

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

Decision No: [2011] NZIACDT 27

Reference No: IACDT 015/10

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**Maureen Raj Singh**  
Complainant

**AND**

**Artika Archina Devi**  
Adviser

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**DECISION**  
IMPOSITION OF DISCIPLINARY SANCTIONS

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**REPRESENTATION:**

**Adviser**

In person

**Complainant**

In person

Date Issued: 5 September 2011

## Decision

### The decision on the complaint

- [1] In a decision dated 7 July 2011, the Tribunal upheld a complaint in this matter.
- [2] The facts and background are set out in the earlier decision. The three elements of the complaint upheld were, in outline:
  - [2.1] The Adviser accepted a professional engagement to apply for a residence visa/permit. The Adviser failed to progress the work she was engaged to perform.
  - [2.2] The Adviser failed to communicate with her client despite queries directed to her from her client.
  - [2.3] The Adviser has failed to return personal documents.
- [3] The conduct was in breach of section 44 of the Act and the Code of Conduct.
- [4] 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 two 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

- [5] The Adviser provided submissions in relation to sanctions. The key points were:
  - [5.1] The Complainant willingly paid fees.
  - [5.2] The Complainant refused to pay lodgement fees for an Expression of Interest, and instead lodged this complaint.
  - [5.3] The Complainant denied the Adviser the opportunity of rectifying the situation without the intervention of the Tribunal.
  - [5.4] The Tribunal has been put to expense because the Complainant has not “done the right thing and contacted us directly about her issues”.

[5.5] The Adviser agreed to refund the Complainant “whatever money she thinks was paid to us in vain”, after the complaint was lodged.

[5.6] She apologised for the inconvenience caused to the Tribunal.

[6] The Complainant provided a submission in response to the Adviser’s submission. It said the fees for the Expression of Interest had been paid, and unacceptable offers made to settle the complaint. There was evidence to support the claim the fees had been paid. When making her original complaint the Complainant sought the refund of fees and disbursements, and the return of her diploma, the original of her marriage certificate, her NZQA assessment, and birth certificates.

## **Decision**

### *Other complaints*

[7] As a preliminary point I note the Adviser is the subject of a series of independent complaints, which have been upheld. I am approaching the issue of penalty in each case independently. The events in relation to the other complaints all occurred prior to the first complaint being upheld, so it is not appropriate to treat later complaints as repeat disciplinary offences.

[8] There are however two aspects of the sanctions where it is necessary and appropriate to have regard to the penalties in the other matters.

[9] First, the totality of the penalties should reflect the extent of the professional disciplinary offending.

[10] Second, in relation to other complaints I have concluded the Adviser must be subject to orders that will preclude her from practising on her own account, unsupervised. That penalty makes it appropriate to ameliorate the financial penalties that would otherwise apply. That is due to the potential effect on the Adviser’s means to pay a penalty, and because that restriction on her professional practice will protect the public without the need to rely solely on a financial penalty to signal the gravity of the offending.

[11] Accordingly, the effect of the other complaints is favourable to the Adviser in terms of the penalties that will be imposed.

### *Penalty*

[12] The conduct in the present case involves failure to deal with instructions, communicate with her client, and a failure to return documents.

[13] The breaches relate to elementary requirements of fulfilling a professional engagement.

[14] The conduct amounts to a serious disregard for professional duties, and essentially replicates the unprofessional conduct the Act was intended to eradicate.

[15] While not a case of taking fees with the intention of not performing work, that is what occurred. The conduct was inexcusable, and over a period of time. This was not an isolated oversight or lapse which was corrected when discovered. The Complainant followed up, and her concerns were not addressed. The Adviser wholly failed to supervise the professional engagement.

[16] The Adviser’s submissions in relation to sanctions make it evident even now she does not appreciate her professional obligations. In the face of the Tribunal’s findings to criticise her client for raising a serious and valid complaint shows a concerning inability to understand and accept responsibility for her professional failings. The Tribunal is necessarily concerned the Adviser does not have the experience or skill to practise on her own account. By a small margin I consider this complaint falls short of requiring an order to prevent her doing so. Such orders have been made in relation of other complaints. This matter is more confined than the complaints that justified those orders.

- [17] In the circumstances, and particularly having regard to the orders in other matters that prevent her practising on her own account, the financial penalty imposed will be \$2,500.

*Compensation - Principles*

- [18] It has been a longstanding criticism of some professional disciplinary processes that they do not include jurisdiction to require a professional who is at fault to compensate the client. That had required a separate, and potentially, expensive second process.
- [19] The Act addresses that perceived shortcoming by providing this Tribunal may require an Adviser to refund fees and pay reasonable compensation when a complaint has been upheld.
- [20] Section 51 of the Act confers these powers using general language. The application of the power is relatively uncomplicated where the grounds on which the complaint has been upheld would establish a civil claim for breach of contract, negligence, or another tort, given the standard of proof before this Tribunal is no less than would be the case for bringing the claim in a civil proceeding. Accordingly, in such circumstances, the Tribunal will ordinarily apply the principles that apply in a civil claim, including causation, quantum and the other principles that regulate entitlement.

*Compensation – this case*

- [21] I am satisfied fees of \$2,000 (\$Fijian) paid by the Complainant should be repaid. The Adviser failed to progress her professional engagement. She was satisfied with the service she received in relation to fees she paid earlier. The order will be for \$1,420 (\$NZ) as that approximates the current exchange rate.
- [22] The Complainant has not sought additional compensation. Clearly she has been put to a great deal of trouble and expense, however in the absence of a specific claim for compensation, no order will be made.

*Publication*

- [23] The Tribunal will routinely publish the name of an Adviser and the reasons for its decision where a complaint is upheld. That is a usual incident of open justice, and this decision will be published in the normal way.

**Order**

- [24] The Adviser is censured.
- [25] The Adviser is ordered to pay a penalty of \$2,500.
- [26] The Adviser is ordered to refund fees amounting to \$1,420.
- [27] There has been no application for an order for payment of the costs and expenses of the inquiry, so no order is made.

**DATED** at WELLINGTON this 5<sup>th</sup> day of September 2011

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**G D Pearson**  
Chair