

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

Decision No: [2015] NZIACDT 35

Reference No: IACDT 008/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

U and G U

Complainants

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

**THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE
PUBLISHED**

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 complainants with a request for a visa. The allegations are that she:
 - [2.1] Failed to comply with the requirements for commencing a professional relationship, as she had no written agreement, and did not attend to the various disclosure requirements.
 - [2.2] She applied for a visa without instructions.
 - [2.3] She failed to take instructions and respond when Immigration New Zealand made inquiries, the applications accordingly failed.
 - [2.4] Ms Tangilanu did not inform her clients of what had occurred.
- [3] Ms Tangilanu has not responded to the complaint with an explanation or justification addressing the grounds of complaint.
- [4] The Tribunal has concluded it must uphold the complaint, as the material before it establishes the facts and they establish negligence, and non-compliance with Ms Tangilanu's professional obligations.

The complaint

- [5] The Registrar filed a statement of complaint, she put forward the following background as the basis for the complaint:
 - [5.1] In May 2011, the complainants engaged Ms Tangilanu to assist them with immigration matters. At the end of that month, the female complainant's employer paid Ms Tangilanu \$1,500 for her services; and the female complainant repaid her employer.
 - [5.2] On 26 May 2011, Ms Tangilanu submitted a work visa application for the female complainant, and the following day an application for a visitor visa for the complainant without seeking their instructions to do so. The next day, their existing work visas expired and they were in New Zealand unlawfully as a result.
 - [5.3] On 22 June 2011, Immigration New Zealand wrote to Ms Tangilanu with concerns the complainants were not genuine visitors to New Zealand. Ms Tangilanu did not respond, and accordingly on 11 July 2011 Immigration New Zealand declined the visitor visa applications.
 - [5.4] On 4 August 2011, Immigration New Zealand wrote to Ms Tangilanu regarding the application for a work visa and sought information. Ms Tangilanu did not reply, and accordingly on 24 August 2011 Immigration New Zealand declined the application.
 - [5.5] On 23 September Ms Tangilanu's licence as a licensed immigration adviser expired. She did not tell the complainants their visa applications failed.
- [6] The Registrar identified potential infringement of professional standards during the course of Ms Tangilanu's engagement. Namely:
 - [6.1] That Ms Tangilanu breached clause 1.5(a), (b) and (d) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). Those provisions required Ms Tangilanu to have written terms of engagement, explain all relevant matters, and have her clients confirm in writing they accepted the terms. The circumstances were:

- [6.1.1] Ms Tangilanu took no steps to establish her professional relationship pursuant to the disclosure, and documentation process those provisions of the 2010 Code required.
- [6.1.2] She accordingly failed:
- [6.1.2] To make the complainants aware, in writing and in plain language of the terms of the agreement and all significant matters relating to it (clause 1.5(a) of the 2010 Code);
 - [6.1.2] To ensure the complainants engaged her pursuant to a written agreement that contained a full description of the services she would provide (clause 1.5(b) of the 2010 Code); and
 - [6.1.2] To have the complainants confirm in writing that they accepted the terms of an agreement (clause 1.5(d)).
- [6.2] That Ms Tangilanu breached clause 8(b) of the 2010 Code, as she failed to set out fees and disbursements before commencing work. The circumstances were:
- [6.2.1] Ms Tangilanu received \$1,500 for her services, but did not set out the fees and disbursements before commencing the work.
 - [6.2.2] She did so in breach of clause 8(b) of the 2010 Code.
- [6.3] That Ms Tangilanu was negligent, which is a ground for complaint pursuant to section 44(2)(a) of the Immigration Advisers Licensing Act 2007 (the Act). The circumstances were:
- [6.3.1] Ms Tangilanu failed to respond to Immigration New Zealand's letter of 22 June 2011, and as a result, the visitor visa applications were declined.
 - [6.3.2] Ms Tangilanu did not tell the complainants she was applying for visitor visas, or tell them when Immigration New Zealand declined those applications.
 - [6.3.3] Ms Tangilanu did not respond to Immigration New Zealand's 4 August 2011 letter, and as a result the female complainant's application for a work visa was declined, and Ms Tangilanu did not tell the complainants about those matters.
 - [6.3.4] Ms Tangilanu was negligent because:
 - [6.3.4] She prepared and submitted work visa without instructions.
 - [6.3.4] She failed to tell the complainants about Immigration New Zealand's inquiries, and the need to respond.
 - [6.3.4] She failed to reply to Immigration New Zealand's queries.
 - [6.3.4] She did not tell her clients the applications failed.
 - [6.3.5] The Registrar also identified potential breaches of the 2010 Code arising from the same matters, if the more serious finding of negligence is not made out.

The responses

- [7] 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.
- [8] The complainants did not file a statement of reply, but indicated they agreed with the contents of the Statement of Complaint.

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.

The facts

- [12] The facts are uncomplicated, and essentially rely on the documentation the Registrar presented to the Tribunal. It is clear Ms Tangilanu accepted instructions and failed to undertake the client engagement process required under the 2010 Code. They cover disclosure, having a written agreement, and setting out fees and disbursements before commencing work.
- [13] Ms Tangilanu then lodged an application for a work permit with instructions; but lodged visitor visa applications without instructions. She failed to respond to queries from Immigration New Zealand in respect of each of the applications, as a result the applications failed. She then failed to tell her clients.

The charges of professional misconduct

- [14] I am satisfied the complaint that Ms Tangilanu failed to comply with clauses 1.5(a), (b) and (d), and 8(b) of the 2010 Code are made out. Ms Tangilanu simply failed to have a written agreement, failed to explain the essential matters that were to be in the agreement, and did not set out her fees before commencing work.
- [15] Ms Tangilanu was also negligent.
- [16] She was negligent in failing to get instructions before lodging applications for visitor visas. Applying for the visas may have been appropriate, but could never be so without instructions. Her clients needed to know the reasons for applying for work visas, which would appear to be the imminent expiry of their current visas. They needed to know what the consequences of that were, and what steps they should take. For Ms Tangilanu to make an application without her clients' knowledge was grossly negligent. First her clients did not understand their circumstances or what was occurring in relation to their affairs. Second, she could not properly submit the applications to Immigration New Zealand without ensuring the information she supplied was accurate, and could not do so without taking instructions.
- [17] She was also negligent in failing to inform her clients about Immigration New Zealand's queries, and then not taking instructions and replying to Immigration New Zealand. The consequence was the applications failed. That outcome was a clear and obvious outcome of failing to respond. Ms Tangilanu could not know what response was possible without taking instructions; and she had an obligation to her clients and Immigration New Zealand to reply.
- [18] Ms Tangilanu was further negligent in failing to report to her clients. They were in a situation where they were in New Zealand unlawfully, and failing to respond appropriately would potentially harm their long-term immigration prospects. They needed to have accurate information regarding their circumstances.

Decision

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

- [20] Ms Tangilanu was negligent, and breached the 2010 Code in the respects identified; they are grounds for complaint pursuant to section 44(2) of the Act.

Submissions on Sanctions

- [21] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [22] The Authority and the complainants 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.
- [23] 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.
- [24] 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

- [25] The timetable for submissions will be as follows:
- [25.1] The Authority and the complainants are to make any submissions within 10 working days of the issue of this decision.
- [25.2] 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.
- [25.3] 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.

Order prohibiting publication of the complainant's name or identity

- [26] As the complainants were in New Zealand unlawfully, the Tribunal orders that their names and any information that may identify them is not to be published.
- [27] This order recognises that persons seeking advice regarding their unlawful status in New Zealand are entitled to complain regarding professional misconduct, without fear of publication that may adversely affect them.
- [28] Leave is reserved for the complainant or the Registrar to apply to vary this order. The order does not prevent **the complainants** disclosing the decision to their professional advisers, or any authority **they** considers should have a copy of the decision.

DATED at Wellington this 23rd day of March 2015

G D Pearson
Chair