

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 31

Reference No: IACDT 024/17

**IN THE MATTER** of a referral under s 48 of  
the Immigration Advisers  
Licensing Act 2007

**BY** **THE REGISTRAR OF  
IMMIGRATION ADVISERS**  
Registrar

**BETWEEN** **JOEL ABELLERA**  
Complainant

**AND** **JANINE ELIZABETH**  
Adviser

---

**FINAL DECISION**  
**Dated 13 May 2019**

---

**REPRESENTATION:**

Registrar: Self-represented

Complainant: Self-represented

Adviser: Self-represented

## INTRODUCTION

[1] The Tribunal (Mr Pearson) earlier considered this complaint and issued an interim decision on 20 September 2017 in *Abellera v Elizabeth* [2017] NZIACDT 17. The Tribunal (Mr Plunkett) apologises for the undue delay in issuing this final decision, which was overlooked.

## BACKGROUND

[2] At the material time, Ms Janine Elizabeth was a licensed immigration adviser employed by Best Migration Services Global Pty Ltd (BMS), an Australian company. Ms Elizabeth was based in Australia. Her employer operated in conjunction with FBP International DWC LLC (FBP), a Dubai based company. Ms Elizabeth's licence expired on 27 May 2017.

[3] On 14 July 2015, Mr Joel Abellera, the complainant, entered into a contract with FBP for the provision of immigration services. The fee was US\$3,600. The contract was signed by Mr Abellera and by Ms Elizabeth, on behalf of FBP. Mr Abellera was then an employee of FBP. While not specified in the contract, he sought a New Zealand skilled migrant visa.

[4] Between about July 2015 and January 2016, Ms Elizabeth and other staff worked on the initial stages of Mr Abellera's application. There was then a long period of inactivity, which included Mr Abellera taking an IELTS English language test.

[5] On 23 February 2017, Mr Abellera sent an email to Ms Elizabeth seeking a refund of the US\$3,600 paid. His application had still not been lodged and he had noticed that information about New Zealand migration had been removed from BMS's website.

### *Complaint*

[6] On 25 February 2017, Mr Abellera lodged a complaint with the Immigration Advisers Authority (the Authority).

[7] Ms Elizabeth telephoned Mr Abellera on 3 March 2017 and said that if he withdrew his complaint within 12 hours, he would receive a refund. If he did not, FBP would file a complaint against him and he would not receive a refund.

[8] On 9 March 2017, Ms Elizabeth sent an email to Mr Abellera confirming termination of their services. She stated that a settlement offer had been made but not accepted by him. The matter would therefore be decided by the Authority.

[9] Mr Abellera advised the Authority on 17 March 2017 that he wanted to withdraw the complaint, as FBP had agreed to refund him US\$2,000 if he did so. BMS had already remitted US\$1,000 and handed over his final salary.

[10] FBP sent an email to Mr Abellera on 23 March 2017 stating that because the complaint was still being reviewed by the Authority, the second payment of US\$1,000 would not be paid.

[11] The Authority referred the complaint to the Tribunal on 26 July 2017.

#### *Interim decision*

[12] As noted above, the Tribunal issued an interim decision on 20 September 2017. It recorded its findings on the evidence then produced, but stated it would allow Ms Elizabeth to respond before a final decision was issued. It did so because it was concerned that she appeared not to understand the gravity of the complaint.

[13] The Tribunal considered breaches of the following provisions in the Code of Conduct 2014 (the Code):

#### **General**

1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

#### **Written agreements**

19. A licensed immigration adviser must ensure that a written agreement contains:

...

- e. a full description of the services to be provided by the adviser, which must be tailored to the individual client

...

#### **Refunds**

24. A licensed immigration adviser must:

- a. ensure that refunds given are fair and reasonable in the circumstances

...

- c. promptly provide any refunds payable upon completing or ceasing a contract for services.

[14] The Tribunal found that Ms Elizabeth had breached each of those clauses in the following manner:

- (1) The written contract referred to Australia and did not identify the type of visa sought. It did not contain a full description of the services to be provided by Ms Elizabeth, tailored to the circumstances of Mr Abellera, in breach of cl 19(e);
- (2) Mr Abellera was entitled to terminate his instructions. Furthermore, Ms Elizabeth had no entitlement to the fee as the written contract did not comply with the Code. She was obliged to refund the full fee of US\$3,600, but did not do so, in breach of cl 24(a) and (c). It was her personal responsibility to refund the fee.
- (3) In demanding the withdrawal of the complaint if a refund was to be provided and continuing to withhold the refund, Ms Elizabeth committed a gross breach of her professional duties in cl 1. This was a serious matter.

[15] Mr Abellera responded on 3 October 2017 advising that he would be happy to receive a further refund of US\$2,600. This was the only resolution he was looking for. He confirmed on 17 October 2017 that he had no issues with the interim decision as all the details were correct.

[16] Ms Elizabeth replied to the interim decision on 3 October 2017. She acknowledged and accepted her personal responsibility and apologised that it was not transparent in her earlier replies to the Tribunal. She confirmed that she would refund the amount of US\$2,600 in her personal capacity and would not rely on or abide by any company policy in the future. Ms Elizabeth noted that Mr Abellera was the first client to lodge a complaint. She had already acknowledged her breaches and apologised for the faults.

[17] On 18 October 2017, Ms Elizabeth advised that US\$2,600 had been refunded to Mr Abellera. She sent proof of the transfer on 21 October 2017.

[18] On 9 May 2019, Mr Abellera confirmed that Ms Elizabeth had refunded the US\$2,600 to him.

**OUTCOME**

[19] The interim decision is hereby made final. Ms Elizabeth is found to be in breach of cls 1, 19(e), 24(a) and (c) of the Code. The complaint is upheld.

[20] While the Tribunal indicated in its interim decision that it would invite submissions on sanctions following the final decision, the delay in issuing this decision means any sanction other than a refund would not be appropriate. In this regard, it is relevant to note that Ms Elizabeth's licence expired two years ago, so the public interest does not compel any further sanction.

[21] As a full refund of the fee has now been made, the Tribunal will make no further order, in accordance with s 50(b) of the Immigration Advisers Licensing Act 2007.

---

D J Plunkett  
Chair