

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

Decision No: [2015] NZIACDT 34

Reference No: IACDT 007/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**Between**

**Suilana Samisoni**

Complainant

**AND**

**Alungamonu (Laki) Tangilanu (Monu)**

Adviser

---

**DECISION**

---

**REPRESENTATION:**

**Registrar:** In person.

**Complainant:** Mr R. Small, lawyer, Pacific Legal Ltd, Lower Hutt

**Adviser:** In person

Date Issued: 23 March 2015

## DECISION

### Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal.
- [2] The complaint is that Ms Tangilanu accepted instructions and received an initial fee to assist the complainant with a request for a visa, she then:
- [2.1] Made some initial inquiries.
- [2.2] Ms Tangilanu's licence as a licensed immigration adviser expired, shortly after making the initial inquiries. However, she had not taken any steps beyond the initial inquiry.
- [2.3] Ms Tangilanu did not tell her client she could no longer act for her, assist with ongoing representation, or refund the fees she took.
- [3] The allegation is that Ms Tangilanu did not comply with her professional obligations when her licence expired. She had an obligation to tell her client she could no longer act, take reasonable steps to ensure her client's interests were represented, and refund any fees due. She is alleged to have done none of those things.
- [4] Ms Tangilanu has not responded to the complaint with an explanation or justification addressing the grounds of complaint.
- [5] The Tribunal has concluded it must uphold the complaint, as the material before it establishes the facts, and Ms Tangilanu failed to meet her professional obligations when she could no longer act for the complainant.

### 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's visa expired on 17 August 2011.
- [6.2] She entered into a written agreement with Ms Tangilanu on 13 September 2011. Ms Tangilanu agreed to apply for a visa under section 61 of the Immigration Act 2009, appeal to the Minister and complain to the Office of the Ombudsmen. She paid an initial fee of \$500.
- [6.3] On 20 September 2011, Ms Tangilanu telephoned Immigration New Zealand regarding the complainant's immigration history. Three days later on 23 September 2011 Ms Tangilanu's licence as a licensed immigration adviser expired. At that point, she had not taken any steps beyond the initial inquiry to Immigration New Zealand.
- [6.4] Ms Tangilanu did not tell the complainant her licence had expired, or refund the fee she received, or otherwise take steps to protect her interests.
- [7] The Registrar identified potential infringement of professional standards during the course of Ms Tangilanu's engagement. Namely:
- [7.1] That Ms Tangilanu breached clause 1.1(c) and 3(b) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code) as she did not take reasonable steps to ensure her client's interests were represented when she could not continue as a representative; and did not confirm in writing when she ceased work part way through her instructions. The circumstances were:
- [7.1.1] Ten days after receiving instructions from the complainant, Ms Tangilanu's licence as a licensed immigration adviser expired.
- [7.1.2] She did not tell the complainant, and took no steps to ensure continuing representation or otherwise address the situation.

- [7.1.3] Ms Tangilanu potentially failed to take reasonable steps to ensure the complainant's interests were represented when she could no longer continue as her representative (clause 1.1(c) of the 2010 Code); and
- [7.1.4] She potentially failed to confirm in writing to the complainant when she ceased work part way through the immigration process (clause 3(b) of the 2010 Code).
- [7.2] That Ms Tangilanu breached clause 3(d) of the 2010 Code, as she did not provide any refund payable on ceasing her contract to provide services. The circumstances were:
  - [7.2.1] The complainant paid Ms Tangilanu \$500 for professional services, and she had not performed the services before her licence expired.
  - [7.2.2] After her licence expired, Ms Tangilanu could no longer provide the services.
  - [7.2.3] Ms Tangilanu should have refunded the fees, and did not do so.
  - [7.2.4] Clause 3(d) of the Code required Ms Tangilanu to refund the fee.

### **The responses**

- [8] Ms Tangilanu did not file a statement of reply; she was not required to do so if she accepted the contents of the Statement of Complaint.
- [9] The complainant filed a statement of reply, she agreed with the contents of the Statement of Complaint.

### **Discussion**

#### *The standard of proof*

- [10] 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*

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

#### *The facts*

- [13] The facts are uncomplicated, and essentially rely on the documentation the Registrar presented to the Tribunal. It is clear Ms Tangilanu accepted instructions some 10 days before her licence expired.
- [14] The Act precluded her from lawfully providing further immigration services if her licence did expire without renewal. The 2010 Code had obligations Ms Tangilanu had to honour if she could not complete her instructions.
- [15] The material before the Tribunal establishes Ms Tangilanu took no steps to meet her obligations to her client when her licence did expire. She had accepted the instructions, she took a fee, could not complete the instructions, and made no attempt to address the situation.

#### *The charges of professional misconduct*

- [16] The professional misconduct potentially arising from the facts before the Tribunal, are set out above in paragraph [7]. The facts and documentary material properly found the grounds. Ms Tangilanu breached the 2010 Code due to the facts and circumstances identified in that paragraph.

- [17] I find Ms Tangilanu breached clause 1.1(c) and 3(b) of the 2010 Code. Ms Tangilanu's client, the complainant, was in New Zealand unlawfully. She had only been in New Zealand unlawfully (due to her visa expiring) for a relatively brief period of time. The longer the time she was in New Zealand unlawfully, the more adverse the potential immigration consequences would likely be. She had sought professional assistance, and that assistance needed to follow through with communication with Immigration New Zealand, and a responsible course of action to address the complainant's situation. What Ms Tangilanu did was to make an inquiry with Immigration New Zealand, which would alert Immigration New Zealand to the complainant's unlawful status. She failed to take any steps to address it. The actions were calculated to give the impression the complainant was aware of her status, and was delinquently ignoring it. In fact the complainant had given what she understood were instructions to deal with her circumstances.
- [18] The complainant needed to know immediately when Ms Tangilanu could not act for her; and she needed professional representation to deal with Immigration New Zealand. Ms Tangilanu failed to tell her client she could not act. That was an overt breach of clause 3(b) of the 2010 Code. She also should have ensured her client understood she had not taken any effective action, been given advice as to where she could get professional assistance, and Ms Tangilanu should have reported to an alternative adviser as to what she had done. She took none of those steps, and accordingly breached clause 1.1(c) of the 2010 Code.
- [19] Ms Tangilanu had taken fees of \$500. She had taken no steps beyond an initial inquiry. She had provided nothing of value, it would have cost no less to get a new adviser to accept instructions and act for the complainant. Accordingly, Ms Tangilanu had not earned any of the fee she took. Clause 3(d) obliged Ms Tangilanu to refund fees due when she could no longer act. I am satisfied she was obliged to refund the whole of the fee in this case, and she failed to refund any of the fee.

### **Decision**

- [20] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [21] Ms Tangilanu breached the 2010 Code in the respects identified; that is a ground for complaint pursuant to section 44(2) of the Act.

### **Submissions on Sanctions**

- [22] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [23] 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.
- [24] 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.
- [25] The Registrar is requested to report on the extent to which Ms Tangilanu has complied with previous orders the Tribunal has imposed in respect of sanctions, and the steps she has taken to enforce the orders.

### *Timetable*

- [26] The timetable for submissions will be as follows:
- [26.1] The Authority and the complainants 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 complainants may reply to any submissions made by the adviser within 5 working days of her filing and serving those submissions.

**DATED** at Wellington this 23<sup>rd</sup> day of March 2015

---

**G D Pearson**  
Chair