

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

Decision No: [2015] NZIACDT 40

Reference No: IACDT 015/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Ilaisaane Talanoa

Complainant

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

DECISION

REPRESENTATION:

Registrar: In person.

Complainant: Mr N Tupou, Barrister, Auckland.

Adviser: In person

Date Issued: 15 April 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 also failed to document the amount of, and terms relating to her fees, and did not issue an invoice when paid.
- [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 Ms Tangilanu did not comply with her obligation to document her instructions, and the fees relating to them.

The complaint

- [5] The Registrar filed a statement of complaint, she put forward the following background as the basis for the complaint:
 - [5.1] On 15 March 2007, the complainant engaged Ms Tangilanu, to assist with her husband's immigration issues. He was in New Zealand unlawfully, without a current permit. The complainant paid Ms Tangilanu fees in instalments.
 - [5.2] On 5 August 2010, Ms Tangilanu lodged a request for a work permit under section 35A of the then current Immigration Act. On 25 October 2010, she completed an "Immigration Adviser Details Form", and submitted that to Immigration New Zealand in November 2010.
 - [5.3] On 8 March 2011, Ms Tangilanu went to the complainant's home and requested a further payment of \$300 to seek an extension to her husband's permit. She paid the amount, and Ms Tangilanu did not issue a receipt.
 - [5.4] On 17 March 2011, Immigration New Zealand approved the request for a permit, and issued a work visa under section 61 of the Immigration Act 2009, which applied by that time.
 - [5.5] On 23 September 2011, Ms Tangilanu's licence expired and she had not applied for a residence visa for the complainant's husband. Ms Tangilanu continued to demand payment for her services.
- [6] The Registrar identified potential infringement of professional standards during the course of Ms Tangilanu's engagement. They only relate to the period from 24 September 2010, when Ms Tangilanu first became a licensed immigration adviser. The potential infringements were:
 - [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 did not enter into a written agreement regarding the services she was to provide. Her communications were oral, and the complainant did not understand the terms and the services Ms Tangilanu was to provide.

[6.1.2] Ms Tangilanu accordingly failed:

[6.1.2] To make the complainant 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 complainant 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 complainant confirm in writing that she accepted the terms of an agreement (clause 1.5(d)).

[6.2] That Ms Tangilanu breached clause 8(b), (c) and (e) of the 2010 Code, as she failed to set out fees and disbursements before commencing work, set out payment terms, and did not provide invoices. The circumstances were:

[6.2.1] After Ms Tangilanu was licensed, she did not take any steps to address the obligations contained in clause 8 of the 2010 Code.

[6.2.2] On 8 March 2011, Ms Tangilanu claimed a fee of \$300, and did not provide an invoice.

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 complainant did not file a statement of reply. She too was not required to do so if she accepted the contents of the Statement of Complaint. Her complaint was on wider grounds than the Statement of Complaint, and she did not seek to advance the grounds beyond those in the Statement of Complaint. Accordingly, the Tribunal will deal only with the grounds in 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. The complainant also provided an affidavit in support of her complaint.

[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 had 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. She then claimed fees without any attempt to document them, or issue a receipt when paid as the 2010 Code required.

The charges of professional misconduct

- [13] I am satisfied the complaint that Ms Tangilanu failed to comply with clauses 1.5(a), (b) and (d), and 8(b), (c) and (e) 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. She then failed to document fees and payments as the Code required.
- [14] The facts founding the complaint are evident in the record, and Ms Tangilanu has not disputed the allegations. I accordingly find each of the grounds of complaint made out.

Decision

- [15] The Tribunal upholds the complaint pursuant to section 50 of the Act; they are grounds for complaint pursuant to section 44(2) of the Act.

Submissions on Sanctions

- [16] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [17] 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.
- [18] 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.
- [19] 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

- [20] The timetable for submissions will be as follows:
- [20.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.
- [20.2] 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.
- [20.3] 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 15th day of April 2015

G D Pearson
Chair