

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

Decision No: [2014] NZIACDT 120

Reference No: IACDT 013/13

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Ranjeev Kumar

Complainant

AND

Madhur (Maddox) Ahuja

Adviser

DECISION

REPRESENTATION:

Registrar: Mr A Dumbleton, Lawyer, MBIE, Auckland.

Complainant: No appearance at hearing

Adviser: Mr R Chambers, Lawyer, Vulcan Chambers, Auckland

Date Issued: 19 December 2014

DECISION

Introduction

- [1] Mr Kumar engaged Mr Ahuja to provide immigration services. Mr Ahuja was employed in a practice which Global Immigration Consultants Ltd. (Global) owned. He was the sole licensed immigration adviser in the practice.
- [2] Mr Kumar paid fees for his initial consultation with Mr Ahuja. One of Global's personnel told Mr Kumar an offer of employment was available, so he should pay further fees for his immigration to progress. Mr Ahuja was not aware of these developments at the time. Mr Kumar paid the fees requested.
- [3] There was no employment offer, which would have been necessary for the immigration work to proceed. Mr Kumar wanted repayment of the instalment of fees he paid after he believed there was a job offer. Mr Ahuja refunded the amount of that fee he personally received, but said Global was responsible for the rest. He says the balance of the fees were for job search services.
- [4] The Tribunal has found the fees were procured for immigration services. As the sole licensed immigration adviser in the practice, and the person engaged in the particular instructions, Mr Ahuja was responsible for refunding the fees in full.
- [5] The Tribunal has upheld the complaint on the basis Mr Ahuja failed to refund the fees in full, when the Licensed Immigration Advisers Code of Conduct 2010 required him to do so.

Background

- [6] The Registrar filed a statement of complaint, and identified one ground of complaint that was potentially supported by the information she held. Both the complainant and the adviser have had the opportunity of responding to the statement of complaint. While the original complaint was on wider grounds, the only ground pursued is the ground the registrar identified. It is not necessary to examine the wider grounds in this decision.
- [7] The ground of complaint for the Tribunal to determine is whether Mr Ahuja failed to refund unearned fees when his engagement was terminated. The relevant provision in the Code of Conduct is clause 3(d), which provides:

A licensed immigration adviser must maintain professional business practices relating to finances, records, documents, contracts and staff management, including:

...

- d) providing any refunds payable upon completing or ceasing a contract for services;

- [8] Mr Ahuja was employed by Global, but he was not a shareholder or director. Officers of the company worked in the practice. Mr Kumar engaged Mr Ahuja to assist him with a residence application and an agreement dated 19 July 2012 recorded the terms. The agreement identified Mr Ahuja as the licensed immigration adviser.
- [9] Mr Kumar paid \$287.50 for the initial advice. Global agreed to assist with finding an offer of employment to support the visa application. One of the officers of Global telephoned Mr Kumar, and said he had a job offer. On 14 September 2012, Mr Kumar paid \$2,000 to Global. In fact no offer of employment eventuated and no residence application proceeded.
- [10] Mr Ahuja refunded \$510 of the instalment of \$2,000 but considered he was not responsible for the balance. Mr Ahuja did not see Mr Kumar after the initial meeting in July 2012.

Oral hearing

- [11] The Tribunal convened an oral hearing to allow Mr Ahuja to present his case. Neither Mr Kumar nor the Registrar sought to produce evidence. Mr Kumar did not attend the oral hearing.

Discussion

Mr Ahuja's reasons for not refunding all the fees

- [12] Mr Ahuja accepted he was the only licensed immigration adviser in the practice. He explained he accepted employment in the practice and over time became increasingly concerned regarding the conduct of the directors of Global. He provided evidence two persons connected with Global had left New Zealand and arrest warrants had been issued from the District Court. He requested that the Tribunal evaluate his conduct against that background, particularly that he was potentially deliberately not told of matters occurring within the practice.
- [13] Mr Ahuja said his role was solely that of an immigration adviser, and Global also undertook employment search work. His arrangement with Global was that he received 30% of the fees paid for immigration work. He received \$510 in respect of the instalment of \$2,000 and he refunded that. He contended the refund reflected the fees paid for immigration work, and he was not responsible for the balance which related to employment search work.

Responsibility

- [14] In the Tribunal's decision *JM v DTM* [2011] NZIACDT 1, the Tribunal emphasised these aspects of professional responsibility:
- [38] It is evident a key element of the mechanism in the Act is that licensed immigration advisers are clearly identified; client relationships commence with the Adviser identifying their standing, and providing of a copy of the Code (Code clause 1.4). The scope of section 6 is wide, and one no doubt intended to ensure licensed advisers are not able to be used as a "front" for unlicensed operators. The legislation is structured to effect functional exclusion from the professional relationship of any person who is not either licensed or exempt.
- [39] The legislation provides an important privilege to licensed immigration advisers in allowing them to exclusively provide immigration advice (along with exempt persons). However, consistent with that, licensed advisers carry professional obligations. They are personally responsible for the professional relationship, regardless of whether they are employees, or otherwise.
- [40] Dealings in relation to fees in my view come with section 7, so a licensed immigration adviser must deal with the client in relation to fees (unless it is simply a clerical aspect such as issuing invoices, which is provided for in section 7(b)(iii)). Determining the value of professional work, and negotiating what is to be paid requires knowledge and experience in immigration, and assists with an immigration matter.
- [41] The purpose of the Act is set out in section 3, and it includes promoting and protecting the interests of consumers receiving immigration advice. Abusive practices in relation to fees were certainly among the concerns the Act was intended to meet. Some confirmation licensed immigration advisers are responsible for dealing with fees as well as other aspects of the professional relationship is found in the scope of disciplinary sanctions. Licensed immigration advisers will potentially be personally responsible under section 51(1)(h) for the refunding of fees in the event such an order is made as a disciplinary sanction. It will not be an answer to say their employer received the fees.
- [42] Accordingly, licensed immigration advisers are given the freedom to practise as employees where they have little control over the business practices of their employer. However, they do so at their peril unless they establish proper protection for their professional independence, and assurance they can ensure

they manage and deliver service for all aspects of the professional relationship (alone or with another licensed adviser).

- [15] It is not open to a licensed immigration adviser to claim they are subordinate to an employer or contractor, or say an unlicensed person was responsible for aspects of the professional relationship.
- [16] The usual point of difficulty is what is controllable. Proper control requires that a professional person maintain effective control over employees and resources within a practice. Regardless, there are occasions when professional persons are blameless victims of deception, or other circumstances, and that will not trigger professional disciplinary consequences. However, the issue in this complaint relates to discharging a financial obligation, not the absence of a job offer or procuring the payment of fees by saying there was a job offer.
- [17] When Mr Kumar engaged with Global he was told Mr Ahuja was a licensed immigration adviser, given a copy of the Code of Conduct, and led to believe his engagement was under Mr Ahuja's professional control.
- [18] The only question is whether Mr Ahuja was personally responsible for the fees. Mr Ahuja's response that Global were providing other services could potentially mean fees were outside of the professional relationship for which he carried responsibility.

Was the \$2,000 in fees paid separate from the engagement to provide immigration advice

- [19] Mr Ahuja contends he was the victim of the directors of Global having deceived Mr Kumar by representing that a job offer was available and collecting fees which should not have been paid. Mr Ahuja contends that he did not know of these events at the time. I accept Mr Ahuja's evidence, and I will proceed on the basis that is the correct position.
- [20] Mr Ahuja had obligations as the sole licensed immigration adviser to ensure that the practice was managed professionally and that clients who were offered immigration services were protected. However, in this case there is a more fundamental issue. Mr Kumar signed a contract which contained a schedule of payments; the first was \$250 + GST, which he paid for the initial consultation with Mr Ahuja. The schedule showed the next instalment was \$2,000 + GST, and due after Mr Kumar found a job. The agreement is clear; it does not relate the payments to Global finding work. The agreement relates all the fees to immigration services.
- [21] An objective observer seeing Mr Ahuja present the Code to Mr Kumar, explain the agreement to him and have him sign it, would be in no doubt about what occurred. Mr Kumar was expected to pay the money he paid, and in doing so would be protected by the Code of Conduct. Mr Ahuja has not provided any reason why Mr Kumar should think that only part of the fee was covered by the agreement and legislative regime.
- [22] Accordingly, when it became evident Mr Ahuja could not proceed with the immigration work and Mr Kumar wanted his money back, he was entitled to expect Mr Ahuja to repay the money. It appears a person working with Global may have misled both Mr Kumar and Mr Ahuja; however, that does not absolve Mr Ahuja of his obligation. It was Mr Ahuja who chose to conduct his practice under the auspices of Global. He was in a position to ensure he had adequate control over finances, information and personnel to deliver professional services to Mr Kumar. If he could not do so, he should not have conducted his practice in that environment. Mr Kumar was entitled to accept at face value that he was dealing with a licensed immigration adviser, and had the relevant protection the Code of Conduct offers. Disclosure of that protection at the commencement of the engagement is mandatory (Clause 1 of the Code of Conduct).
- [23] Accordingly, Mr Ahuja had a personal obligation to repay the \$2,000, and did not meet his obligation by paying \$510.
- [24] It follows I am satisfied Mr Ahuja breached clause 3(d) of the code in that respect, and I uphold the complaint to that extent.

Decision

- [25] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [26] Mr Ahuja breached the Code of Conduct in the respect identified, which is a ground for complaint pursuant to section 44(2)(e) of the Act.
- [27] In all other respects, the Tribunal dismisses the complaint.

Submissions on Sanctions

- [28] The Tribunal has upheld the complaint. Accordingly, pursuant to section 51 of the Act, it may impose sanctions.
- [29] The Authority and Mr Kumar now have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees and compensation.
- [30] Whether they do so or not, Mr Ahuja is entitled to make submissions and respond to any submissions from the other parties.
- [31] 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

- [32] The timetable for submissions will be as follows:
 - [32.1] The Authority and Mr Kumar are to make any submissions within 10 working days after 16 January 2015 of the issue of this decision.
 - [32.2] Mr Ahuja is to make any further submissions (whether or not the Authority or Mr Kumar makes submissions) within 15 working days after 16 January 2015.
 - [32.3] The Authority and Mr Kumar may reply to any submissions made by Mr Ahuja within 5 working days of him filing and serving those submissions.

DATED at WELLINGTON this 19th day of December 2014

G D Pearson
Chair