

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

Decision No: [2018] NZIACDT 5

Reference No: IACDT 040/17

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

BY **The Registrar of
Immigration
Advisers**

Registrar

Between **Gaurav Sharma**

Complainant

AND **Ashar Joseph**

Adviser

DECISION

REPRESENTATION:

Registrar: Represented by Ms A Skadiang.

Complainant: In person.

Adviser: In person.

Date Issued: 14 March 2018

DECISION

The complaint

- [1] This complaint has been resolved based on the adviser accepting the grounds of complaint, and all parties agreeing on the sanctions to be imposed. In these circumstances the grounds for the complaint can be described briefly.
- [2] The first ground of complaint is that the adviser was negligent or breached clause 1 of the Licensed Immigration Advisers Code of Conduct 2014 (the Code of Conduct). This element of the complaint arose because the adviser failed to respond in time to a letter requesting information from Immigration New Zealand. The consequences of failing to respond in a timely manner were significant, as it led to Immigration New Zealand declining the complainant's request for a visa, and therefore he was in New Zealand unlawfully.
- [3] The second ground of the complaint is that the adviser engaged in dishonest or misleading behaviour. That arose because the adviser provided misleading information to the complainant, rather than immediately being fully frank with him about not responding in time to Immigration New Zealand's request for information, and the consequences of that.
- [4] The third ground of complaint is that, in breach of clause 18(a) of the Code of Conduct, the adviser failed to have a written agreement.
- [5] The fourth ground of complaint is that the adviser failed to confirm in writing the details of material discussions with his client. That is a breach of clause 26(c) of the Code of Conduct.

The circumstances

- [6] The adviser provided an explanation as to why he missed the deadline for replying to Immigration New Zealand. The explanation is plausible; however, it did reflect a laxness in his office administration. That laxness in administration is also reflected in the failure to have a written agreement and a failure to confirm material discussions in writing.
- [7] Given the way in which the complaint was resolved it is not necessary to reach an express conclusion on the alternatives of negligence or a breach of clause 1 of the Code of Conduct. The lapse would meet the threshold for each. It is the circumstances that determine the gravity of that lapse, not the classification of negligence or a breach of the professional standards imposed by clause 1 of the Code of Conduct.

- [8] In terms of the gravity of the grounds of complaint the most significant matter is the allegation of dishonest or misleading behaviour. The adviser has very frankly accepted he misled the complainant initially. His explanation for doing that was his embarrassment and lack of experience in dealing with the consequences of a significant professional error.
- [9] The adviser, as he is entitled to do, gained his academic qualifications to practise as a licenced immigration adviser and practised on his own account. He has not had the benefit of working in a practice with an experienced adviser. There is a requirement for mentoring; however, that is far short of the ideal environment for gaining professional experience in the first years of practice.
- [10] Working with an experienced practitioner and seeing how they deal with the inevitable mistakes and difficulties that arise during professional practice is invaluable. In the circumstances, I am satisfied that rather than dishonesty in this case, there were elements of prevarication, supported by a degree of self-deception. The adviser persuaded himself that until he saw a document notifying him of the decision to decline the complainant's visa, he could think the matter was still progressing. In fact, he could infer that was not the case, and should have been making inquiries. I am satisfied this is a case where the adviser engaged in misleading, but not dishonest behaviour. It would not be possible to make that finding if matters had gone beyond prevarication and self-deception.
- [11] As I have indicated, an important issue in this complaint is the adviser's willingness to accept responsibility for his professional lapses. Each of the grounds of complaint is the sort of lapse that can occur when an inexperienced person embarks upon professional practice without the benefit of first gaining experience as an employee in a professional practice.
- [12] The reasons for maintaining high standards of file and information management are not always apparent. Failing to attend to critical steps such as entering an agreement for the provision of services is sometimes deferred, with a practitioner intending to do it later. That not only breaches the Code of Conduct by failing to have the agreement before commencing work, but ultimately the adviser is likely to fail to attend to it altogether. It is a daunting situation for an inexperienced practitioner dealing with the potentially serious consequences of a professional error.
- [13] I am satisfied that the adviser is contrite, and there is no reason to suppose that he is other than genuine.

Sanctions

[14] Taking all the circumstances into account the Registrar considered that this is a case where the focus should be on ensuring that the complainant is compensated and in addition requiring that the adviser undertake a refresher course, notwithstanding that he has qualified for the full professional qualifications to practice. The Registrar also sought a nominal contribution to costs of \$1,000. In doing so the Registrar recognised that the adviser is not in a strong position to pay a monetary penalty.

[15] The adviser consented to an order for the payment of compensation of \$6,872 to the complainant, and the ancillary orders.

Orders

[16] The Tribunal orders that:

[16.1] The adviser pay the complainant the sum of \$6,872 in compensation;

[16.2] The adviser is to enrol in and complete a refresher training course with the Toi Ohomai Institute of Technology, enrolling in the first available course and completing it successfully within 12 weeks of commencement;

[16.3] The adviser pay costs of \$1,000 to the Registrar.

[17] The adviser is required to pay the first instalment of \$2,000 to the complainant within one week of this decision, and a further \$1,000 each month after the first instalment.

[18] The adviser is required to pay the costs of \$1,000 after completing the payment of \$6,872 to the complainant.

[19] The Tribunal reserves leave to amend the orders regarding the further training requirement, and the times for compliance with all the orders on the application of any party.

Notice

[20] The Tribunal notifies the adviser that pursuant to section 51(3) of the Immigration Advisers Licensing Act 2007, he must demonstrate compliance with the training requirement, or his licence will be cancelled.

[21] Furthermore, if the adviser fails to comply with the other orders, that may affect his ability to renew his licence, but that is a matter for the Registrar.

Observation

[22] It is not necessary, given the agreement, to say more about the reasons for the orders. I note however that were it not for the concession relating to the adviser's financial position and the importance of compensating the complainant, the sanctions would have usually involved in addition a monetary penalty in the range of \$3,000 to \$5,000; and, the costs order would have reflected at least a significant portion of the Registrar's actual costs.

DATED at Wellington this 6th day of March 2018

G D Pearson
Chair