

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

Decision No: [2014] NZIACDT 108

Reference No: IACDT 003/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

Between

Senitalela Fifita

Complainant

AND

Alungamonu Tangilanu

Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainant: Mr R Small, solicitor, Pacific Legal Ltd, Wellington

Adviser: In person

Date Issued: 3 October 2014

DECISION

Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal. The grounds alleged in the Statement of Complaint are that the adviser breached elements of the Immigration Advisers Code of Conduct 2010 (the Code).
- [2] The complainant and her then husband were in New Zealand unlawfully, as their visas had expired. The complainant engaged Ms Tangilanu to assist them. The complaint alleges Ms Tangilanu promised she would get the complainant a work visa, entered a written agreement that did not comply with the Code, failed to make the application promptly, then belatedly made a request to the Minister and later lodged an application with Immigration New Zealand in relation to the husband. Further, after taking the initial step of making a request of the Minister, she did not have an agreement relating to the subsequent application to Immigration New Zealand.
- [3] The alleged events potentially amount to breaches of the Code, because the promise of getting a visa was false, and Ms Tangilanu did not document or perform her engagement in accordance with the Code.
- [4] Ms Tangilanu did not challenge the grounds of complaint or the material supporting them.
- [5] The Tribunal has upheld the complaint. In particular, breach of the obligations:
- [5.1] of due care and diligence in performing services (clause 1.1(a)),
 - [5.2] to report and provide timely updates (clause 3(a)),
 - [5.3] to document the engagement and deliver professional services in accordance with the Code (clause 1.5(b), 3 and 8(b)), and
 - [5.4] to represent honestly immigration opportunities (clause 5.1(c)).

The complaint

- [6] The Registrar filed a statement of complaint, she put forward the following background as the basis for the complaint:
- [6.1] The complainant and her husband were in New Zealand unlawfully, as they did not hold current visas. They engaged Ms Tangilanu to assist, and entered an agreement relating to the provision of professional services. The date of the agreement is 28 October 2010.
 - [6.2] The agreement failed to set out the services, fees and disbursements. It did provide payment terms for \$1,465.78 in total. The agreement does not identify the extent to which the payments are respectively for disbursements and fees, and it does not relate the payments to particular services.
 - [6.3] Ms Tangilanu promised the complainant Immigration New Zealand would issue a work visa. She also said she lodged an application, which was false. In January 2011, the complainant ascertained Ms Tangilanu had not filed an application.
 - [6.4] On 25 February 2011, the Minister of Immigration received a request, which Ms Tangilanu submitted. The Minister responded on 10 May 2011, and said Ms Tangilanu should make the request to Immigration New Zealand in relation to the applicant's husband as he appeared to have a job offer which had not previously been considered.
 - [6.5] On 28 May 2011, Ms Tangilanu lodged a request with Immigration New Zealand for the complainant's husband, which they declined.
- [7] The Registrar identified the potential infringements of professional standards.

Breach of the Code in relation to duties of care, diligence, respect and professionalism in performing services (clause 1.1(a)), and maintaining professional business practices, including reporting to clients (clause 3(a))

- [7.1] The delay of some four months without acting on her instructions potentially amounted to a failure to perform services with due care and diligence (clause 1.1(a) of the Code); and
- [7.2] The failure to provide the complainant with written confirmation of lodging the application, and timely updates potentially breached the duties imposed under clause 3(a) of the Code.

Breach of the Code in relation to ensuring agreements contain a full description of services (clause 1.5(b)), maintaining professional business practices, (clause 3), and setting out fees and disbursements (clause 8(b)).

- [7.3] The agreement for the provision of professional services did not set out the services Ms Tangilanu would provide, or distinguish fees and disbursements. After seeking the intervention of the Minister, there was no new agreement setting out the terms for the changed approach.
- [7.4] Ms Tangilanu accordingly failed to:
 - [7.4.1] Ensure the written agreement contained a full description of the services (clause 1.5(b) of the Code);
 - [7.4.2] Set out the disbursements (including Immigration New Zealand fees) (clause 8(b) of the Code), and
 - [7.4.3] Maintain professional business practices relating to contracts and finances (clause 3 of the Code)

Breach of the Code in relation to the prohibition against falsely, fraudulently or deceptively, misrepresenting or promoting a client's immigration opportunities (clause 5.1(c)).

- [7.5] Ms Tangilanu promised the complainant she would receive a work visa, when she could not have any certainty she could achieve that result.

The responses

- [8] Neither Ms Tangilanu nor the complainants responded to the Statement of Complaint. They were not required to do so if they accepted that it set out the facts and matters in dispute appropriately.

Discussion

The standard of proof

- [9] The Tribunal determines facts 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 at [55].

The material before the Tribunal

- [10] The Registrar provided a chronology, and supporting documentation. The parties have not disputed this record or added to it.
- [11] I am satisfied this material supports the grounds of complaint alleged.

Breach of the Code in relation to duties of care, diligence, respect and professionalism (clause 1.1(a)), and maintaining professional business practices, including reporting to clients (clause 3(a)).

- [12] The delay of some four months without acting on her instructions is *prima facie* a failure to perform services with due care and diligence (clause 1.1(a) of the Code). In this case, the complainant made her own inquiries, and only after that did Ms Tangilanu take any action. I am satisfied Ms Tangilanu failed to act with due care and diligence.
- [13] Ms Tangilanu should have lodged an application with Immigration New Zealand or a request with the Minister promptly. Her clients were in New Zealand unlawfully; and New Zealand's immigration policy is to regard such breaches as serious and gives weight to them when considering subsequent applications. Delay potentially had adverse effects for her clients' ability to obtain visas immediately, and in the future.
- [14] Once she lodged the request with the Minister, Ms Tangilanu failed to provide the complainant with written confirmation and ongoing timely updates. This breached the duties imposed under clause 3(a) of the Code. She had not informed her client of the initial delay either, and her client made her own enquiries to discover Ms Tangilanu had not carried out her instructions. Ms Tangilanu's conduct is a clear breach of the Code.

Breach of the Code in relation to ensuring agreements contain a full description of services (clause 1.5(b)), maintaining professional business practices, (clause 3), and setting out fees and disbursements (clause 8(b)).

- [15] The Code clearly regulates the form and contents of agreements between licensed immigration advisers and clients. Ms Tangilanu did not have an agreement that set out the services she would provide or itemise the fees and disbursements. Furthermore, after seeking the intervention of the Minister, she had no agreement concerning the steps she took.
- [16] The section in the agreement where it referred to fees and disbursements is blank, though the agreement did have a list of payments required. The amounts do not relate to specific services, and whether the payments are for fees, disbursements or a mixture is not stated.
- [17] Ms Tangilanu accordingly breached clauses 1.5(b), 8(b), and 3 of the Code in the manner set out in the Statement of Complaint.

Breach of the Code in relation to the prohibition against falsely, fraudulently or deceptively, misrepresenting or promoting a client's immigration opportunities (clause 5.1(c)).

- [18] Ms Tangilanu promised the complainant she would receive a work visa, she did so when her client was considering whether to engage her or not. Ms Tangilanu, as a licensed immigration adviser, must have known no immigration application is certain and that in this particular case the application relied on the exercise of absolute discretion, and was therefore particularly uncertain. The fact her clients were in New Zealand unlawfully was in itself an adverse factor. Immigration New Zealand can, and does, reject applications under section 61 without providing reasons. The Minister had no obligation to intervene. The section 61 application and the request to the Minister both failed.
- [19] I am satisfied Ms Tangilanu misrepresented the complainant's immigration opportunities. The Statement of Complaint put Ms Tangilanu on notice the information before the Tribunal may support a finding she did so in a false, fraudulent or deceptive manner. I am satisfied Ms Tangilanu did make the misrepresentation falsely, fraudulently and deceptively. The complainant says Ms Tangilanu made the misrepresentation at the time she was deciding whether to engage her. The complainant's statement is that Ms Tangilanu said to her that she "had to go and work hard and save money to pay her when my application will be returned with my visa on it". I note the written agreement does say there is no guarantee of the outcome, however I am satisfied Ms Tangilanu orally countered the effect of the statement in the agreement.
- [20] Ms Tangilanu has failed to provide any response to the Statement of Complaint that refers to the complainant's material lodged in support of the complaint. I am satisfied the material is clear and unanswered evidence of Ms Tangilanu making a representation that was false, known by her to be false, and designed to procure the payment of money to her due to the

misrepresentation. It follows I am satisfied this ground of complaint is made out to the relevant standard of proof.

Decision

[21] The Tribunal upholds the complaint pursuant to section 50 of the Act.

[22] The adviser breached the Code in the respects identified.

Submissions on Sanctions

[23] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.

[24] 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 Tangilanu is entitled to make submissions and respond to any submissions from the other parties.

[25] 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

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

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

[26.2] The adviser is to make any further submissions (whether or not the Authority or the complainant makes submissions) within 15 working days of the issue of this decision.

[26.3] The Authority and the complainant may reply to any submissions made by the adviser within 5 working days of her filing and serving those submissions.

DATED at Wellington this 3rd day of October 2014

G D Pearson
Chair