

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2023] NZIACDT 13

Reference No: IACDT 016/22

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

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

**BETWEEN** **OT**  
Complainant

**AND** **GENOVEVA EVELYN RAMOS**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 24 April 2023**

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**REPRESENTATION:**

Registrar: Self-represented  
Complainant: A Martins, counsel  
Adviser: P Moses, counsel

## **PRELIMINARY**

[1] The complainant, OT, engaged the adviser, Genoveva Evelyn Ramos, to obtain residence. Ms Ramos failed to make the application.

[2] A complaint by the complainant against Ms Ramos to the Immigration Advisers Authority (the Authority) has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It is alleged Ms Ramos was negligent and/or incapacitated and/or dishonest or misleading and/or breached the Code of Conduct 2014 (the Code), all being grounds of complaint under the Immigration Advisers Licensing Act 2007 (the Act).

## **BACKGROUND**

[3] The complainant, a national of Brazil, first came to New Zealand in 2016 on a working holiday visa. He is a carpenter.

[4] Ms Ramos, a licensed immigration adviser, is a director of Sunrise Immigration Services Ltd, of Auckland.

[5] In 2017, the complainant contacted Ms Ramos seeking a work visa. It is understood that Ms Ramos successfully sought more than one work visa for him.

[6] In September 2021, Immigration New Zealand (Immigration NZ) released information about a one-off residence visa for certain work visa holders in the country (the 2021 RV instructions or application). Those eligible could apply from 1 March 2022 until 31 July 2022. On 30 September, the complainant sent an email to Ms Ramos asking whether it was great news for him. Ms Ramos replied on the same day to say it was great indeed. Then on 27 December 2021, Ms Ramos sent an email to him stating that she would lodge an application for him and his wife in March.

[7] The complainant and Ms Ramos signed her consulting agreement on 20 and 21 February 2022 respectively. She agreed to lodge a 2021 RV application, including his wife, for a total fee of \$4,460 (of which the service fee for Ms Ramos was \$2,000 excl. GST). He paid the total fee between 21 February and 2 March 2022.

[8] On 4 and 5 April 2022, the complainant and Ms Ramos respectively signed a consulting agreement for a variation of his work visa. The fee was \$765 (including a service fee for Ms Ramos of \$500, excl. GST). Ms Ramos lodged the application on 19 April 2022 and it was approved on 5 May 2022.

[9] On 19 April 2022, Ms Ramos sent an email to her office administrator to state that the complainant qualified under the 2021 RV instructions.

[10] According to the complainant, he phoned Ms Ramos on about 14 July 2022 and was told that the residence application was “under assessment”. This is denied by Ms Ramos, though she accepts she may have mistakenly thought that the application had been filed and confirmed this to the complainant.<sup>1</sup>

[11] On 5 August 2022, the complainant’s wife sent an email to Ms Ramos again enquiring about the status of their residence application. She replied the same day to ask if they had paid \$4,460.

*Ms Ramos discovers her mistake*

[12] Later on 5 August 2022, Ms Ramos sent the complainant an email apologising and advising she would do everything to lodge the application.

[13] On the same day, 5 August 2022, Ms Ramos sent an email to Immigration NZ asking for a “huge favour”.<sup>2</sup> She said the staff did the applications for her and she checked them for approval. However, she was hospitalised and while about 400 applications were lodged, she had found out that day that one was not. She had been negligent. Ms Ramos wanted to know if there was any way an application could be lodged under the 2021 RV instructions.

[14] Immigration NZ advised on 8 August 2022 that the policy had closed. Ms Ramos asked the visa officer on the same day whether there was any other option for residence. The officer replied suggesting a check as to whether they qualified for “Straight to Residence”. Later that day, Ms Ramos sent an email to Immigration NZ asking for “Paper Form 1365”,<sup>3</sup> or whether there was any other option. She repeated that the 2021 RV application was missed because of her hospitalisation.

[15] Ms Ramos or her staff completed such an application for the complainant and the office administrator sent it to him on 9 August 2022. The complainant and his wife signed it the same day, as did Ms Ramos. It is not known whether it was actually filed.

[16] On 15 August 2022, Ms Ramos wrote to the Minister of Immigration seeking his intervention for the complainant and his wife. She set out their circumstances. She advised she had been hospitalised. Ms Ramos noted that she had two fulltime staff, as

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<sup>1</sup> Letter from Mr Moses to the Authority (22 November 2022) at 5.

<sup>2</sup> Registrar’s bundle at 31.

<sup>3</sup> This is the paper-based version of an online 2021 RV application.

well as her son working for her. While in hospital, she had checked and approved their work. Three days after the policy closed, they discovered an oversight. Ms Ramos acknowledged being negligent. She asked for the Minister's intervention to grant the couple residence.

[17] The complainant's newly instructed and present counsel, Ms Martins, informed Ms Ramos on 18 August 2022 of her instructions. The file was sought. It was provided by Ms Ramos.

[18] Ms Ramos refunded the total fee of \$4,460 on 19 August 2022.

[19] On 22 September 2022, the office administrator sent an email to Ms Ramos apologising for failing to lodge the residence application, which she thought had been lodged.

## **COMPLAINT**

[20] Meanwhile, on 7 September 2022, counsel filed a complaint against Ms Ramos with the Authority on behalf of the complainant and his wife. The couple had engaged Ms Ramos to lodge a residence application, but she failed to do so. Additionally, she failed to make proper arrangements with other licensed advisers to ensure that her clients were not impacted by her absence in hospital. She had confirmed that unlicensed staff handled the lodgement of applications, which was prohibited. Furthermore, her letter to the Minister was without instructions.

[21] According to counsel, the complainant and his wife had been left in a state of significant shock and distress. They were very disappointed that their dream of residence here may have been jeopardised.

[22] Counsel made comprehensive submissions on the grounds of complaint.

[23] There was a personal statement (2 September 2022) from the complainant. He said he always worked hard and wanted to live permanently in New Zealand. They were very happy and excited about the new residence category. When they learned that no residence application had been made, they were in a state of shock. They were psychologically shaken and this caused their work performance to decrease and an inability to concentrate on personal matters. They had made a lot of plans waiting for residence, which was every migrant's dream. It was not fair that Ms Ramos had forgotten and lied to them.

[24] The Authority wrote to Ms Ramos on 10 November 2022 enclosing a copy of the complaint and seeking her explanation.

*Explanation of the adviser*

[25] Mr Moses, counsel for Ms Ramos, replied on 22 November 2022 to the Authority. It had previously been acknowledged by Ms Ramos that she was responsible for failing to file the residence application, thereby prejudicing the complainant's ability to obtain residence. She had apologised and made a full refund. It was clear there had been a breach of cl 1 of the Code, or alternatively negligence. It was also accepted that Ms Ramos had failed to provide updates of the application to the complainant. In a sense, it was part of the failure to file the application because it was overlooked.

[26] Counsel acknowledged that Ms Ramos had also overlooked the need to obtain a variation of the consulting agreement when pursuing the Ministerial direction. It was further conceded that the process adopted to rectify her error was inadequate. She met with the complainant and his wife at her office in early August. They discussed what had gone wrong and what could be done to resolve the situation. However, she failed to confirm her advice in writing and to ensure that she had the complainant's informed instructions. Ms Ramos was motivated by wanting to resolve the problem she had caused, at no extra expense to the complainant.

[27] However, the allegations of incapacity and of dishonest or misleading conduct were not made out.

[28] As for incapacity, Ms Ramos' periodic inability to work due to ill-health was not permanent. Given the overall timeframe, it was not the key reason for the application being overlooked. Incapacity denoted more than a temporary inability to provide services competently. It was not appropriate to frame the absence of arrangements to hand files to another licensed adviser as a separate breach of cl 1. Rather, there was one breach, namely not filing the application in time.

[29] Equally, according to counsel, there was no basis to the allegation that Ms Ramos failed to be honest by not advising the complainant she was unwell. The reason the application was not filed was that Ms Ramos overlooked doing so, not the lack of a system advising her clients of her health.

[30] As for the allegation of dishonesty based on Ms Ramos' statement to the Authority that she had informed the complainant of the request to the Minister, she

instructed that she had discussed this with the complainant and his wife at a personal meeting.

[31] In respect of the advice to the complainant that he complete a paper application, it was not permissible to conclude this was dishonest or misleading advice. It was part of an unsuccessful attempt to persuade Immigration NZ to accept the application, as an exception to the usual online approach. Even if misconceived, there was nothing to suggest it was done to deceive the complainant into believing the application would be accepted if he filled in the form. She had already told him of her failure to lodge the application in time.

*Complaint filed in the Tribunal*

[32] The Registrar filed a statement of complaint (19 December 2022) in the Tribunal alleging against Ms Ramos:

Negligence, or alternatively breaches of the specified clauses of the Code –

- (1) Failed to exercise due care in ensuring the residence application was lodged as instructed, in breach of cl 1.
- (2) Failed to exercise due care and diligence by not recognising that being unwell may impact the services provided to the complainant, in breach of cl 1.
- (3) Failed to provide a new or amended written agreement for seeking Ministerial intervention, in breach of cl 18(a).
- (4) Failed to provide ongoing timely updates to the complainant, in breach of cl 26(b).
- (5) Failed to obtain the complainant's instructions after missing the deadline, in breach of cl 2(e).
- (6) Failed to confirm in writing material discussions, in breach of cl 26(c).

Incapacity, or alternatively breach of the specified clause of the Code –

- (7) Lacked the capacity to provide professional and diligent service, in breach of cl 1.

Dishonest or misleading behaviour, or alternatively breach of the specified clause of the Code –

- (8) Failed to be honest regarding the state of her health, in breach of cl 1.
- (9) Misled the Authority as to having obtained the complainant's consent to the letter to the Minister when she had not.
- (10) Misled the complainant into thinking there was a chance the paper residence application would be accepted.

**JURISDICTION AND PROCEDURE**

[33] The grounds for a complaint to the Registrar made against an immigration adviser or former immigration adviser are set out in s 44(2) of the Act:

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

[34] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>4</sup>

[35] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.<sup>5</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>6</sup>

[36] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.<sup>7</sup>

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<sup>4</sup> Immigration Advisers Licensing Act 2007, s 45(2) & (3).

<sup>5</sup> Section 49(3) & (4).

<sup>6</sup> *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

<sup>7</sup> Section 50.

[37] The sanctions that may be imposed by the Tribunal are set out in the Act.<sup>8</sup> The focus of professional disciplinary proceedings is not punishment but the protection of the public.<sup>9</sup>

[38] It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.<sup>10</sup>

*From the Registrar*

[39] The Tribunal has received from the Registrar the statement of complaint (19 December 2022) and a paginated bundle of documents.

*From the complainant*

[40] There is a statement of reply (21 February 2023) from the complainant. To the extent material, counsel's submissions in the statement are addressed later.

[41] A statement of further evidence (27 March 2023) has also been produced by the complainant. He states that a request for Ministerial intervention was lodged by counsel on 7 September 2022, but was declined on 15 March 2023. A second request was lodged on 23 March 2023 and the Minister's determination is awaited.

[42] Counsel submits that unless the Minister reaches a different decision, the complainant and his wife will have no further avenue to seek residence as a result of the conduct of Ms Ramos.

*From Ms Ramos*

[43] Ms Ramos has produced a statement of reply (20 February 2023), together with an affidavit (20 February 2023). To the extent material, counsel's submissions in the statement are addressed later.

[44] In her affidavit, Ms Ramos accepts that it was her fault the application was not filed on time. This was something she had accepted immediately. She had advised the complainant and met him.

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<sup>8</sup> Section 51(1).

<sup>9</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

<sup>10</sup> *Z v Dental Complaints Assessment Committee*, above n 9, at [97], [101]–[102] & [112].



[45] As for the allegation of dishonesty in making the Ministerial request, she can recall distinctly talking to the complainant and his wife about this option in her office. He consented. She showed him the draft letter before sending it.

[46] As for the allegation she was dishonest in relation to the paper-based application, Ms Ramos fails to understand how this could be dishonest. She was trying to find a way to file the application, despite the online portal being closed. She did not lie to the complainant or do anything to mislead him.

[47] In respect of her health, Ms Ramos acknowledges having been in variable health for a while. It had been difficult at times, but it had not generally led her to being unable to work. She missed days of work when unwell or in hospital, but overall had been able to manage her business successfully. She did not believe she was required to tell the complainant about her various health issues. The absence of doing so was not dishonest.

[48] Ms Ramos produces two medical certificates. One of them (18 July 2022) sets out her “problems”, of which one or more appear to the Tribunal to be serious conditions. The other certificate (16 February 2023) lists her hospital attendances from 21 July 2021 until 30 April 2022. Of the five attendances, one involved a stay of two nights, one was an overnight stay, one was a planned day stay and the other two were attendances without admission. Ms Ramos says the doctor overlooked a hospitalisation in July 2022 for three days.

[49] No party has requested an oral hearing.

## **ASSESSMENT**

[50] As a preliminary point, the Tribunal refers to the submission of Ms Martins that the behaviour of Ms Ramos breaches provisions of the Code other than those relied on by the Registrar, or satisfies additional statutory grounds of complaint.

[51] These are not matters which can be assessed by the Tribunal, which is restricted to determining the heads of complaint referred by the Registrar.<sup>11</sup> The Tribunal agrees with Ms Martins that there is evidence here of the practice known as ‘rubber stamping’, whereby the adviser delegates the preparation of applications and the engagement with the client to unlicensed staff. This is not a matter, though, that the Registrar has referred

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<sup>11</sup> *Mizoguchi v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 3198 at [45] & [46].

to the Tribunal. It is plainly irrelevant to the complainant's complaint, as his residence application was not prepared by anyone and no one engaged with him on it.

[52] The Registrar relies on the following provisions of 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.

**Client Care**

2. A licensed immigration adviser must:

...

- e. obtain and carry out the informed lawful instructions of the client, and

...

**Written agreements**

18. A licensed immigration adviser must ensure that:

- a. when they and the client decide to proceed, they provide the client with a written agreement

**File management**

26. A licensed immigration adviser must:

...

- b. confirm in writing to the client when applications have been lodged, and make on-going timely updates

- c. confirm in writing to the client the details of all material discussions with the client

...

[53] The heads of complaint will be considered in turn.

*Negligence, or alternatively breaches of the specified clauses of the Code –*

- (1) *Failed to exercise due care in ensuring the residence application was lodged as instructed, in breach of cl 1.*

[54] This is the gravamen of the complaint and the real wrongdoing of Ms Ramos. She agreed on 21 February 2022 to lodge a 2021 RV application for the complainant

and his wife once Immigration NZ opened applications, which it did on 1 March 2022. She advised her staff on 19 April that he qualified. The deadline was 31 July 2022. This was a generous timeframe for Ms Ramos to meet.

[55] Ms Ramos accepts she missed the deadline because she and her staff overlooked his instructions. She is responsible for her unlicensed staff. There was a lack of due care by Ms Ramos, a breach of cl 1, which she admits. The first head is upheld.

(2) *Failed to exercise due care and diligence by not recognising that being unwell may impact the services provided to the complainant, in breach of cl 1.*

[56] It is alleged by the Registrar that Ms Ramos lacked due care by not recognising that being unwell could impact her services. The medical evidence now presented (to the Tribunal, but not to the Registrar) shows that Ms Ramos' hospitalisations and health were not the cause of the failure to meet the deadline. The second head is dismissed.

(3) *Failed to provide a new or amended written agreement for seeking Ministerial intervention, in breach of cl 18(a).*

[57] Ms Ramos admits she did not amend the existing consulting agreement or provide a new agreement for the Ministerial request, in breach of cl 18(a). The agreement of 21 February 2022 was for the 2021 RV application only. The third head is upheld.

(4) *Failed to provide ongoing timely updates to the complainant, in breach of cl 26(b).*

[58] It is alleged Ms Ramos failed to provide updates to the complainant from time to time regarding his 2021 RV application and had she done so, she would likely have been aware of the actual status of the application.

[59] Any such updates, however, would have stated nothing more than she had not filed the application. This is just another way of saying she failed to file the application because she overlooked it. In overlooking the application and therefore not filing it, she overlooked telling the complainant from time to time that she had not filed it. In other words, she overlooked telling the complainant she had overlooked the application. This adds nothing to the real mistake she made (failing to file the application). The fourth head is dismissed.

(5) *Failed to obtain the complainant's instructions after missing the deadline, in breach of cl 2(e).*

(6) *Failed to confirm in writing material discussions, in breach of cl 26(c).*

[60] The complainant says that Ms Ramos did not obtain his instructions for the Ministerial request. Ms Ramos deposes that she did have the complainant's consent to the request and even showed him the draft letter.

[61] Regrettably, in addition to there being no new consulting agreement, Ms Ramos made no file note of the discussion and did not write to him confirming her advice. The latter is a breach of cl 26(c) of the Code, which she admits. She will be given the benefit of the doubt concerning the meeting with him and showing him the draft letter, so the fifth head will be dismissed. The sixth head is upheld.

#### *Negligence*

[62] Since these heads of complaint have been assessed in terms of the alternative breaches of the Code, there is no need to additionally assess them in terms of negligence. Ms Martins contends that negligence is made out, in addition to the breach of cl 1, in respect of the failure to lodge the application. She is correct. However, it adds nothing to finding a lack of due care to say Ms Ramos was negligent in respect of the identical conduct. They are the same wrongdoing. It would not add to the sanctions to say that negligence is also made out.

#### *Incapacity, or alternatively breach of the specified clause of the Code –*

(7) *Lacked the capacity to provide professional and diligent service, in breach of cl 1.*

[63] It is alleged that Ms Ramos lacked the capacity to provide the complainant with the professional and diligent service to which he was entitled, resulting in her failure to lodge the residence application.

[64] It is unsurprising that the Registrar has made this allegation, as Ms Ramos blamed her hospitalisations for failing to file the application on time in correspondence with Immigration NZ and in the Ministerial request. It is apparent from the medical evidence now adduced that she was exaggerating the effect of her health on her practice and the failure to file the complainant's application. There appear to have been no more than short periods in hospital and/or recuperating at home due to her ill-health. This does not amount to incapacity.

[65] The health of Ms Ramos does not explain overlooking the application for more than five months, from about 21 February 2022 (when the consulting agreement was entered into) until 31 July 2022 (when the category closed). The Tribunal agrees with Mr Moses that the temporary nature of her ill-health did not cause the failure to lodge the application. Once again, we return to what the real wrongdoing is here, a lack of due care in failing to file the application because Ms Ramos forgot about it. The seventh head is dismissed.

*Dishonest or misleading behaviour, or alternatively breach of the specified clause of the Code –*

(8) *Failed to be honest regarding the state of her health, in breach of cl 1.*

[66] It is alleged that Ms Ramos was not honest with the complainant regarding the state of her health. It is said she should have told him she was unwell and might not be able to provide the reasonable service to which he was entitled.

[67] The medical evidence produced shows Ms Ramos has what appears to be a serious health condition, but in her correspondence with Immigration NZ and the Minister she exaggerated the extent of hospitalisation and the effect of her health on her practice and hence on the failure to file the application. Indeed, it appears to the Tribunal her health was immaterial to the failure. Her few brief hospitalisations (one attendance without admission and one admission of three days in the relevant period from 21 February to 31 July 2022) cannot be the reason for overlooking the application during the five months she held instructions to file it before the category closed.

[68] There was nothing to tell the complainant in relation to Ms Ramos' health. The eighth head is dismissed.

(9) *Misled the Authority as to having obtained the complainant's consent to the letter to the Minister when she had not.*

[69] It is alleged the complainant did not consent to the Ministerial letter and that Ms Ramos misled the Authority when she said he did. The complainant said he was not aware of the request and did not consent to it.

[70] Ms Ramos says in her affidavit that he did consent. The Tribunal has already given her the benefit of the doubt and accepted that she had instructions to file the request. Ms Ramos did not therefore mislead the Authority when she said the complainant had consented to the letter. The ninth head is dismissed.

(10) *Misled the complainant into thinking there was a chance the paper residence application would be accepted.*

[71] It is alleged Ms Ramos was dishonest since she was aware that the paper application would not be accepted by Immigration NZ. It is said she misled the complainant into thinking there was a chance the application would be accepted.

[72] There is no evidential basis for this allegation. It is far more probable it was a misguided attempt by Ms Ramos to assist the complainant. She knew the online applications had been closed, but wrongly thought that by making a paper application and bringing the complainant's circumstances (including her role in failing to make the online application) to the attention of Immigration NZ that somehow it might work out. The Tribunal also agrees with Mr Moses that there was no coverup here. Ms Ramos had readily admitted to the complainant her responsibility for missing the deadline.

[73] The 10th head is dismissed.

## **OUTCOME**

[74] The first, third and sixth heads of complaint are upheld. Ms Ramos has breached cls 1, 18(a) and 26(c) of the Code. The balance of the complaint is dismissed.

## **SUBMISSIONS ON SANCTIONS**

[75] As the complaint has been upheld, the Tribunal may impose sanctions pursuant to s 51 of the Act.

[76] A timetable is set out below. Any request that Ms Ramos undertake training should specify the precise course suggested. Any request for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim.

### *Timetable*

[77] The timetable for submissions will be as follows:

- (1) The Registrar, the complainant and Ms Ramos are to make submissions by **17 May 2023**.
- (2) The Registrar, the complainant and Ms Ramos may reply to submissions of any other party by **31 May 2023**.

## **ORDER FOR SUPPRESSION**

[78] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>12</sup>

[79] There is no public interest in knowing the name of Ms Ramos's client, nor the particulars of her health.

[80] The Tribunal orders that no information identifying the complainant or giving details of the health of Ms Ramos are to be published other than to Immigration NZ.

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D J Plunkett  
Chair

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<sup>12</sup> Immigration Advisers Licensing Act 2007, s 50A.