

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

Decision No: [2011] NZIACDT 7

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

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**DECISION**  
IMPOSITION OF DISCIPLINARY SANCTIONS

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**REPRESENTATION:**

**Adviser**

In person

Date Issued: 22 March 2011

## Decision

### The decision on the complaint

- [1] In a decision dated 16 December 2010, the Tribunal upheld a complaint.
- [2] The facts and background are set out in the earlier decision.
- [2.1] 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:
- [2.1.1] [www.visaexpress.co.nz](http://www.visaexpress.co.nz)
- [2.1.2] <http://bbs.skykiwi.com>
- [2.2] Those websites were used to promote the Adviser's professional services. The Adviser had the intention existing and potential clients would read and rely on the information, and she knew that information was false.
- [3] The complaint was 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.
- [4] Given the finding, disciplinary sanctions under section 51 of the Act may be imposed by the Tribunal.
- [5] 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

- [6] The Adviser submitted by an email dated 17 December 2010 that when she published the false information on the websites, she expected to complete the MBA qualification in the near

future. As it transpired, her other commitments proved to be too much to cope with at the same time as her study. She said she had not misled clients and colleagues about her qualifications, aside from the information on the website.

### Decision

- [7] It is inescapable; the finding against the Adviser is one of dishonesty. Honesty is the foundation of a professional practice.
- [8] The Act has established licensed immigration advisers as a professional group. Subject to certain exceptions, they have the exclusive right to provide immigration advice. The main exception is lawyers, who are governed by professional obligations and a separate disciplinary system to ensure standards are maintained.
- [9] In dealing with the appropriate sanctions to impose, it is relevant to consider the reasons for the Act, and its objectives. Until the profession was regulated, the great majority of advisers were professional people acting responsibly and providing skilled services. There was, unfortunately, a small minority of unskilled and unscrupulous people providing immigration services. Immigrants are a vulnerable group, and in some instances suffered serious harm from such people. The harm extended to affecting the integrity of the process for engaging with New Zealand's immigration regime. Immigration advisers have an important professional role in assisting clients to present their case to Immigration New Zealand. Their honesty in dealing with Immigration New Zealand, and their clients, is fundamental.
- [10] The Act records in section 3 that 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.”
- [11] When the Act came into force, many people had a background in 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.
- [12] To establish the profession, a relatively low threshold was applied. It required that 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.
- [13] 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.
- [14] It is difficult to overstate the value to a new member of a profession of mentoring, not only for the development of technical skills, but importantly to understand ethical and behavioural standards required of a professional person. Mentoring from senior members of a profession is not something that can be regulated when a new profession is established.
- [15] There is no doubt 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.
- [16] However, the inevitably low threshold for entry into the profession, in that entry has not required a long period of academic training, and 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.

- [17] Any finding of dishonesty will require that this Tribunal consider the cancellation of the Adviser's licence. Failing to take a serious view of dishonesty will inevitably lead to the perpetuation of the very abuses the Act was intended to stop.
- [18] In the present case, it is a matter of gravity the Adviser has intentionally set about misleading potential clients. Client relationships are a core area where honesty is essential.
- [19] I am willing to take the most favourable view, that the Adviser's principal motivation was vanity, rather than any particularly significant professional advantage.
- [20] I am also prepared to have regard to the fact the Adviser did not set about misleading a particular client in relation to their immigration affairs.
- [21] However, misleading potential clients as to academic qualifications is without doubt a very serious lapse from acceptable professional standards, and the action was a considered and deliberate act.
- [22] Cancellation of the Adviser's licence is a "last resort", but given the overt dishonesty in this case, it is the starting point. The Act, and the Code of Conduct, simply do not countenance dishonesty, and the present case involved overt dishonesty.
- [23] Having regard to the fact the Adviser appears not to have had the benefit of a mentored entry to the profession, and the ameliorating factors referred to in paragraphs [19] and [20], I am willing to leave continuation as a member of the profession as a possibility. However, it must be in an environment where she has appropriate mentoring, and supervision. Accordingly, while her full licence will be cancelled, I will not exclude the Adviser from applying for a provisional licence on appropriate terms. Furthermore, she will be given a period of time to seek employment in an appropriate professional environment.
- [24] These directions 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, the gravity of the misconduct requires, at the very least, a sustained period in which she is supervised, and demonstrates a willingness and ability to meet the obligations of a licensed adviser. It is the Adviser's responsibility to find employment in such an environment.

### **Order**

- [25] The Adviser is censured.
- [26] The Adviser's full licence which she presently holds is cancelled, with effect two months from the date of this decision.
- [27] The Adviser is prevented from reapplying for a full licence for a period of two years from the date her full licence is cancelled.
- [28] The Adviser is prevented from applying for a provisional licence, unless:
- [28.1] 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);
- [28.2] 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, in the event the Registrar does not approve a person nominated; and further that
- [28.3] The Registrar is satisfied any supervisor has been supplied with a copy of this decision by the Adviser; and further that

- [28.4] The period of supervision extends for two years, or until the Adviser is entitled to, and has obtained a full licence.
- [29] The Adviser is ordered to pay a penalty of \$1,500. This penalty is not intended to reflect the gravity of her conduct. I infer the Adviser is not well placed to pay a substantial financial penalty. Accordingly, this level of financial penalty should not be seen as a tariff for the wrongdoing, but as having been discounted with regard to the Adviser's apparent means.
- [30] 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 22<sup>nd</sup> day of March 2011

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**G D Pearson**  
Chair