

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

Decision No: [2017] NZIACDT 5

Reference No: IACDT 049/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Parminder Gill

Complainant

AND

Daljit Singh

Adviser

DECISION

REPRESENTATION:

Registrar: Ms Carr, lawyer, MBIE, Auckland

Complainant: No appearance at hearing

Adviser: Mr S Laurent, lawyer, Laurent Law, Auckland

Date Issued: 6 April 2017

DECISION

Introduction

[1] This is the second decision relating to this complaint. This decision is to be read with the previous decision published as *Gill v Singh* [2016] NZIACDT 36. This decision relates to an application for a rehearing of an element of the previous decision. The particular aspect is a finding that Mr Gill was required to pay fees for services provided by Mr Singh. Mr Singh had claimed he provided services on a voluntary basis; the Tribunal rejected the claim on the evidence it had and as a result upheld elements of the complaint. There are two issues:

[1.1] Should the Tribunal grant the application for a rehearing; and if so

[1.2] Should it change its factual findings to reflect Mr Singh neither having sought nor been paid any fees in relation to this matter.

[2] Both parties essentially agree on the proper principles, namely whether Mr Singh is able to justify his failure to put forward the evidence he is now presenting earlier, and that it is in the interests of justice to grant the application for a rehearing.

[3] Inevitably, when determining whether it is in the interests of justice to grant the rehearing the merits of Mr Singh's evidence to demonstrate that the factual findings previously made are wrong have a bearing on that question.

The findings in the previous decision

[4] It is important to review the findings in the previous decision. As the issues are fully set out in the previous decision, a brief summary is sufficient.

[5] The Tribunal heard the previous decision "on the papers". That occurred despite the Tribunal putting Mr Singh on notice (through his counsel) that unless he took steps to present evidence it would likely find the allegations against him were true. Practitioners facing professional disciplinary charges do not enjoy a "right to silence", for the reasons set out in the original decision.

[6] The critical reasoning and finding regarding the payment of fees is set out at paragraphs [24] to [44] of the previous decision. The essence of the reasoning was that the complainant provided a coherent allegation that his parents had paid fees to his employer's brother in India, which related to the immigration services Mr Singh provided. While Mr Singh had claimed that he was a community leader who provided free immigration services, counsel for the complainant had contended the claim was implausible as:

[6.1] He was not likely to do so without an income; and

[6.2] Mr Singh had a conviction for electoral fraud so his veracity should be doubted.

- [7] Furthermore, the Tribunal had seen multiple cases of dishonest practices similar to those the complainant described, where money has changed hands in a migrant's home country; the complaint made was plausible. Accordingly, there was sufficient evidence to require Mr Singh to provide evidence to support his position. Despite being on notice of the consequences of not providing evidence, Mr Singh chose to remain silent in the face of the allegations. Accordingly, the Tribunal upheld the complainant's allegation against Mr Singh regarding fees.

The evidence presented in support of the application for rehearing

- [8] In support of the application for rehearing, Mr Singh produced evidence that his former counsel appeared to be under the misapprehension that Mr Singh could simply require the Registrar and the complainant to prove the allegation, and he could remain silent and demand that the Tribunal dismiss the complaint with no adverse inference drawn from his silence. Whereas, Mr Singh was willing to give evidence and be cross-examined.
- [9] The Registrar did not challenge Mr Singh's evidence regarding his counsel's advice, and his instructions to her.
- [10] Mr Singh produced some of his banking records at this hearing. It appears he intended to produce all of them, though in fact that was not the case. The Registrar accepted that there is no direct evidence that Mr Singh received any fees from Mr Gill. She did; however, put in issue whether Mr Singh had fully disclosed all the potentially relevant records. Mr Singh is adamant that he received no fees. He explained that he did not charge for immigration services, because at the time he enjoyed a good income as a real estate agent and was substantially involved in providing community services as part of the Sikh community in New Zealand.
- [11] Mr Manjinder Singh, an executive member of the Supreme Sikh Society of New Zealand, gave evidence that Mr Singh had provided extensive community services as a volunteer, including immigration services. He said he was personally aware that large numbers of people had taken advantage of the free immigration service Mr Singh provided.
- [12] Mr Matt Robson, a lawyer and former Member of Parliament, gave evidence that he had known Mr Singh for almost 20 years. He spoke positively of Mr Singh's character and his voluntary service characterising him "without hesitation, as an honest, trustworthy and dedicated member of his community."
- [13] Mr Gill's former employer also gave evidence. He confirmed Mr Singh's evidence that Mr Gill had not paid anything for the provision of immigration services, and said that the claims that Mr Gill paid fees, including money-changing hands in India, were simply fabrications. He also spoke of matters concerning Mr Gill that did not reflect well on his reliability.
- [14] The Registrar and the complainant called no evidence. Counsel who had been representing Mr Gill indicated that he had returned to India, and his counsel withdrew from the proceedings.

Discussion

- [15] The Registrar did not contest the evidence that Mr Singh's counsel failed to understand the true position of a licensed immigration adviser responding to a complaint before the Tribunal, and gave incorrect advice as a result is not contested. This is not a case where a party has simply failed to call evidence that was available, and only chose to do so after an adverse result. The circumstances come within the general principles where an appeal or application for rehearing is allowed due to a fundamental error on the part of counsel. The misunderstanding regarding the right to silence, and the drawing of adverse inferences is quite different from the inevitable decisions that have to be made in the course of litigation, and on which counsel may differ. Accordingly, if the Tribunal is satisfied that on the evidence now before it, it should find Mr Singh neither solicited fees nor received any fees, I am satisfied that the rehearing should be granted. A factor that should have some weight in that decision is that the finding against Mr Singh is a serious one; it is effectively a finding of grave dishonesty.
- [16] The complainant has not given evidence on oath. The Tribunal does not know why the complainant is not available to give evidence, remotely from India, if necessary. It is not appropriate to speculate as to what the reasons might be.
- [17] Mr Singh's evidence and his witnesses presented sworn evidence, and each of them was available for cross-examination. In contrast, the complainant's evidence is unsworn, and he is not available for cross-examination.
- [18] Given Mr Singh's evidence of his income, and the supported evidence that a significant part of his life has involved providing voluntary community service, his claim that he provided immigration services without charging for them is plausible. Mr Gill's former employer gave direct evidence that Mr Singh provided the services without payment, and that he had no part in arranging for fees to be paid in India as the complainant alleged.
- [19] There is nothing in the written record that is inconsistent with the account Mr Singh and Mr Gill's former employer gave. It necessarily follows that the Tribunal has no justification for rejecting Mr Singh's evidence that he did not solicit or receive any fees from the complainant directly or indirectly.
- [20] Accordingly, the Tribunal grants the application for rehearing, and overturns the factual findings in the previous decision to the extent that the Tribunal accepts Mr Singh neither received nor solicited any fees.

Changes to the findings

- [21] In the original decision, the Tribunal set out its findings in relation to written agreements in paragraphs [14] to [23.3]. In paragraph [23.3] there is a finding that Mr Singh failed to set out fees of \$16,000 in an agreement and accordingly breached Clause 8(d) of the 2010 Code. That finding cannot stand and, accordingly, the Tribunal rescinds it.

[22] In the previous decision, the Tribunal's findings relating to fees are set out at paragraph [24] to paragraph [45.2]. None of the adverse findings in those paragraphs can stand, and the Tribunal rescinds them.

[23] In other respects, the previous decision stands, however, the previous decision is in all respects subject to the Tribunal now being satisfied that Mr Singh neither solicited nor received any fees whatever in relation to the professional engagement that is the subject of the complaint in this proceeding.

Submissions on Sanctions

[24] The Tribunal has not addressed the question of sanctions due to the application for a rehearing.

[25] The timetable for submissions relating to sanctions is:

[25.1] The Authority and the complainant may make any submissions within 10 working days of the issue of this decision.

[25.2] Mr Singh is to make any further submissions (whether or not the Authority or the complainant makes submissions) within 15 working days after the issue of this decision.

[25.3] The Authority and the complainant may reply to any submissions made by the adviser and provide affidavits in reply to Mr Singh's explanation within five working days of him filing and serving his submissions.

DATED at WELLINGTON this 6th day of April 2017

G D Pearson
Chair