation to apply for residence is fabricated. Ms Tan withheld the information, and he was told about 3 months later; it was part of a device to extract additional payments.
- [70.9] He considered the repeated references to money being "non-refundable" reflected an unprofessional attitude where Ms Tan's focus was on extracting revenue from clients.
- [70.10] He regarded Ms Tan and her colleagues as opportunistic and manipulative.

Discussion

Personal attack on the complainant

- [71] The Tribunal is concerned at the personal denigration of the complainant in Ms Tan's response to the complaint. She has furthered it in her response to the Minute.
- [72] The material presently before the Tribunal evidences Ms Tan's failure to comply with the Code, in a way calculated to generate the very sort of complaint that is now before the Tribunal.
- [73] Clients have a right to lodge complaints, and a licensed adviser is expected to deal with a complaint on its merits, and treat the client or former client with respect. A robust response to incorrect or unfair complaints is entirely appropriate; however, that does not require personal denigration. If it is necessary to allege dishonesty on the part of a client, then there must be proof. Ms Tan's personal attack on the complainant is not supported by such proof.
- [74] Ms Tan's initial response had an entirely inappropriate focus on recovery of fees, and her entitlement to be paid. The same focus appears in the agreement under which Ms Tan was engaged.
- [75] Professionals are entitled to be paid, and it is entirely appropriate to pursue legal remedies where necessary.
- [76] However, a licensed professional is given the privilege of providing services to the exclusion of persons who are not licensed. Typically, and certainly in the case of licensed immigration advisers, they must accept the responsibility of charging fair fees. Fees must be fair in respect of the amount, and in addition there must be full and fair disclosure of the fees to be charged.
- [77] I am satisfied Ms Tan's denigration of her client is without foundation, and evidences a lack of respect to both her client, and the professional dignity expected of a licensed immigration adviser.
- [78] Ms Tan was put on notice that if she alleged her client was dishonest, she was expected to prove it. She had no right to make that allegation without proof. There has been no proof. Instead, she altered her attack to say the complainant threatened a staff member with personal violence, and he engaged in criminal conduct.

- [79] Again, there was no proof of the new allegations.
- [80] I reject them entirely. If the claims of threatened violence were true Ms Tan would have made them when she accused the complainant of dishonesty. She did not, and has not explained why not.
- [81] Ms Tan claimed:
- [81.1] Davao is a place where people are assaulted, threatened and even killed for petty sums and disagreements, and the killers or the person behind the killer is never found;
- [81.2] The complainant made threats of violence; and
- [81.3] She believes he is capable of carrying out criminal acts.
- [82] If she genuinely believed that to be true, it is implausible she would feel free to attack the complainant's honesty, and accuse him in the way she has. She would at least be expected to demonstrate she had taken steps to gain protection from civil authorities, or the like, if that were true. That adds to the implausibility of Ms Tan's claims.
- [83] I make these findings, as they are relevant to weighing Ms Tan's claims that she is respectful of professional obligations, her clients, and the complainant in particular.
- [84] As the unprofessional attack on her former client occurred after the complaint was made, the finding will not be a ground of complaint, only a matter relevant to weighing evidence.
- [85] I note that Ms Tan also said in her submission she had extensive experience in her practice, and: "To date no one has ever complained about misbehaviour from our side except [the complainant]." The claim is false, as Ms Tan has been subject to a serious complaint that has previously been upheld by this Tribunal.

The agreement and the professional relationship

- [86] There were two distinct phases of the services Ms Tan agreed to provide:
- [86.1] Lodging an expression of interest; and
- [86.2] If successful, lodging an application for residence, and following through with the requirements.
- [87] In most cases, and the complainant's case appears not to be an exception, it is likely that lodging an expression of interest will involve less work than the work involved after being invited to lodge a residence application, and following through to the issue of a visa.
- [88] Ms Tan was at all times required to charge fees that were "fair and reasonable in the circumstances", pursuant to the Code of Conduct.
- [89] The first phase of the work was lodging an expression of interest, and it appears the complainant paid what the agreement said was 50% of the total fees right through to the issue of a residence visa. Ms Tan was asked to provide further information, or the Tribunal may conclude that the complainant had paid fully for the work relating to the expression of interest.
- [90] Ms Tan appears to approach the issue on the basis that the complainant was obliged to continue to engage Ms Tan, and pay for services in accordance with the agreement, and she would be "cheated" if he did not do so.
- [91] A licensed professional is expected to respect their client's right to choose to terminate their engagement. A professional engagement is not simply a commercial relationship; it involves issues of trust, confidentiality and judgment. It is a highly personal relationship.

- [92] The personal nature of a professional relationship necessarily entitles the client to terminate the relationship without objective justification; of course, the adviser remains entitled to fair and reasonable fees for work performed.
- [93] In the present case I am satisfied Ms Tan's approach to providing professional services fell far short of the minimum standards required, and the complainant reasonably identified that her conduct was unacceptable.
- [94] My reasons for finding Ms Tan grossly breached the requirements of professionalism begin with the agreement to provide professional services.
- [95] The terms of the agreement are significant. The agreement is substantially, if not wholly, devoid of terms that identify the professional obligations on Ms Tan. The agreement under the Code of Conduct was required to "contain a full description of the services to be provided by the adviser" (clause 1.5 of the Code).
- [96] The agreement mentions lodging an expression of interest, a residence application, and an appeal against an adverse decision. A reasonable implication would be that for the fees agreed the complainant was entitled to have Ms Tan provide her professional services for each of those steps.
- [97] Ms Tan has contended that the provision in the agreement that allowed disbursements to be charged, in addition to fees, allowed her to charge USD 1,000 to provide the best professional assistance to prepare for an interview. The clause Ms Tan relies on (see paragraph [65]) does not sufficiently provide notice to the complainant that such additional charge may be payable in the future.
- [98] The claim is wholly unrealistic. I am satisfied Ms Tan failed to give notice of this substantial charge when engaged, and then emphasised the interview was important and used it as an opportunity to solicit fees she was not entitled to charge. She was obliged to ensure that all her clients had proper and adequate professional assistance to prepare for the interview. If it involved additional charges, she needed to identify that clearly at the outset when she set the terms of her engagement.
- [99] Ms Tan accepts this was the point when her relationship with the complainant broke down; it is wholly unsurprising that was the result of her conduct.
- [100] I am satisfied the terms of engagement were not within the Code, and Ms Tan's attempts to extract additional fees was unprofessional. Ms Tan used the importance of the interview, as a device to make the complainant feel compelled to pay the additional cost to increase the likelihood of a successful interview. She did so when she was already obliged to provide the service.
- [101] Ms Tan's claim of entitlement to be retained to complete the application process, and be paid fees for doing so is misplaced. The complainant had good cause to terminate her engagement, she did not have terms of engagement that met the requirements of the Code, and she acted unprofessionally in attempting to extract fees to which she was not entitled.
- [102] I am satisfied Ms Tan breached the requirements of Clause 1.5 of the Code, as she did not engage the complainant with an agreement that contained a full description of the services to be provided; and further she breached the requirement in Clause 1.1 to perform her services with respect and professionalism. She failed to meet her professional obligations, and treated her client as being obliged to accept services from her on terms that were not consistent with the terms agreed. The agreement was not satisfactory, and Ms Tan then used it as a device to extract further fees from her client.

Identifying fees and accounting for them

- [103] Ms Tan was requested to provide a full and accurate copy of all the documents she holds in relation to fees in connection with her dealings with the complainant. She was required to include:

- [103.1] A record of how the services and fees to be paid were set out originally;
- [103.2] Any variation from the services and fees originally set, and the circumstances and justification;
- [103.3] A copy of the documents, including invoices, in relation to each payment the complainant made; and
- [103.4] An explanation of the reason for each payment, and a clear identification of the total of all payments.
- [104] The material she has provided is confusing, and unsatisfactory. The Code (clause 8 (e)) provides that “each time a fee is payable, [the licensed immigration adviser must] provide clients with an invoice containing a full description of the services that the invoice relates to”.
- [105] The two invoices provided state they are for “consultancy fees payable to affiliate company in New Zealand”. They do not identify the services provided. As noted, the services agreed to be provided are not clear in the agreement.
- [106] The confused material relating to fees is in essence a dimension of the failure to agree on the services to be provided. Accordingly, it is unnecessary to make any further findings on this issue, as the complaint has been upheld in relation to the substance of this issue.

Controlling access to the New Zealand Government’s invitation to the complainant

- [107] The complainant received an invitation to lodge an application for residence in January 2010. Ms Tan admitted when initially responding to the complaint:
- “We are unashamed to say that we did not hand over the invitation to him because he did not pay us.”
- [108] In her most recent submission. She said:
- “He was informed about his selection personally immediately after and was reminded of his contractual obligation for the second payment before the handing over of the Invitation to Apply for Residence.”
- [109] I accept the complainant’s statement that he was not informed promptly. Ms Tan initially withheld the information and disclosed it about 3 months after Immigration New Zealand sent the invitation.
- [110] I prefer the complainant’s evidence in all matters where there is a difference for the reasons discussed below commencing at paragraph [136]. Further it is implausible, and unexplained, why Ms Tan would initially respond to the complaint saying she did not “hand over the invitation”, and not mention she did promptly inform the complainant, if that were true.
- [111] I am satisfied the complainant’s statement that he was not informed at the time the invitation was issued is true; and it is consistent with Ms Tan’s initial response.
- [112] While Ms Tan’s explanation regarding fees is unsatisfactory with varying dates, and amounts; the best view appears to be that the complainant refused to pay for the next stage, the application for residence. Further, as I have found that was appropriate and unsurprising given Ms Tan’s unprofessional conduct.
- [113] Accordingly, the complainant had paid for lodging the expression of interest. The Government of New Zealand had issued the invitation to the complainant. Ms Tan had no right to control access to that invitation.
- [114] Withholding an important communication from the Government of New Zealand to her client was not consistent with Ms Tan upholding the integrity of New Zealand’s immigration system.

- [115] I am satisfied that, as the complainant says, Ms Tan did tell the complainant he could lodge an application for residence; but she deliberately withheld the correspondence with the intention that it would support her demand for further fees.
- [116] She had no right to insist that the complainant purchase further services from her. The Complainant had paid for the services he had received.
- [117] I am satisfied that in controlling this communication from the Government of New Zealand to her client Ms Tan breached her obligation under clause 2.1 (f) to uphold the integrity of New Zealand's immigration system.
- [118] Such conduct was aggravated, as Ms Tan had no reason to complain as her client was terminating the professional relationship due to her own unprofessional conduct.

Charging additional fees for services that were already contracted for

- [119] The agreement implied Ms Tan would provide all services from lodging an expression of interest to the issue of a residence visa (including an appeal, it appears, if that was necessary).
- [120] The agreement as noted is unsatisfactory as it does not contain a full description of the services as required by clause 1 of the Code of Conduct.
- [121] There is nothing in the agreement that suggests Ms Tan was providing anything other than a full professional service. That necessarily included providing her best professional assistance to prepare for the interview with Immigration New Zealand. If not, that had to be very clearly marked out in the agreement, and it was not.
- [122] At a critical juncture, when the complainant and his wife had to prepare for an interview Ms Tan sought to charge an additional fee of USD 1,000. She emphasised how important the interview was.
- [123] As noted, the Code of Conduct requires that fees and disbursements be set out. The agreement appears to set out the fees payable by the complainant for full professional services; Ms Tan then attempted to charge for further work which was entirely foreseeable that she would be required to provide. If Ms Tan wished to charge additional fees for such work she should have clearly outlined that in the agreement as discussed in paragraph [98]; Ms Tan failed to do so. Further, she emphasised how important these services were to aid in persuading her client to pay the fee.
- [124] I am satisfied she had failed to comply with the requirements of clauses 1.1 of the Code, she failed to treat her client with respect and professionalism, and attempted to gain payments to which she was not entitled, and did so using misleading behaviour. In particular:
- [124.1] She encouraged her client to believe she was not required to provide professional services she was obliged to provide.
- [124.2] She was obliged to do so for the agreed fee.
- [125] This misleading behaviour is grounds for complaint under section 44(2).
- [126] In relation to the claim Ms Tan attempted to make further charges for medical reports, and NZQA report, Ms Tan says there were no further professional fees, only the charges of the service providers.
- [127] On the material before the Tribunal there appears to be room for confusion on this issue. I am not satisfied Ms Tan sought to charge further fees in relation to medical reports and NZQA assessments.

Permitting unlawful provision of immigration advice

- [128] There are stringent restrictions in the Act on unlicensed persons providing immigration services, and they have extraterritorial effect. Ms Tan was required to understand these restrictions before gaining a license as a licensed immigration adviser.
- [129] Section 63 of the Act provides that a person commits an offence if they provide “immigration advice”, without being either licensed or exempt from the requirement to be licensed.
- [130] Section 73 provides that a person may be charged with an offence under section 63, whether or not any part of it occurred outside New Zealand.
- [131] The scope of “immigration advice” is defined in section 7 very broadly. It includes:
- “using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand ...”
- [132] Ms Tan has expressed the view she could provide immigration services in a “team” environment.
- [133] Ms Tan has however claimed she provided all the services that were “immigration advice” under the Act. Whereas the complainant has said Ms Tan provided little input to the provision of services, essentially signing off on work others were doing. Further, he says that Mr Mehta provided crucial immigration advice at a seminar, and did so unprofessionally. Ms Tan denies that, and says she was present at all seminars.
- [134] The complainant is clear; he says that Mr Mehta was overtly engaged in giving immigration advice, including advice on evading the requirements of New Zealand immigration law and policy. The issue is one of credibility, and it is with considerable reluctance that I make a credibility finding “on the papers”. However, the parties were given the opportunity to apply for an oral hearing and have not done so.
- [135] I have reached the point where I am satisfied I must accept the complainant’s account as the true one.
- [136] I have reached an adverse view of Ms Tan’s evidence, and her evidence on this particular point for the following reasons:
- [136.1] Ms Tan has made statements to the Tribunal that are false, I find her unreliable, and the complainant has given an accurate and consistent account. Two specific matters where I have found against Ms Tan’s credibility are:
- [136.1.1] She has said she had never had a client complain, when the Tribunal has upheld a complaint against her;
- [136.1.2] I have made an adverse finding on the allegations of dishonesty, and threats of violence she had made against the complainant.
- [136.2] In relation to this particular matter, Ms Tan appears to have no appreciation at all of her professional obligations, as she had admitted that Mr Andre Tan unlawfully gave immigration advice. She said in her most recent submission:
- “[The complainant] continued to interact with Mr Andre Tan regarding the process and the documents he needed to pursue his application. Due to the personal relationship between him and Mr Andre Tan, complete guidance was provided so that he could complete the application process before the expiry date.”
- [136.3] That amounts to an overt admission of allowing an unlicensed person to give immigration advice. If Ms Tan was willing to permit Mr Andre Tan to give immigration

advice unlawfully, her claim that she meticulously prevented Mr Mehta from doing so must be questioned. I have to weigh a credible account that he did give immigration advice, and I accept the complainant's account.

- [137] In reaching this conclusion, I am conscious of the standard of proof. The Tribunal is required to determine facts on the balance of probabilities; however, the test must be applied with regard to the gravity of the findings (*Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1). . However, I am sure that the material before me demands this conclusion, having full regard to the gravity of the allegation and the consequences of finding it established.
- [138] Accordingly, I find Ms Tan performed her services unprofessionally by allowing or encouraging Mr Mehta to provide immigration advice to the complainant. She breached clause 1 of the Code, and that is grounds for upholding a complaint pursuant to section 44(2) of the Act.
- [139] As the admission relating to Mr Andre Tan emerged late, and Ms Tan has not been on notice of a potential finding in relation to that issue, I do not consider that as an element of the complaint. Its relevance is evidential only.

Decision

- [140] Pursuant to section 50 of the Act, the complaint is upheld, as Ms Tan has breached the Code of Conduct in the respects identified, which is a ground for complaint pursuant to section 44(2)(e) of the Act. Additionally, Ms Tan engaged in misleading behaviour which is a ground for upholding the complaint pursuant to section 44(2)(d).
- [141] The specific conduct being that which was discussed above, in particular:
- [141.1] Failing to enter into an agreement for the provision of professional services, that described the services properly; and then failing to deliver professional services on the terms agreed and in accordance with the Code.
- [141.2] Withholding a communication from Immigration New Zealand to the complainant for the purpose of improperly demanding fees.
- [141.3] Attempting to demand fees to which Ms Tan was not entitled, by withholding the professional services she agreed to provide.
- [141.4] Unprofessionally being a party to the unlawful provision of immigration advice by Mr Mehta.
- [142] In other respects, the complaint is dismissed.

Submissions on sanctions

- [143] As the complaint has been upheld, section 51 allows the Tribunal to impose sanctions.
- [144] The Authority and the complainant 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, Ms Tan is entitled to make submissions and respond to any submissions from the other parties.
- [145] Any application for an order for the payment of costs or expenses under section 51(1)(g) should be accompanied by a schedule particularising the amounts and basis for the claim.

Timetable

- [146] The timetable for submissions will be as follows:

[146.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.

[146.2] Ms Tan is to make any further submissions (whether or not the Authority or the complainant make submissions) within 15 working days of the issue of this decision.

[147] The parties are notified that this decision will be published with the names of the parties (apart from the name of the complainant; see paragraph [148] below) after five working days, unless any party applies for orders not to publish any aspect.

Suppression of name

[148] The name of the complainant is not to be published at anytime in relation to this complaint. The allegations of dishonesty and threats of violence Ms Tan has made against him are without foundation, and he is entitled to be protected from publication of them.

DATED at WELLINGTON this 13th day of June 2013

G D Pearson
Chairperson