

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

Decision No: [2018] NZIACDT 15

Reference No: IACDT 014/18

IN THE MATTER of a referral under s 54 of the
Immigration Advisers Licensing
Act 2007

AGAINST A decision of **The Registrar of
Immigration Advisers**

By **Shubham Singla**
Appellant

**THE NAME AND ANY INFORMATION IDENTIFYING THE LICENSED
IMMIGRATION ADVISER IS NOT TO BE PUBLISHED**

DECISION

REPRESENTATION:

Registrar: Ms S Blick, Lawyer, Ministry of Business, Innovation and
Employment, Auckland.

Appellant: In person.

Date Issued: 08 June 2018

DECISION

Introduction

- [1] This is an appeal against the Registrar's decision not to refer a complaint to the Tribunal, as she considered it did not disclose any of the statutory grounds for complaint.
- [2] Mr Singla complained to the Registrar that a licensed immigration adviser who was acting for him:
- [2.1] failed to give advice;
 - [2.2] provided wrong advice;
 - [2.3] made baseless comments;
 - [2.4] made unacceptable comments;
 - [2.5] misled him;
 - [2.6] ignored immigration law; and
 - [2.7] directed a "personal attack" toward the appellant and Parminder Singh Cheeema (Senior Consultant).
- [3] He extended his complaints to an email he received from the adviser's barrister on the adviser's instruction saying the barrister:
- [3.1] made baseless, derogatory and insulting comments; and
 - [3.2] raised specious concerns, and he was discourteous and quite impertinent.
- [4] In the appellant's view, the adviser was negligent, incompetent, engaged in dishonest and misleading behaviour and breached the Code of Conduct.
- [5] The Registrar found the complaint lacked evidence to support it, and accordingly failed to disclose any of the statutory grounds of complaint under s 44 of the Immigration Advisers Licensing Act 2007 (the Act). Initially, the Registrar considered there were grounds for complaint, but, after examining all the material, concluded that the adviser gave appropriate advice and acted appropriately in all respects.
- [6] The appellant had the opportunity to provide evidence to support his complaint during this appeal.

[7] The Tribunal has to decide whether the material now before it is sufficient to conclude that the complaint should be referred to the Tribunal.

[8] The Tribunal has rejected the appeal because the evidence does not support the complaint.

The grounds of appeal

[9] This is an appeal under s 54 of the Act, against a decision of the Registrar not to pursue a complaint. The Registrar applied s 45(1)(b) of the Act.

[10] The appellant says the Registrar:

[10.1] erroneously concluded that the failure to apply “certain instructions” is not automatically a breach of the Code of Conduct;

[10.2] was mistaken regarding the appellant’s immigration prospects;

[10.3] incorrectly concluded that the adviser responded to the appellant’s concerns appropriately; and

[10.4] incorrectly concluded there was no grounds for complaint established.

The decision appealed against

[11] The Registrar provided submissions and documentary material showing the process she used to evaluate the complaint, which is subject to this appeal, and the information she considered.

[12] It is sufficient to record that in her view the advice tendered by the Licensed Immigration Adviser, and the actions taken by the Adviser in relation to the appellant’s circumstances, were appropriate.

The appellant’s response

[13] The appellant has set out a series of assertions. His material does not identify immigration law and prove facts that are a founding for this Tribunal to find the adviser gave wrong advice, or breached professional obligations.

Discussion

The issue

- [14] The appellant's complaint failed, as the Registrar considered that the evidence did not support it. She considers that she has taken the matter far enough to make that determination.
- [15] The appellant has had the opportunity to provide facts or reasoning to show that the Registrar is wrong in her view.
- [16] Section 54 of the Act requires the Tribunal to reject the appeal, determine it should hear the appeal, or set in place a process to determine the matter under the adviser's complaints procedure.
- [17] The Tribunal evaluates the decision in the same manner as the Registrar, but also considers any material supporting the appeal and considers the issues on a *de novo* basis.

The Registrar's statutory process

- [18] When she makes a decision under s 45, the Registrar is deciding whether she should commence the process of referring the complaint to the Tribunal. Should she decide to refer the complaint to the Tribunal, then the Act contemplates the potential for further investigation (ss 47 and 48).
- [19] Statutory investigators in roles of this kind are required to exercise their judgement as to whether they pursue a particular matter. This type of role is discussed in *Brierley Investments Ltd v Bouzaid* [1993] 3 NZLR 655 by the Court of Appeal. That case concerned the Commissioner of Inland Revenue, but makes the relevant observation that an official in this position must take account of resources and selectively make decisions on what matters to pursue.
- [20] The Registrar was not required to undertake an exhaustive examination of any potential evidence. She reached the view that the appellant's complaint lacked evidence to show it was well founded.

My evaluation of the complaint

- [21] The appellant's complaint was, on its face, implausible. It also lacked the obvious evidence that would be present to support it, if it were true. It is also cast in terms that would make the appellant a very problematic witness if he sought to support the complaint in a hearing. His complaint is replete with exaggeration, and grave allegations that are demonstrably inconsistent with the written material. An example is his allegations against the barrister who

responded for the adviser. The lack of connection between the objective reality evident in the written material and the terms of the complaint is pervasive.

- [22] There is simply an absence of a coherent and consistent evidential basis for the complaint. The appellant's most specific element in his final position, was presented when he replied to the Registrar's response to this appeal. He focused on an alleged failure of the Adviser to request a reconsideration of Immigration New Zealand's decision to decline an application for a work visa. Immigration New Zealand's letter contained a standard notification of the right to apply for reconsideration, and the criteria to do so successfully. The adviser followed up with a request for reconsideration on the same facts. The appellant says that doing so was not in line with the instructions for a reconsideration.
- [23] I am satisfied there was nothing inappropriate with the request for reconsideration on the same facts. That was, on the information available, the best that could be done. It appears the adviser reasonably considered she had presented the best case; the circumstances had not changed, and accordingly the form of the request was appropriate.
- [24] Following that, the officer in Immigration New Zealand said there was an option of treating the request for reconsideration as a matter to be formally lodged for independent consideration, or to leave it with the original officer. An issue of that kind is a matter of professional judgement. Either leaving the matter with the original decision-maker or a formal review may be best in any given case. There is a lack of evidence to show either the course taken was inappropriate or inconsistent with the adviser's professional obligations to her client.
- [25] The appellant also claimed he was misled as the adviser said she made a reconsideration request; however, that appropriately describes what she did.
- [26] Accordingly, the original grounds of complaint were implausible and inconsistent with the written record. As the complaint evolved, each new focus on the appellant's part amounted to no more than allegations that were plainly wrong or lacked evidence to support them.
- [27] It follows, I am satisfied the Registrar was right to reject the complaint because the evidence does not support it. The Registrar

correctly concluded on the material before her she had sufficient information to decide she should not investigate further. She accordingly correctly determined that the complaint does not disclose any of the grounds of complaint listed in s 44(2) of the Act, and rejected the complaint pursuant to s 45(1)(b) of the Act.

Decision

[28] The Tribunal dismisses the appeal.

Order prohibiting publication of the identity of the adviser and her client

[29] The Adviser was not a party to this appeal, and has had no role in it. The Tribunal requests that the Registrar provide a copy of this decision to the Adviser, as she is entitled to be aware of its contents.

[30] The Tribunal orders that the names and any information that may identify the Adviser are not to be published.

[31] This order recognises that the Tribunal has found the material before it does not support the complaint made regarding the Adviser.

[32] The Tribunal reserves leave for the Adviser and the Registrar to apply to vary this order. The order does not prevent the Adviser and her client from disclosing the decision and their identities to:

[32.1] any authority they consider should have a copy of the decision; or

[32.2] any barrister or solicitor of the High Court of New Zealand for the purpose of obtaining legal advice.

DATED at Wellington this 23rd day of May 2018.

G D Pearson
Chair