

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

Decision No: [2011] NZIACDT 33

Reference No: IACDT 018/10

IN THE MATTER

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

BY

Immigration Advisers Authority
Authority

BETWEEN

Na Jia
Complainant

AND

Wei Wang (Summer)
Adviser

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Adviser

In person

Complainant

In person

Date Issued: 19 October 2011

Background

- [1] The Tribunal upheld Ms Jia's complaint in this matter; the circumstances are set out in the decision of 19 September 2011 upholding the complaint.
- [2] Ms Wang was a new entrant to the profession, employed by Sea Consultants & Investments Ltd (Sea Consultants). She was the only person holding a licence in the organisation, and failed properly to supervise the practice.
- [3] Ms Wang knew Sea Consultants was likely unlawfully providing immigration advice, through at least one unlicensed person. She failed to take steps to deal with this situation generally, and became aware specifically there were irregularities in relation to how Ms Jia's uncle's (the Uncle) immigration issues were being handled.
- [4] Sea Consultants charged the Uncle a grossly excessive fee. The fee was \$20,000 when the fee was normally \$5,000. Ms Wang accepted the likely explanations were:
- [4.1] An attempt to overcharge a naïve person, or
- [4.2] As other evidence suggested, in part, the fee was for inducing an employer to provide a position of employment that was not genuine.
- [5] The lack of supervision of the practice provided the opportunity for persons within Sea Consultants to:
- [5.1] Produce a false contract concerning the Uncle,
- [5.2] For Ms Wang's signature to be forged on the Uncle's immigration application, and
- [5.3] For Ms Wang's identity to be appropriated, without her knowledge, for others to correspond with Immigration New Zealand, pretending to be a licensed immigration adviser.
- [6] In short, her lack of supervision resulted in overtly dishonest behaviour, which completely undermines the Act's requirement that:
- [6.1] only licensed immigration advisers provide immigration advice; and
- [6.2] those licensed immigration advisers meet proper professional standards.
- [7] Despite the overt dishonesty, Ms Wang was not a party to it. The dishonesty included keeping Ms Wang from being aware of what was happening. For that reason, I did not find she was a party to providing unlawful immigration advice. The complaint was upheld on two grounds:
- [7.1] She failed to meet her obligation to supervise effectively, and
- [7.2] When she became personally aware of sufficient irregularities in the treatment of the Uncle that she was obliged to address that specific situation, and failed to do so.
- [8] This decision determines the sanctions and deals with Ms Wang's request that the decisions not be published.
- [9] The sanctions open to the Tribunal are prescribed by section 51. The Tribunal can impose financial penalties, and make orders relating to Ms Wang's entitlement to hold a licence, and other aspects of her practice.
- [10] Section 51 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 \$10,000-00;
- (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."

What the parties say

[11] Ms Wang sought name suppression and said:

[11.1] She had not acted dishonestly; rather she was a victim of dishonesty occurring within Sea Consultants. A decision published with her name may unfairly result in dishonesty being attributed to her.

[11.2] The Authority had not adequately investigated the issues arising from the complaint and that was unfair to her.

[12] She also said she had now resigned from Sea Consultants and suffered health issues. She would be greatly affected in her state of health by the consequences of publication.

[13] The Authority responded and said:

[13.1] This complaint was properly investigated, and referred to the Tribunal with proper and adequate information.

[13.2] Any issues related to immigration advice given by an unlicensed person were separate from the present complaint.

[13.3] Ms Wang had not notified the Authority her employment with Sea Consultants had ended despite a statutory requirement to give notice.

Decision

The complaint and mitigating factors

[14] The grounds on which the complaint has been upheld are serious. Ms Wang was used as a cover for overtly dishonest conduct. Deception has been practised on the Uncle, his family, and Immigration New Zealand.

[15] That would not have occurred if Ms Wang adequately secured systems and managed personnel within the organisation she was responsible for. She took no effective steps, even when alerted to grossly excessive fees being charged, and a false document being created to support them.

- [16] Mitigating the gravity of those findings is the fact she was a new entrant to her profession and did not have the experience to understand how professional practices manage risks of this kind. She was effectively practising on her own account, and responsible for managing a professional services organisation. Her skills in contrast were at the level of a newly admitted member of her profession.
- [17] I accept Ms Wang has suffered ill health and is no longer employed.
- [18] I do not accept Ms Wang's criticism of the Authority, which presented the information relating to the complaint. Unlicensed persons providing immigration advice are not subject to the jurisdiction of this Tribunal. Such information is relevant only to the extent a licensed adviser is a party to, or responsible for, that conduct; in that regard the material before the Tribunal was appropriate.

Ms Wang is prevented from practising on her own account without supervision

- [19] The authorities make it clear 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.
- [20] 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".
- [21] These principles apply to imposing sanctions under the Act.
- [22] Ms Wang accepted the privileges of full membership of her profession, and took responsibility as the sole licensee of a professional services organisation. She failed to exercise the professional obligation to manage the delivery of professional services. The material before me satisfies me her failure was the result of being hopelessly "out of her depth". She was a new entrant to a profession undertaking a role that required experience and maturity. She exhibited neither.
- [23] I now consider what alternatives are available in balancing the need to protect the public, and provide the opportunity for Ms Wang to establish herself with full standing as a member of the profession. I accept restoration is possible, given the finding she was not personally a party to the systematic dishonesty which she admits occurred.
- [24] The most concerning aspect of Ms Wang's conduct was her failure to intervene when she knew the Uncle had been grossly overcharged, and there was a false contract created to support the overcharging. That raises the question of whether Ms Wang lacks the qualities of character to practise as a member of the profession. However, I am satisfied Ms Wang was influenced and manipulated by persons she regarded as senior and to be respected, and actively deceived. In these circumstances, a path to return to full standing in her profession should be left open for Ms Wang.
- [25] Ms Wang lacks the skills to practise without supervision. Furthermore, she has failed to exhibit the self awareness and restraint required to recognise the boundaries of her professional experience and competence and practise within them. She requires an extended period of mentored practice to gain the skills required to offer unsupervised services to the public.
- [26] Accordingly, her full licence will be cancelled, but I will not exclude Ms Wang from applying for a provisional licence on appropriate terms. A provisional licence will only allow her to practise under appropriate supervision.

Compensation

[27] Sea Consultants ultimately refunded the fees and Ms Jia does not seek any other compensation; accordingly, none will be awarded.

Penalty

[28] Ms Wang would face a very substantial financial penalty had she been involved in the dishonesty evidenced in this matter. Having regard to the following:

[28.1] Ms Wang was herself deceived,

[28.2] she is not now working,

[28.3] she faces health difficulties,

[28.4] her failings were in significant measure due to a lack of professional experience and skill for the role she assumed, which is addressed by orders relating to her holding a licence, the penalty will be \$2,000.

Publication

[29] Ms Wang has sought non-publication of her name. 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.

[30] Ms Wang's health issues are not serious enough to prevent publication.

[31] Ms Wang says she will be unfairly affected by publication. She says there was dishonesty, and publication will result in her personally being regarded as dishonest, when that was not the case.

[32] That is not correct; her role is clearly set out in the decisions.

[33] This is not a case where it is unfair to name Ms Wang as she was an uninvolved bystander. She has a high degree of personal responsibility for what happened, and that is the basis the complaint has been upheld. She failed to meet the professional responsibilities of supervision in the role she assumed, and failed to intervene when she was personally aware of serious irregularities. They were very serious failings, mitigated by her naivety and inexperience.

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

Order

[35] Ms Wang is censured.

[36] Ms Wang's licence, which she presently holds, is cancelled, with effect from the date of this decision.

[37] Ms Wang is prevented from reapplying for a full licence for a period of two years from the date her licence is cancelled.

[38] Ms Wang 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:

[38.1] The Authority is satisfied Ms Wang 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); and

- [38.2] The Authority is satisfied any supervisor has been supplied with a copy of this decision by Ms Wang and the Authority has also approved a written protocol setting out with the terms of supervision, which have been agreed between Ms Wang and the supervisor;
- [38.3] Leave is reserved for Ms Wang 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 Authority does not approve a person nominated or the protocol; and further that
- [38.4] The period of supervision will continue for two years or until Ms Wang is entitled to and has obtained a full licence.
- [39] Ms Wang is ordered to pay a penalty of \$2,000.
- [40] There has been no application for an order for payment of the costs and expenses of the inquiry so no order is made.
- [41] These orders are made with due consideration for the possibility Ms Wang 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, I am satisfied she must undertake a mentored re-entry into the profession before providing unsupervised services. To require less would fail to protect the public in the manner the Act contemplates. It is Ms Wang's responsibility to find employment in an environment where she can gain the experience and skills she requires to practise without supervision.

DATED at WELLINGTON this 19th day of October 2011

G D Pearson
Chair