

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

Decision No: [2015] NZIACDT 48

Reference No: IACDT 036/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Joseph San Juan

Complainant

AND

Genoveva Evelyn Ramos

Adviser

DECISION

REPRESENTATION:

Registrar: In person.

Complainant: In person.

Adviser: In person.

Date Issued: 7 May 2015

DECISION

Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal.
- [2] Ms Ramos is a licensed immigration adviser. She assisted the complainant for a nominal fee in an immigration matter. She did not attend to the disclosure requirements for commencing a professional relationship. She says that was appropriate, as she gave assistance as the chair of the Philippine Migrant Centre, a community organisation.
- [3] Part of the work Ms Ramos did was to reply to Immigration New Zealand's concerns regarding a visitor visa application the complainant had lodged himself. Her response failed to address Immigration New Zealand's concern regarding whether the complainant was a genuine "visitor". Ms Ramos said her response was adequate.
- [4] The Tribunal has to determine what Ms Ramos's professional responsibilities were when she accepted the instructions. It must decide whether Ms Ramos could elect to operate under the umbrella of a community organisation, and be exempt from her usual professional obligations. The second issue involves evaluating whether Ms Ramos's response to Immigration New Zealand was adequate.
- [5] The Tribunal has upheld the complaint, as it is satisfied the community organisation has no standing to exempt it from compliance with the law relating to giving immigration advice. Accordingly, Ms Ramos had to act as a licensed immigration adviser and comply with her usual professional obligations.
- [6] In relation to Ms Ramos' response to Immigration New Zealand, the Tribunal has found she failed to address the central element of Immigration New Zealand's concerns. Accordingly, her response did not meet minimum standards of professional service delivery.

The complaint

- [7] The Registrar's Statement of Complaint put forward the following background as the basis for the complaint:
- [7.1] Immigration New Zealand declined to grant the complainant a work visa, but did issue a visitor visa valid until 17 September 2012. He applied for further visas for him and his family. On 7 September 2012 Immigration New Zealand wrote to him, and said:
- [7.1.1] He could not include his wife and daughter, as they were in New Zealand without current visas.
- [7.1.2] He might not qualify for a visa, as he did not appear to be a *bona fide* visitor in the relevant sense, and did not meet funds/sponsorship requirements or onward travel requirements.
- [7.1.3] He had until 17 September 2012 to respond to those concerns.
- [7.2] On 17 September 2012, he engaged Ms Ramos to assist with a response to Immigration New Zealand's letter.
- [7.3] Ms Ramos contacted Immigration New Zealand by email, provided details of her status as a licensed immigration adviser, and sought an extension of time to respond. Ms Ramos gathered information, and then responded to Immigration New Zealand's 7 September 2012 letter with a letter including:
- [7.3.1] A sponsorship form from a New Zealand citizen;
- [7.3.2] Bank account information, and
- [7.3.3] A travel itinerary.

- [7.4] Ms Ramos issued a receipt for \$150 to the complainant, but there was no written agreement. She says she provided the complainant with assistance as community service in her capacity as chair of the Philippine Migrant Centre, and the \$150 was paid to the Centre.
- [7.5] On 21 September 2012, Immigration New Zealand declined the visitor visa application, as the officer was not satisfied that the complainant was a *bona fide* visitor. The letter noted, Ms Ramos's response to Immigration New Zealand's concerns did not provide any comments to the concerns Immigration New Zealand expressed regarding the *bona fides* of the complainant and his family.
- [7.6] The complainant subsequently engaged Ms Ramos to request a work visa under section 61 of the Immigration Act 2009. That section provides for the grant of visas in special cases where the applicant is unlawfully in New Zealand, as was the case here. On 30 October 2012, Ms Ramos wrote to Immigration New Zealand with the request, which Immigration New Zealand declined. Ms Ramos had no written agreement relating to this work.
- [8] The Registrar identified potential infringement of professional standards during the course of Ms Ramos's engagement, the allegations were that potentially:
- [8.1] Ms Ramos breached clauses 1.5(a), 1.5(d) and 8(d) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). The provisions required her to enter an agreement to provide professional services with a full description of the services, and provide relevant information in writing. In addition, she had to set out fees and disbursements before incurring costs. The alleged circumstances were:
- [8.1.1] Ms Ramos agreed to respond to Immigration New Zealand's letter of 7 September 2012 and later made an application under section 61 of the Immigration Act 2009. She failed to comply with the client engagement processes in the 2010 Code, her client paid fees (albeit nominal), and she performed professional work regardless.
- [8.1.2] Ms Ramos claimed she was exempt from the requirements in the 2010 Code as she was performing a "community service", and donated the \$150 to the Philippine Migrant Centre.
- [8.2] Ms Ramos breached clause 1.1(a) of the Licensed Immigration Advisers Code of the 2010 Code. It required her to perform her services with due care, diligence, respect and professionalism. The circumstances were:
- [8.2.1] Ms Ramos' response to Immigration New Zealand's letter of 7 September 2012 potentially failed to deal with Immigration New Zealand's concern that the complainant and his family were not *bona fide* visitors.
- [8.2.2] As there was no response to this concern, which Immigration New Zealand had raised, the application failed.
- [8.2.3] Accordingly, Ms Ramos failed to perform her services in accordance with clause 1.1(a) of the 2010 Code.

The responses

- [9] The complainant did not file a statement of reply, and was not required to do so if he agreed with the terms of the Statement of Complaint.
- [10] Ms Ramos filed a statement of reply. The key elements in her response were:
- [10.1] She did not enter into an agreement for the provision of professional services. This was a deliberate choice after presenting her terms of engagement and fees. The complainant could not afford to engage her.

- [10.2] Ms Ramos justified this on the basis she provided the services through a community organisation, the Philippine Migrant Centre, which she chaired, and donated the nominal fee to that organisation.
- [10.3] She performed the work under urgency, and effectively. She contributed her own money to assist.
- [10.4] Ms Ramos has assisted approximately 3,000 migrants in New Zealand, 20% of them under the Philippine Migrant Centre.

Discussion

The standard of proof

- [11] 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 facts

- [12] The Registrar provided a chronology and supporting documentation. Ms Ramos has provided her account of matters.
- [13] The grounds of complaint in the Statement of Complaint limit the scope of the material facts. The Registrar has raised only two issues, a failure to comply with client engagement processes, and a failure to respond to Immigration New Zealand's concern regarding the complainant being a *bona fide* visitor.
- [14] Ms Ramos has not challenged the factual foundation for those matters, rather she says she did not have to comply with the 2010 Code in relation to client engagement, and while her response did not specifically address the *bona fide* issue the response was adequate.

Ms Ramos's obligation to comply with client engagement requirements of the 2010 Code

- [15] Ms Ramos claims she was "wearing two hats", one being the chair of the Philippine Migrant Centre and the other as a licensed immigration adviser. When she donated fees to the Centre, she did not need to comply with the 2010 Code.
- [16] Ms Ramos' submission is unsustainable and potentially demonstrates a concerning lack of understanding as to the licensing scheme. It is a serious criminal offence to give immigration advice, as defined in the Immigration Advisers Licensing Act 2007, unless you are a licensed immigration adviser, or exempt (section 63). Where a person commits an offence, knowing they are required to be licensed or exempt, the penalty is up to 7 years imprisonment, a fine of \$100,000, or both.
- [17] Neither the chair of the Philippine Migrant Centre, nor the Centre, is exempt under the Act. Accordingly, unless Ms Ramos is suggesting that she committed a serious criminal offence, she had to provide any immigration assistance to the complainant as a licensed immigration adviser. Indeed she clearly did so as she provided details of her status as a licensed immigration adviser when she sought an extension of time to respond to Immigration New Zealand's concerns. Ms Ramos was a licensed immigration adviser, could only act in that capacity, and accordingly she was obliged to comply with the 2010 Code.
- [18] Ms Ramos deliberately chose not to enter into an agreement. She was free to enter into an agreement to do work for a nominal fee, or to associate her service delivery with the Philippine Migrant Centre. However, she was a licensed immigration adviser providing immigration advice and assistance; in every respect, she was required to comply with the professional standards mandated in the Act and the 2010 Code. She did not do so as:
- [18.1] She did not have an agreement in writing and in plain language containing a full description of the services she would provide, she did not make her client aware in writing of the terms of an agreement and all significant matters, and her client did not accept the agreement in writing. Accordingly, she breached clause 1.5 of the 2010

Code in those respects. The 2010 requires written information, and acceptance of the terms. That did not occur.

- [18.2] She did not set out the fees in writing before commencing work that incurred costs. She breached clause 8(b) of the 2010 Code in that respect.

Ms Ramos's obligation to comply with client engagement requirements of the 2010 Code

- [19] Ms Ramos plainly failed to respond to Immigration New Zealand's concern that the complainant was not a *bona fide* applicant for a visitor visa. Immigration New Zealand's letter of 7 September 2012 explained the issue. It is an elementary aspect of New Zealand immigration practice that a person issued with a visitor visa is in New Zealand for a short term under that visa, and Immigration New Zealand will expect to be satisfied the visa holder will leave New Zealand when the visa expires or otherwise gain a lawful status in New Zealand.
- [20] The letter said:
- “Judging from your immigration history, it appears that your intentions for this visitor visa are not genuinely for a temporary stay. We also have concerns that you will remain in New Zealand unlawfully again.”
- [21] For Ms Ramos to have the relevant professional skills to accept these instructions, she had to understand why Immigration New Zealand would raise that concern and why answering it sufficiently was fundamental to the success of the application. The issue was set out in Immigration New Zealand's letter plainly, as the first concern in the letter. Unless addressed, nothing Ms Ramos presented to Immigration New Zealand was likely to result in a favourable outcome.
- [22] Ms Ramos failed to address the issue and the foreseeable and inevitable result was that Immigration New Zealand declined the application. Ms Ramos has not provided an explanation that explains why she failed to deal with this issue. I am accordingly satisfied Ms Ramos failed to act with due care and professionalism. Her response to Immigration New Zealand was fatally deficient.

Decision

- [23] The Tribunal upholds the complaint pursuant to section 50 of the Act; Ms Ramos's breached the 2010 Code in the respects identified and that is a ground for complaint pursuant to section 44(2)(e) of the Act.
- [24] In other respects, the Tribunal dismisses the complaint.

Submissions on Sanctions

- [25] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [26] The Authority and the complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs and compensation. Whether they do so or not, Ms Ramos is entitled to make submissions and respond to any submissions from the other parties.
- [27] 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

- [28] The timetable for submissions will be as follows:
- [28.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.

- [28.2] 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.
- [28.3] 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 7th day of May 2015

G D Pearson
Chair