

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

Decision No: [2011] NZIACDT 28

Reference No: IACDT 17/10

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**Zaim Zamil Nabi**  
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 30 June 2011, the Tribunal upheld a complaint in this matter.
- [2] The facts and background are set out in the earlier decision. The essential narrative of the complaint is:
- [2.1] The Adviser breached the Code of Conduct (refer section 37 the Immigration Advisers Licensing Act 2007, Code published [www.iaa.govt.nz](http://www.iaa.govt.nz)) by failing to initiate her engagement with a complying written agreement, and other ancillary requirements.
- [2.2] The Adviser failed to inform the Complainant of the importance of holding a current permit, and the consequences of being in New Zealand unlawfully as a result of the lapse of a permit.
- [2.3] The Adviser failed to keep her client informed of progress with his immigration affairs.
- [2.4] The Adviser has failed to issue invoices.
- [2.5] The Adviser failed to provide a copy of her internal complaints procedure, as required by the Code.
- [3] The conduct was in breach of the Code of Conduct, and accordingly the complaint was upheld under section 44 of the Act.
- [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 Complainant has not provided a submission on the appropriate disciplinary sanction. His original complaint raised the fees he had been required to pay, and that he was “out of pocket” for \$1,720 he paid for a course that the Adviser said would entitle him to an immigration permit, despite the course not being suitable.

- [6] The fees the Complainant paid to the Adviser amounted to \$2,500.
- [7] The Adviser made a submission on the disciplinary sanctions. The key points made were:
- [7.1] The Complainant and the Adviser had a pleasant business relationship for the large part of the transaction.
- [7.2] He agreed to pay \$3,500 in accordance with an agreement.
- [7.3] The services were performed, and additional services provided.
- [7.4] The Complainant refused to pay the fees claimed in full.
- [7.5] The Complainant “got the bargain that he paid for”.
- [7.6] The Adviser has incurred administrative costs.

## **Decision**

### *Other complaints*

- [8] I note the Adviser is the subject of a series of independent complaints, which have been upheld by the Tribunal. I am approaching the issue of penalty in each complaint 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.
- [9] There is one aspect of the sanctions where it is necessary and appropriate to have regard to the penalties in the other matters. The totality of the penalties should reflect the extent of the professional disciplinary offending. The financial penalty in this case has been reduced for that reason.
- [10] Accordingly, the effect of the other complaints is favourable to the Adviser in terms of the penalties that will be imposed.

### *The complaint*

- [11] The adviser’s conduct has been a course of conduct that paid no regard to her professional obligations under the Code:
- [11.1] She failed to initiate the engagement professionally.
- [11.2] She failed to provide essential advice that affected her client.
- [11.3] She failed to communicate properly.
- [11.4] She failed to deal appropriately with billing.
- [11.5] She failed to deal properly with the complaint.
- [12] The Adviser’s submissions on the appropriate sanctions do not sensibly relate to the findings against her in the decision. They appear to either deny the findings, or justify the fees paid regardless of her breaches of professional duty.
- [13] When considering the Adviser’s submission in relation to the appropriate sanctions it is not possible sensibly to relate the submissions to the findings of the Tribunal set out in the decision upholding the complaint.
- [14] I view the overall conduct as behaviour that completely disregarded the Adviser’s professional obligations under the Code. The Adviser had to demonstrate an understanding of the Code before gaining professional accreditation.

- [15] The obligations she breached are so elementary and fundamental that I regard the conduct as wilful. The ongoing disregard for her professional obligations precludes me regarding the grounds on which the complaint has been upheld as an isolated error or oversight.
- [16] The Adviser has failed to take responsibility for abrogating her professional duties, shown no regret, provided no apology to her client, and not signalled any intention to change her conduct.
- [17] I am accordingly satisfied the public should be protected from the Adviser providing services to the public as a licensed immigration adviser, unless there is a mechanism to ensure the Adviser is committed to practising in a professional manner in accordance with the Code of Conduct.

*The Adviser is prevented from practising on her own account without supervision*

- [18] The authorities indicate it is a “last resort” to deprive a person of the ability to work as a member of their profession. However, regard must be had to the public interest when considering whether a person should be excluded from a profession due to a professional disciplinary offence *Complaints Committee of Waikato Bay of Plenty District Law Society v Osmond* [2003] NZAR 162.
- [19] Rehabilitation of a practitioner is an important factor when appropriate (*B v B* HC Auckland, HC 4/92 6/4/93; [1993] BCL 1093. In *Patel v PCC* (HC Auckland CIV 2007-404-1818; Lang J; 13/8/07), the Court stressed when imposing sanctions in the disciplinary process applicable to that case, it was necessary to consider the “alternatives available short of removal and explain why lesser options have not been adopted in the circumstances of the case”.
- [20] These principles apply to imposing sanctions under the Act. Licensed Immigration Advisers are a recently established profession. It is appropriate to have regard to the manner in which the profession has been established, and the mode of entry to achieve recognition as a member of the profession.
- [21] With limited exceptions, licensed advisers have an exclusive right to provide immigration advice. That exclusive right is enforced by criminal sanctions.
- [22] Until the profession was regulated, the great majority of advisers were professional people acting responsibly and providing skilled services. A small minority of unskilled and unscrupulous people provided immigration services. Immigrants are a vulnerable group and, in some instances, suffered serious harm from such people. Immigration advisers have an important professional role in assisting clients. Their honesty, professionalism, and competence are fundamental requirements.
- [23] The Act records in section 3 its purpose is:
- “... to promote and protect the interests of the consumers receiving immigration advice, and to enhance the reputation of New Zealand as an immigration destination, by providing for the regulation of persons who give immigration advice.”
- [24] When the Act came into force, many people had experience of giving immigration advice. There were no professional qualifications specifically targeted at New Zealand immigration advisers; though of course there were various relevant qualifications that some advisers held.
- [25] To establish the profession, a relatively low threshold was applied. It required a person demonstrate competent handling of immigration applications in the past, a knowledge and understanding of the new professional environment, and also language and communication skills. A significant number of people who had relied on providing immigration advice for their livelihood could not meet those standards. They lost their livelihoods.

- [26] The Authority has required licensed immigration advisers to demonstrate understanding of their professional obligations. In addition, the Authority has established a Code of Conduct under the Act, which prescribes what the Adviser's obligations in day to day professional practice entail.
- [27] The entry to the profession was quite different from the conventional entry to an established profession where an extended period of academic training and then work experience with mentoring from established members of the profession is the norm. The entry requirements for the profession will move over time to the conventional model, but it is necessary to first establish appropriate training courses. Accordingly, to this point, entry to the profession has been under a transitional regime.
- [28] Mentoring by colleagues for a new member of a profession is of inestimable value, not only for the development of technical skills, but to understand the ethical and behavioural standards required of a professional person. Mentoring from senior members of a profession is not something that can be required when a new profession is established.
- [29] The inevitably low threshold for entry into the profession, in that entry has not required a long period of academic training with mentored experience, has resulted in some people entering the profession with no real commitment to maintaining professional standards. It is important that this Tribunal exercise the power to remove people from the profession who are in this category. In a sense, the transitional entry has put a correlative obligation on entrants to the profession to ensure they attain professional standards, having been entrusted with entry to the profession.
- [30] I now consider what alternatives are available in balancing the need to protect the public, and provide the opportunity for the Adviser to establish herself with full standing as a member of the profession.
- [31] I am satisfied a financial penalty is not sufficient to cause the Adviser to attain professional standards. It is apparent that at present she wholly lacks either insight or the skills and experience to self regulate the delivery of professional services. Her response to the complaint has not shown she understands her misconduct. The breaches of the Code of Conduct are of requirements that are both important and elementary. Her response to the complaint, and the findings of the Tribunal show no understanding of that, or commitment to change. A financial penalty in itself is unlikely instil that insight. Finding a professional disciplinary offence established has not done so.
- [32] The view is open the Adviser is not fit to be a member of the licensed immigration advisers' profession, which would lead to determining exclusion from the profession is necessary. However, the more appropriate view in relation to this complaint is that the Adviser needs to gain experience and skills in a supervised environment.
- [33] It follows that the order of the Tribunal must prevent the Adviser continuing to practise on her own account unsupervised, until she develops the professional skills she requires to act as a licensed immigration adviser.
- [34] Accordingly, her full licence will be cancelled, but I will not exclude the Adviser from applying for a provisional licence on appropriate terms. The effect will be she can practise under supervision, but not practise on her own account or provide unsupervised services.

#### *Compensation - Principles*

- [35] 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.
- [36] 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.

- [37] 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 same principles as in a civil claim, including causation, quantum and the other principles that regulate entitlement.

*Compensation – this case*

- [38] I am satisfied all of the fees paid by the Complainants should be repaid, there has been a complete failure by the Adviser to fulfil the obligations of her professional engagement. The work undertaken was not competent, the engagement was not in accordance with the Code of Conduct, and caused serious harm through the failure to provide adequate advice.
- [39] The material before the Tribunal establishes those fees are \$2,500, and an order will be made that they are to be refunded.
- [40] The Complainant enrolled in a course at a cost of \$1,720, he relied on advice from the Adviser he should do so to obtain an immigration permit. The advice was wrong, and the course unsuitable. He is entitled to be compensated for this cost.

*Penalty*

- [41] The Adviser would normally face a substantial financial penalty for the misconduct established. Having regard to the compensation orders that will be made, and that her full licence will be cancelled, the penalty will be reduced to \$2,000.

*Publication*

- [42] 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. The decision will be published in the normal way.

**Order**

- [43] The Adviser is censured. She is warned the opportunity this decision gives to re-establish her professional standing will require good faith, and commitment to attain the skills she requires. Her conduct in this case has very much raised the issue of whether she is fit to be licensed as an immigration adviser. She should regard two years of direct supervision as a minimum period to develop her skills to a level where she can expect to act as an unsupervised principal offering services to the public.
- [44] The Adviser's licence, which she presently holds, is cancelled, with effect one week from the date of this decision. The delay is to allow her to refer clients to another licensed immigration adviser.
- [45] The Adviser is prevented from reapplying for a full licence for a period of two years from the date her licence is cancelled.
- [46] The Adviser is also prevented from applying for any other licence, except a provisional licence, for a period of two years from the date her licence is cancelled, and may only apply for a provisional licence if:
- [46.1] The Registrar is satisfied the Adviser will work under the direct supervision of an appropriate fully licensed immigration adviser (and meet the standards for the issue of the licence in other respects);
- [46.2] The Registrar is satisfied any supervisor has been supplied with a copy of this decision by the Adviser and the Registrar has also approved a written protocol setting out with

the terms of supervision, which have been agreed between the Adviser and the supervisor;

- [46.3] Leave is reserved to the Adviser to seek directions from the Tribunal from time to time as to whether a particular person is appropriate to act as a supervisor, and the terms of the protocol, in the event the Registrar does not approve a person nominated or the protocol; and further that
- [46.4] The period of supervision will continue for two years, or until the Adviser is entitled to, and has obtained, a full licence.
- [47] The Adviser is ordered to pay a penalty of \$2,000.
- [48] The Adviser is ordered to pay compensation and refund fees amounting to \$4,120 to the Complainants, being:
- [48.1] Refund of fees \$2,400.
- [48.2] Compensation for course costs paid unnecessarily \$1,720.
- [49] There has been no application for an order for payment of the costs and expenses of the inquiry, so no order is made.
- [50] These orders are made with due consideration for the possibility the Adviser may not be able to obtain employment in an environment where she is supervised, and the effect may be she is effectively excluded from the profession. However, her level of competence and lack of insight into the requirements of professional practice require her to undertake a mentored re-entry into the profession before providing unsupervised services. To require less would be to fail to protect the public in the manner the Act contemplates. It is the Adviser's responsibility to find employment in an environment where she can gain the experience and skills she requires to practise on her own account.

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

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**G D Pearson**  
Chair