

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 70

Reference No: IACDT 018/18

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **FBN**
Complainant

AND **VICTORIA ADELE
BROADWAY**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 7 October 2019

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: S Laurent, counsel

PRELIMINARY

[1] Ms Broadway, the adviser, was instructed by the complainant to obtain a renewal of her work visa. She had been recommended by the complainant's employer. Ms Broadway misunderstood who her client was and entered into a services agreement with the employer and not with the complainant.

[2] When the Immigration Advisers Authority (the Authority) sought to review Ms Broadway's file some months after the services had concluded, she tried to persuade the complainant to sign an agreement. The complainant did not do so, so Ms Broadway copied and pasted the complainant's signature onto an agreement, which she then provided to the Authority. Ms Broadway admits her conduct was dishonest or misleading, and a breach of both the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

BACKGROUND

[3] Ms Victoria Adele Broadway was a licensed immigration adviser based in Victoria, Australia. She was self-employed, trading under the name V Broadway. Her licence was cancelled by the Registrar of Immigration Advisers (the Registrar), the head of the Authority, on 30 July 2018.

[4] The complainant, Ms FBN, is a citizen of the United States who was living in New Zealand and had a work visa. Her visa was about to expire. On the recommendation of her employer, she engaged the services of Ms Broadway to obtain a renewal of her visa. It is understood that it was the employer who had first contacted Ms Broadway to ask her to help the complainant.

[5] A written agreement for immigration services was entered into by Ms Broadway and the employer. It was signed by Ms Broadway on 10 May 2017 and earlier by the employer on 3 May 2017. It did not specify the particular services to be provided. The total fee was \$500.

[6] On 1 June 2017, Ms Broadway issued an invoice to the complainant, care of the employer, which appears to have been paid by the employer on 8 June 2017. The complainant says she paid half of the fee by way of a deduction from her wages.

[7] On 6 June 2017, the complainant paid Immigration New Zealand's application fee of \$298, which the employer told Ms Broadway she would pay back to the complainant.

[8] On the same day, Ms Broadway filed a work visa application with Immigration New Zealand on behalf of the complainant.

[9] Immigration New Zealand issued a letter to both the complainant and Ms Broadway on 23 June 2017 advising that the employer was included in a list of non-compliant employers maintained by the Labour Inspectorate of the Ministry of Business, Innovation and Employment. The employer would not therefore be able to support the visa application.

[10] Ms Broadway then advised Immigration New Zealand on 26 June 2017 that the complainant had received a further job offer from a different employer.

[11] On the following day, Immigration New Zealand advised Ms Broadway that the complainant would have to lodge a fresh application. Ms Broadway filed the new employment contract, but not a fresh visa application.

[12] On 4 July 2017, Immigration New Zealand declined the complainant's original work visa application as the employer was non-compliant. In the same letter, the immigration officer raised a number of issues in relation to the fresh employment. The complainant was given a visitor visa for one month in order to prepare the necessary documentation supporting the new job offer.

[13] The complainant advised Ms Broadway on 9 July 2017 that she would return to the United States, rather than pursue the new job offer.

Ms Broadway seeks a renewal of her licence

[14] On 10 October 2017, Ms Broadway applied to the Authority to renew her immigration adviser's licence. She was informed on about 12 October 2017 that the Authority would review her file in respect of the complainant.

[15] On 15 October 2017, Ms Broadway sent an email to the complainant telling her that she was in the process of renewing her adviser's licence and that the complainant's file had been selected for review. She asked the complainant to sign "the last page on the form" and to write a short email outlining how she found working with Ms Broadway. An unsigned, undated standard services agreement was sent with the email.

[16] On the following day at 1:02 pm, the complainant replied to Ms Broadway noting that her name had been misspelt and expressing confusion about the document. She queried whether it was a contract she was meant to sign before they worked together.

She expressed a willingness to write an email outlining how she found working with Ms Broadway.

[17] Ms Broadway responded on the same day, 16 October 2017 at 4:04 pm, apologising for the wrong name and resending the last page. She acknowledged that “it’s been on the file” but that she had totally forgotten to get the complainant to sign it. It was for her (Ms Broadway) and would be kept on the file. Ms Broadway appears to have again resent the page, with the correct spelling two hours later at 6:32 pm, requesting the complainant to sign the back page and scan it back to her.

[18] On 17 October 2017 at 7:32 pm, the complainant advised Ms Broadway that she did not feel comfortable signing the form. Ms Broadway responded four minutes later:

Oh really? Why?

[19] There were texts between the two of them on 17 and 18 October 2017 about the misspelling and the updated page sent to the complainant. Ms Broadway explained it was merely a formality, part of being a licensed adviser and to protect the complainant.

[20] On the same day, Ms Broadway produced the complainant’s file to the Authority.

[21] The Authority wrote to Ms Broadway on 31 October 2017 referring to her application for renewal. As a result of reviewing her file concerning the complainant, there were issues as to whether she met the competency standards. In particular, the written agreement was with the employer and not her client. Her response to the issues raised was invited.

[22] On 31 October 2017, Ms Broadway again sent the page to the complainant and informed her that she would really appreciate an acknowledgement of receipt of the document and, if possible, that she sign and return it. She needed to close the file and could not do so without the complainant’s signature.

[23] On 1 November 2017, Ms Broadway wrote to the Authority replying to the letter of 31 October 2017 and sending a copy of a written agreement purportedly signed by the complainant and apologising for not supplying it earlier. Ms Broadway had falsely inserted the complainant’s signature though had not dated it. She signed it herself and dated her signature on 10 May 2017. She responded to the Authority’s concerns as to whether she met the competency standards.

COMPLAINT

[24] The complaint against Ms Broadway was lodged with the Authority by the complainant on 1 November 2017. She explained that her employer recommended Ms Broadway, agreeing to split the cost with her of seeking a new visa. When she called Immigration New Zealand, she was told the agency had no record of any application. She asked Ms Broadway if the application had been filed, but did not hear back from her.

[25] According to the complainant, Ms Broadway sent her an email on 15 October 2017 explaining that her licence was up for renewal and the complainant's case had been chosen for review. Ms Broadway attached a contract which she was asked to sign. She had never seen the document before. The complainant said she was confused as it was a contract to be signed before they worked together. She did not feel comfortable signing a document with errors, which was a contract for something that had already occurred.

[26] The Authority wrote to Ms Broadway on 10 November 2017 notifying her of the complaint. She was asked to produce her full file concerning the complainant.

[27] Ms Broadway sent a lengthy letter to the Authority on 12 November 2017 responding to the complaint. She truly believed that it was the employer who engaged her services. The employer had first contacted her, sent her the core documents and paid the invoices. It totally slipped her mind to send a copy of the agreement to the complainant. She panicked when the Authority suggested on 31 October that the client had not signed the terms of engagement, so copied and pasted the complainant's signature onto the copy sent to the Authority. This was not her common practice and she regretted doing so. She realised she should have explained to the Authority what she had previously understood about who should sign. This was a training mistake on her part.

[28] The Authority wrote to Ms Broadway on 8 March 2018 formally advising her of the details of the complaint and inviting her explanation. It appeared that she had tried to persuade the complainant to sign a retrospective services agreement in October 2017, after her services had ended in about July 2017. The complainant had refused to sign it. But she had supplied it to the Authority on 6 November 2017.¹ Later that month, she had written to the Authority admitting that the agreement was fraudulent.

[29] On 22 March 2018, Mr Laurent, counsel for Ms Broadway, responded to the Authority's letter of 8 March 2018. It was acknowledged that Ms Broadway never had a

¹ Actually 1 November 2017.

services agreement with the complainant. This was because she believed it was not required, as she had been originally asked by the employer to assist with the visa application. She formed the view that the only agreement needed was with the employer. Ms Broadway had very seldom handled visa applications where her instructions came from a third party, such as the employer, rather than the visa applicant. She was unfamiliar with the obligation to have a written agreement with everyone to whom immigration advice was provided.

[30] Mr Laurent added that Ms Broadway confirmed the admission previously made that she had supplied a document which purported to be a services agreement with the complainant. It was accepted that the ground of dishonest or misleading behaviour had been made out. On receipt of the Authority's letter of 31 October 2017, Ms Broadway had panicked and produced the document which appeared to be signed by the complainant. She was acutely aware of the seriousness of this action. Ms Broadway also admitted that her request to the complainant to sign a services agreement after the fact was unprofessional.

Complaint referred to Tribunal

[31] The Registrar filed a complaint with the Tribunal dated 11 May 2018, alleging the following statutory grounds of complaint and breaches of the Code by Ms Broadway:

- (1) by attempting to persuade the complainant to sign a retrospective written agreement and then supplying the Authority with a fraudulent written agreement, she has displayed dishonest or misleading behaviour; and
- (2) by not providing a written agreement to the complainant when she decided to proceed, she breached cl 18(a).

JURISDICTION AND PROCEDURE

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

- (a) negligence;
- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour; and

(e) a breach of the code of conduct.

[33] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.²

[34] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.³ It has been established to deal relatively summarily with complaints referred to it.⁴

[35] 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.⁵

[36] The sanctions that may be imposed by the Tribunal are set out in the Act.⁶ The focus of professional disciplinary proceedings is not punishment but the protection of the public.⁷

[37] 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.⁸

[38] The Tribunal has received from the Registrar the statement of complaint, dated 11 May 2018, with supporting documents.

[39] On behalf of Ms Broadway, there is a statement of reply from Mr Laurent, dated 23 May 2018, together with a memorandum from him, dated 30 May 2018. Ms Broadway admits that she acted in an unprofessional manner in seeking to obtain the complainant's signature to a services agreement after the services were provided. It was open to the Tribunal to conclude that this was a dishonest or misleading course of action.

[40] Ms Broadway also admits presenting a document to the Authority which had been falsified by the attachment of what appeared to be the complainant's signature. This had been admitted to the Authority on 12 November 2017. Her early acknowledgment of her conduct might limit the seriousness of the Tribunal's finding. The Tribunal might be justified in exercising its power under s 50(b) of the Act to make a finding against her but decide to take no further action.

² Immigration Advisers Licensing Act 2007, s 45(2) & (3).

³ Section 49(3) & (4).

⁴ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

⁵ Section 50.

⁶ Section 51(1).

⁷ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).

⁸ *Z v Dental Complaints Assessment Committee*, above n 7, at [97], [101]–[102] & [112].

[41] According to counsel, it is acknowledged by Ms Broadway that she failed to have a services agreement, as she should have had. She was unfamiliar with her need to establish a professional relationship with all the parties receiving immigration advice. Her work in New Zealand immigration had considerably reduced in the last few years. It is recommended that the Tribunal find Ms Broadway liable but determine to take no further action.

ASSESSMENT

[42] The Registrar relies on the following provision of the Code:

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

(1) *By attempting to persuade the complainant to sign a retrospective written agreement and then supplying the Authority with a fraudulent written agreement, she has displayed dishonest or misleading behaviour*

(2) *By not providing a written agreement to the complainant when she decided to proceed, she breached cl 18(a)*

[43] At the time Ms Broadway was first instructed, she entered into a written services agreement with the employer, as she misunderstood who her client really was. For the purpose of her statutory and professional Code obligations, Ms Broadway's client was the complainant. She was advising, assisting and representing the complainant in relation to an immigration matter, not the employer.⁹ Clause 18(a) required her to have an agreement directly with the complainant.

[44] Mr Laurent says Ms Broadway was unfamiliar with the need to establish a professional relationship with all the parties receiving immigration advice. She had seldom handled what are known as tripartite relationships, where the employer instructs and/or pays the adviser to assist an employee or prospective employee.

[45] The Registrar doubts this is correct and points to Ms Broadway's work history in immigration advisory services. There is some merit to the Registrar's scepticism. I note also that Ms Broadway appears to have in fact prepared such an agreement early in the

⁹ Immigration Advisers Licensing Act 2007, s 7(1)(a), definition of "immigration advice".

process, but had mistakenly put it on the file having forgotten to ask the complainant to sign it.¹⁰

[46] In any event, it is no defence that an adviser misunderstood who the client was. It is a fundamental obligation of an adviser to obtain a written agreement with the visa applicant prior to engagement.

[47] Ms Broadway has breached cl 18(a) of the Code in failing to enter into a written services agreement with the complainant at the commencement of the instructions.

[48] Once Ms Broadway was faced with a request by the Authority to inspect the complainant's file and realised she had not obtained her client's signature on the agreement, she sent a blank agreement to the complainant and sought her signature. This was after the services had been performed. Then, when the complainant declined to do so, she copied and pasted the complainant's signature onto the agreement and subsequently presented it to the Authority as one purportedly signed by the complainant at the commencement of the engagement.

[49] Focusing on Ms Broadway's request to the complainant made first on 15 October 2017, approximately three months after the services concluded, the Registrar characterises this as retrospective and as dishonest or misleading.

[50] I note that in asking the complainant to sign it, Ms Broadway made no suggestion in any of her emails to the complainant as to what date to insert against the signature. There is a space immediately underneath the place for each of the signatures of the client and the adviser, for a date to be inserted by each signatory. The copy standard agreement attached to the emails was blank.¹¹ Ms Broadway had neither signed nor dated the "back page" herself when she sent it to the complainant.

[51] I accept that seeking the complainant's signature on the agreement at that time can be regarded as retrospective, since the services had already been performed. But, if the signatures are undated or properly dated, it is not dishonest or misleading. I do not consider it to be dishonest or misleading to obtain a signature after the services have been performed, if the signatures are undated or are properly dated, provided the document is not presented to others as one signed prior to the services being performed. It is not unknown for commercial contracts, particularly in the building industry, to be signed well after the work has commenced, though it must be rare for them to be signed

¹⁰ Ms Broadway's email to the complainant on 16 October 2017 at 4:04 pm; Registrar's supporting documents at 28.

¹¹ Registrar's supporting documents at 34 & 40.

after the work is completed. Such a document can have legal value, even though in the immigration adviser's context it does not comply with cl 18(a) of the Code.

[52] It is conceivable that Ms Broadway was hoping the complainant would sign but not date the document. Ms Broadway could then have inserted an earlier date. As noted above though, Ms Broadway said nothing to the complainant about dating the document. She did not even date the falsely inserted signature of the complainant when she sent the agreement to the Authority on 1 November 2017, though she did falsely date her own signature as 10 May 2017.

[53] I decline to speculate on Ms Broadway's motives in sending the blank agreement to the complainant. The act of doing so is not, of itself, dishonest or misleading.

[54] While I do not regard Ms Broadway's conduct in belatedly seeking a signature on the services agreement after the services had been performed as dishonest or misleading, I regard it as unprofessional to do so without fully explaining to her client why. She truthfully advised the complainant at the start that it was in the context of her licence renewal, but later misrepresented her request as being necessary to protect the complainant and close her file. She did not disclose that the real purpose was to send it to the Authority. Such unprofessional conduct could be a breach of cl 1 of the Code, but no such breach is alleged by the Registrar.

[55] This brings me to that presentation of the agreement to the Authority bearing the complainant's signature. That is plainly dishonest or misleading behaviour. Ms Broadway had attached a signature from another document. I do not know how it was done physically, but that does not matter. She did not date the complainant's signature, but did falsely date her own as 10 May 2017. That was the date she signed the agreement with the employer, not this copy of the same agreement. By leaving the complainant's signature blank, Ms Broadway was leaving it to the Authority to infer that both of them signed at the commencement of the engagement.

[56] Whatever was Ms Broadway's motive at the time she requested the complainant's signature, her conduct became both dishonest and misleading at the point at which she presented the agreement, purportedly signed by the complainant, to the Authority on 1 November 2017.

[57] I find that Ms Broadway's conduct satisfies the statutory ground of complaint of dishonest or misleading behaviour, on the basis of her presentation of a false document to the Authority.

OUTCOME

[58] I uphold both heads of complaint. Ms Broadway has breached cl 18(a) of the Code and engaged in dishonest or misleading behaviour.

SUBMISSIONS ON SANCTIONS

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

[60] While Mr Laurent urges the Tribunal to take no further action after upholding the complaint, the conduct of Ms Broadway is too serious to avoid a sanction. The honesty and integrity of a licensed adviser goes to the very heart of what it is to be professional. Ms Broadway's early admission of wrongdoing to the Authority will influence the sanction, but does not justify deciding not to sanction her misconduct.

[61] A timetable is set out below. Any request that Ms Broadway 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

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

- (1) The Registrar, the complainant and Ms Broadway are to make submissions by **29 October 2019**.
- (2) The Registrar, the complainant and Ms Broadway may reply to the submissions of any other party by **12 November 2019**.

ORDER FOR SUPPRESSION

[63] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹²

[64] Mr Laurent submits that the complainant's name should not be suppressed, as the complainant has not expressly requested it and no reason has been given for suppression. Mr Laurent, however, gives no good reason for not suppressing the name of the complainant.

¹² Immigration Advisers Licensing Act 2007, s 50A.

[65] There is no public interest in knowing the complainant's name. The Tribunal now has a general practice of suppressing the names of complainants (apart from Immigration New Zealand) and clients, particularly foreign nationals, in order to encourage them to report wrongdoing.

[66] The Tribunal orders that no information identifying the complainant is to be published other than to Immigration New Zealand.

D J Plunkett
Chair