

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 43

Reference No: IACDT 022/18

IN THE MATTER of an appeal under s 54 of
the Immigration Advisers
Licensing Act 2007

AGAINST **THE REGISTRAR OF**
IMMIGRATION ADVISERS
Registrar

BY **SARDAR M ABID FAHEEM**
KHAN
Appellant

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 24 June 2019

REPRESENTATION:

Registrar: S Blick, counsel

Complainant: Self-represented

INTRODUCTION

[1] This is an appeal against the decision of the Registrar of Immigration Advisers (the Registrar) on 1 June 2018 not to pursue a complaint made by Mr Sardar M Abid Faheem Khan, against a licensed immigration adviser, [adviser].¹

BACKGROUND

[2] The following narrative is the best that can be ascertained from the limited documentation produced to the Tribunal.

[3] Mr Khan and/or his cousin, [the cousin], approached the adviser to obtain an entrepreneur work visa for the cousin. On 17 and 22 August 2017, the cousin sent emails to Mr Khan attaching certain documents.

[4] Mr Khan sent the documents from the cousin and other documents to the adviser by email on 15 September 2017. On the same day, the adviser issued a "Temporary Receipt" for \$1,750 received "for [the cousin]" regarding an entrepreneur work visa. The Tribunal understands it was issued to Mr Khan.

[5] On 20 September 2017, Mr Khan appears to have sent an "agreement" to his cousin. The cousin was asked to sign it and scan it back. The nature of the agreement is unknown. On 21 September 2017, the cousin sent the "signed papers" to Mr Khan by email. Later that day, the cousin sent the "required resume" to Mr Khan. These documents appear to have been forwarded by Mr Khan to the adviser on 22 September 2017.

[6] On 22 September 2017, the adviser emailed the client service agreement, service acknowledgement (authorising the adviser to act on behalf of the cousin) and Code of Conduct to the cousin. The email was copied to Mr Khan. The cousin was requested to "Read, Understand and sign and date on all pages" of the agreement, sign and date the other two documents and then send them back to the adviser.

[7] Mr Khan then emailed two of the documents back to the adviser on 26 September 2017 at 8.00 am.

[8] On 26 September 2017 at 1.53 pm, the adviser sent an email to the cousin, copied to Mr Khan, accepting the signed service agreement and service acknowledgement.

¹ [adviser] no longer holds a current licence.

[9] The copy of the service agreement sent to the Tribunal is expressed to be between the adviser's company and the cousin and to have been "made" on 22 September 2017. It bears the cousin's signature against which is the date 25 September 2017 and that of the adviser with the date 27 September 2017. The service to be performed by the adviser was described as an entrepreneur work visa for the cousin.

[10] The service acknowledgement bears the cousin's signature against the date 22 September 2017.

[11] Mr Khan sent an email to the adviser on 26 September 2017 at 2.34 pm asking him to send the checklist as (*verbatim*) "client is getting panic".

[12] On the same day, at 2.57 pm, the adviser sent the cousin by email a checklist for an entrepreneur work visa. It was copied to Mr Khan. There was no response to this email.

[13] Then on 5 October 2017, the adviser sent both Mr Khan and the cousin by email a form to complete. The adviser's file discloses no response.

[14] The signed service agreement and service acknowledgement was also emailed by an employee of the adviser's company to the cousin on that same day, 5 October 2017. It was copied to Mr Khan.

Complaint

[15] On about 24 November 2017, a complaint was made by Mr Khan against the adviser to the Immigration Advisers Authority (the Authority). The Authority is headed by the Registrar.

[16] Mr Khan said he paid \$1,750 and is the person who had suffered monetary loss. He "intended to receive business plan for my cousin but neither I obtained any business plan nor money back." If he had received the plan, he would have claimed the money from his cousin.

[17] According to Mr Khan, his cousin does not "know the company, country or agent." The adviser had dishonestly used his money for the whole month. He had refused a refund and had not responded to various contact efforts. No business plan had ever been initiated. The commitment was for the completion of a business plan within 15 to 20 days. No contract or other papers had been signed by him or his cousin.

Registrar's letter dismissing complaint

[18] On 1 June 2018, the Registrar wrote to Mr Khan advising him that the complaint would not be referred to the Tribunal, as it did not disclose any of the statutory grounds of complaint.

[19] According to the Registrar, Mr Khan had claimed that he had paid the adviser \$1,750 to assist his cousin in applying for an entrepreneur work visa. He had complained that the adviser did not supply a business plan as promised, but the Registrar found that the plan had not been completed because the cousin failed to respond to the adviser's requests for further information.

[20] Mr Khan had also complained about the adviser's refusal to refund the fees, but the Registrar found that the adviser had undertaken a reasonable amount of work, the nature of which was listed in the Registrar's letter.

[21] Furthermore, according to the Registrar, Mr Khan had advised that he had no email communication with the adviser, but the adviser had been able to provide copies of such communications. Mr Khan had stated they were fake, but there was no evidence to support that claim. Indeed, the same mobile device signature "sent from by Samsung device" was present on the emails. It therefore appeared highly unlikely that the adviser had fabricated the same mobile device signature, given he would not have known of the signature if he had not received any emails from Mr Khan.

[22] The Authority had attempted to make contact with the cousin on a number of occasions but he did not respond.

JURISDICTION AND PROCEDURE

[23] The grounds for a complaint against a licensed adviser are listed in s 44(2) of the Immigration Advisers Licensing Act 2007 (the Act):

- (a) negligence;
- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour; and
- (e) a breach of the code of conduct.

- [24] Section 45(1) provides that on receipt of a complaint, the Registrar may:
- (a) determine that the complaint does not meet the criteria set out in section 44(3), and reject it accordingly;
 - (b) determine that the complaint does not disclose any of the grounds of complaint listed in section 44(2), and reject it accordingly;
 - (c) determine that the complaint discloses only a trivial or inconsequential matter, and for this reason need not be pursued; or
 - (d) request the complainant to consider whether or not the matter could be best settled by the complainant using the immigration adviser's own complaints procedure.

[25] In accordance with s 54 of the Act, a complainant may appeal to the Tribunal against a determination of the Registrar to reject or not pursue a complaint under s 45(1)(b) or (c).

- [26] After considering the appeal, the Tribunal may:²
- (a) reject the appeal; or
 - (b) determine that the decision of the Registrar was incorrect, but nevertheless reject the complaint upon another ground; or
 - (c) determine that it should hear the complaint, and direct the Registrar to prepare the complaint for filing with the Tribunal; or
 - (d) determine that the Registrar should make a request under section 45(1)(d).

[27] The adviser against whom the complaint is made is not a party to the appeal and has not been served. The appeal itself cannot result in the Tribunal upholding the complaint against the adviser.

[28] In respect of the complaint here, the Registrar rejected it in accordance with s 45(1)(b) as it did not disclose any of the statutory grounds for a complaint.

[29] The Tribunal has received from Mr Khan submissions in the form of an email sent on 15 June 2018, with an attached completed appeal form and the Registrar's letter of 1 June 2018.

² Immigration Advisers Licensing Act, s 54(3).

[30] Directions concerning the procedure were issued by the Tribunal (Mr Pearson) on 22 June 2018.

[31] The Tribunal has a memorandum from the Registrar's counsel, Ms Blick, dated 20 July 2018 with copies of the relevant emails between the adviser, Mr Khan and the cousin. The Registrar sent further evidence to the Tribunal on 29 and 30 May 2019.

[32] Mr Khan made a further submission on 29 May 2019.

ASSESSMENT

[33] Mr Khan says the Registrar misunderstood his complaint. He had never paid the amount to assist his cousin. The adviser did not know anything about his cousin. It was Mr Khan himself who had requested the business plan for the entrepreneur category. The Authority had a "fake agreement". Furthermore, the adviser was fraudulent and had fabricated and tampered with email communications. He requested that the amount of \$1,750 be refunded as the adviser had failed to devise a business plan.

[34] In support of the allegation that the service agreement is fake, Mr Khan points out that his cousin's signature appearing on the agreement is different from that which appears on the cousin's official Pakistan identity card dated only one month earlier.

[35] I agree with Mr Khan that the signatures are very different, but the sequence of events does not support any allegation of impropriety against the adviser.

[36] The chain of emails between 22 September and 26 September 2017 shows that an unsigned service agreement, expressed to be between the adviser and the cousin, was sent by the adviser to the cousin and copied to Mr Khan. The cousin was requested to read, understand, sign and date it. It was Mr Khan himself who appears to have returned the agreement to the adviser on 26 September, bearing the signature of the cousin against a date of 25 September. The adviser then signed the agreement on 27 September, though it was not until 5 October that his staff sent the agreement, now signed by both parties, back to the cousin.

[37] There would have been no reason for the adviser to believe the cousin's signature on the agreement was not genuine, if indeed it is not genuine.

[38] The written service agreement, the service acknowledgement, the temporary receipt and the email communications all show that the adviser understood his client to be the cousin. I do not know whether the adviser ever met the cousin in person, but I find that the adviser understood, on reasonable grounds, that the cousin was his client.

[39] As for the allegedly fabricated email correspondence, I agree with the Registrar that the Samsung footer reference does provide some evidence inconsistent with the allegation that the communications are fake, though given the prevalence of Samsung devices the allegation of falsity may not be “highly unlikely” on that basis alone.

Conclusion

[40] The available evidence does not disclose any wrong-doing by the adviser. There is nothing worthy of further investigation by the Authority or the Tribunal. In reaching this conclusion, I take into account that the cousin, whom I find to be the client, has made no complaint against the adviser.

OUTCOME

[41] The appeal is rejected.

ORDER FOR SUPPRESSION

[42] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.³

[43] There is no public interest in knowing the name of the adviser against whom the complaint is made. Nor would that be fair given that the complaint was dismissed by the Authority and will not be heard by the Tribunal. Nor is there any public interest in knowing the name of the cousin, who has not made a complaint.

[44] The Tribunal orders that no information identifying the adviser or the cousin is to be published other than to the parties and Immigration New Zealand.

D J Plunkett
Chair

³ Immigration Advisers Licensing Act 2007, s 50A.