

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

Decision No: [2010] NZIACDT 1

Reference No: IACDT 004/10

**IN THE MATTER**

of a referral under s48 of the Immigration  
Advisers Licensing Act 2007

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**May Moncur**  
Complainant

**AND**

**Ran Deng**  
Adviser

---

**DECISION**

---

**REPRESENTATION:**

**Adviser**

In person.

Date Issued: Thursday, 16 December 2010

## Decision

### The Referral

- [1] This matter was referred to the Tribunal pursuant to section 45 of the Immigration Advisers Licensing Act 2007 by the Registrar of the Immigration Advisers Authority. It concerns a complaint of dishonest and misleading behaviour. The key allegation being the Adviser published, on websites promoting her practice that she held a University Degree which she did not in fact hold.
- [2] The Registrar has referred the complaint as a breach of Clause 5.1 of the Code of Conduct. The Code having been developed pursuant to section 37 of the Act.
- [3] Clause 5 of the Code requires that a licensed immigration adviser must not, in a false, fraudulent or deceptive manner, misrepresent or promote herself, or her business.

### Factual Issues

- [4] The original complaint raised various issues.
- [5] The only issue referred by the Authority concerns an allegation the Immigration Adviser, Ran Deng (the Adviser) made a false representation:
  - [5.1] That she held a Master of Business Administration Degree, from the University of Auckland; and
  - [5.2] This representation was false, and published.
- [6] The Tribunal will disregard other allegations entirely, and regard them as neither substantiated nor relevant.

### Legal issues

- [7] The parties have not raised legal issues outside the inevitable question of whether on the facts the complaint meets the requirements under the Act for it to be upheld.

### The positions of the parties

- [8] The Tribunal undertook a review of the whole of the papers presented, and issued a minute dated 15 November 2010. Among other procedural matters, the minute identified the factual matters in issue, and the potential conclusions that could be reached on the papers before the Tribunal. The Adviser was given an opportunity to respond, and the other parties' rights of reply.
- [9] The potential conclusions notified to the Adviser being:
  - [9.1] The Adviser made a representation she held a Master of Business Administration Degree, from the University of Auckland. This representation was made on two websites:
    - [9.1.1] [www.visaexpress.co.nz](http://www.visaexpress.co.nz)
    - [9.1.2] <http://bbs.skykiwi.com>
  - [9.2] Those websites were used to promote the Adviser's professional services with the intention existing and potential clients would read and rely on the information, which she knew to be false.
- [10] Through her then counsel, the Adviser had earlier accepted the essence of the potential conclusion was correct. The facts were clearly evidenced on the papers before the Tribunal. The Adviser responded personally to the minute by email of 26 November 2010. She

confirmed she accepted the facts, and provided some further information regarding her regret, lack of benefit from what she had done, and client testimonials.

- [11] The Complainant and the Authority have not, and did not need to, made any response to the Adviser's position in relation to the potential conclusion.

### **Decision**

- [12] I accordingly make the following finding regarding the Adviser's conduct:

[12.1] The Adviser made a representation she held a Master of Business Administration Degree, from the University of Auckland. This representation was made on two websites:

[12.1.1] [www.visaexpress.co.nz](http://www.visaexpress.co.nz)

[12.1.2] <http://bbs.skykiwi.com>

[12.2] Those websites were used to promote the Adviser's professional services with the intention existing and potential clients would read and rely on the information, which she knew to be false.

- [13] It follows I find the complaint is upheld to that extent. The conduct was in breach of Clause 5.1 of the Code of Conduct. The code prohibits licensed immigration advisers from promoting themselves in a "false, fraudulent or deceptive manner". Section 44(2) of the Act sets out the grounds for complaints under the Act, dishonest or misleading behaviour, and breaching the code are grounds.

- [14] Given the finding, disciplinary sanctions under section 51 of the Act may be imposed by the Tribunal.

- [15] The sanctions which are potentially open are prescribed by section 51 which provides:

#### **"Disciplinary sanctions**

- (1) The sanctions that the Tribunal may impose are —
- (a) caution or censure:
  - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
  - (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
  - (d) cancellation of licence:
  - (e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:
  - (f) an order for the payment of a penalty not exceeding \$10,000:
  - (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
  - (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
  - (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person."

**Submissions on disciplinary sanctions**

- [16] The Authority and the Complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees, and compensation.
- [17] Given the nature of the finding, it appears unlikely the present case is one in which issues would arise in relation to the refund of fees or compensation; however the Authority and Complainant may pursue that, if they choose to do so.
- [18] Any application for an order for the payment of costs or expenses under section 51(1)(g) should be accompanied by a schedule particularising the amounts, and basis for the claim.
- [19] The Adviser will have the opportunity to respond to any submissions from the Authority and the Complainant. In any event, the Adviser may make further submissions on penalty.
- [20] Should the Adviser have a submission regarding inability to pay a penalty that submission is to be supported by a statement of assets and liabilities, and particulars of income and outgoings.
- [21] The timetable for submissions (allowing for the Christmas vacation) will be as follows:
- [21.1] The Authority and the Complainant are to make any submissions by 24 January 2011, and
- [21.2] The Adviser to make any further submissions (whether or not the Authority or the Complainant make submissions), by 7 February 2011.

**DATED** at WELLINGTON this 16th day of December 2010

---

**G D Pearson**  
Chair