

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

Decision No: [2011] NZIACDT 8

Reference No: IACDT 019/10

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**Nitin Kumar**  
Complainant

**AND**

**Chheogyal Jah Om Sandyang Lepcha**  
Adviser

---

**DECISION**  
IMPOSITION OF DISCIPLINARY SANCTIONS

---

**REPRESENTATION:**

**Adviser**

In person

Date Issued: 22 March 2011

## Decision

### The decision on the complaint

- [1] In a decision dated 27 January 2011, the Tribunal upheld the complaint in this matter.
- [2] The facts and background are set out in the earlier decision. In summary, the key findings were that the Adviser:
- [2.1] Had no professional relationship with the Complainant (the Code sets out the requirements for establishing one).
- [2.2] Knowingly created the misleading impression he was duly engaged as the Complainant's licensed immigration adviser in his dealings with Immigration New Zealand. He did this in the Complainant's Student Permit Application by:
- [2.2.1] Setting out a declaration he was a licensed immigration adviser; and
- [2.2.2] Signing an acknowledgement he had provided immigration advice under the Act.
- [2.3] The Adviser intended Immigration New Zealand would believe the Student Permit Application had been prepared by a licensed immigration adviser acting in accordance with the standards and duties of his profession, whereas he had not had any contact with the Complainant, taken no adequate steps to establish a professional relationship with him, and had not been engaged in accordance with the Code.
- [2.4] The Adviser delegated his professional duties to non-licensed people, and one or more of them effected a fraud, and used the Adviser to "sign off".
- [2.5] The Adviser altered a form which furthered the fraud, but I did not find he knew the information he added was false, although he would likely have become aware of that fact if he had contact with the Complainant.
- [3] Given the findings, disciplinary sanctions under section 51 of the Act may be imposed by the Tribunal.
- [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] By letter dated 16 February 2011, the Adviser made a submission on the appropriate disciplinary sanctions. He explained he had taken legal advice, and now understood the obligations on a licensed adviser were higher than for an unlicensed person.
- [6] He also said he came from a cultural background where it was not appropriate to question employers, and he had relied on what his employer had told him. He said for that reason he had not intentionally misled Immigration New Zealand.
- [7] He requested that the issue be addressed by way of a caution or censure only.

### **Decision**

- [8] The finding against the Adviser is that he was dishonest in the way he misrepresented his authority to act for the Complainant to Immigration New Zealand. He completely disregarded the requirements to establish a professional relationship, and also allowed himself to be used to further a fraud.
- [9] In short, the Adviser had no regard to his professional obligations, and allowed himself to be directed by an unlicensed person who was apparently perpetrating a deception.
- [10] 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 professional standards are maintained.
- [11] 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 service. 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.
- [12] 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.”
- [13] 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; although of course there were various relevant qualifications that some advisers held.
- [14] 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.
- [15] 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. The entry to the profession has been under a transitional regime.

- [16] 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.
- [17] 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.
- [18] 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 meet professional standards, having been entrusted with entry to the profession.
- [19] Any finding of dishonesty will require that this Tribunal will 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.
- [20] The Adviser has pointed to deference to his employer for cultural reasons as a factor in his conduct. However, he repeatedly failed to comply with the Code of Conduct, and professional obligations. To gain his status as a licensed immigration adviser he had to demonstrate he understood those obligations. In effect the Adviser is putting forward the proposition he allowed his employer's demands to have priority over his legal and professional obligations. The suggestion is untenable, it is a fundamental requirement for all professional people that they withstand pressure from employers, clients, and others. Professional people do come under pressure to put their principles aside and breach the standards of conduct demanded by their profession. It is inevitable they will be personally accountable when they do so.
- [21] Cancellation of an adviser's licence is a "last resort". However, given the personal dishonesty on the Adviser's part in his misrepresentation to Immigration New Zealand, and the essentially complete disregard for his professional obligations which allowed others to further their dishonest objectives, cancellation is necessary. His misconduct has facilitated the very sort of egregious conduct the Act was intended to prevent.
- [22] I accept the Adviser may have lacked experience and maturity, and have had regard to that as a mitigating factor. However, that is not sufficient to determine cancellation is not required. The complaint did not involve a mere error of judgment, or naivety. The Adviser had no significant regard to his professional obligations at all in this matter. Inexperience and lack of maturity do little to mitigate such conduct.
- [23] I have had regard to the Adviser's lack of experience and maturity in relation to the level of financial penalty, and further reduced it considering the financial consequences of cancellation of his licence.

#### **Order**

- [24] The Adviser is censured.
- [25] The Adviser's licence, which he presently holds, is cancelled, with effect from this decision being notified to him.
- [26] The Adviser is prevented from reapplying for any licence under the Act for a period of two years from the date his current licence is cancelled.

- [27] The Adviser is ordered to pay a penalty of \$3,000. This penalty is not intended to reflect the gravity of his 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.
- [28] There has been no application for payment of the costs and expenses of the inquiry, or other orders, so no further order is made.

**DATED** at WELLINGTON this 22<sup>nd</sup> day of March 2011

---

**G D Pearson**  
Chair