

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

Decision No: [2012] NZIACDT 17

Reference No: IACDT 020/11

**IN THE MATTER**

of a referral under s 48 of the Immigration  
Advisers Licensing Act 2007

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**TG**  
Complainant

**AND**

**Alungamonu (Laki) Tangilanu (Monu)**  
Adviser

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**DECISION**  
IMPOSITION OF DISCIPLINARY SANCTIONS

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**Representation:**

**Adviser**

In person

**Complainant**

In person

**Date Issued:** 8 May 2012

## **DECISION**

### **The Decision on the Complaint**

- [1] In a decision dated 27 March 2012, the Tribunal upheld the complaint in this matter. There were two separate complaints from different complainants involving Ms Tangilanu, and both were upheld. The penalty decisions for both matters are now being issued contemporaneously.
- [2] The total penalty for both matters must reflect the overall conduct.
- [3] The facts and background are set out in the earlier decision upholding this complaint, dated 27 March 2012. The key findings were:
  - [3.1] Ms Tangilanu systematically failed to act with care, diligence and professionalism; she effectively ignored the Code.
  - [3.2] She failed to carry out her client's (Ms TG's) instructions to apply for both student permits and residence permits.
  - [3.3] She failed to commence her professional engagement as a licensed immigration adviser with a written agreement, which the Code required.
  - [3.4] She failed to report to Ms TG.
- [4] The Tribunal also found Ms Tangilanu misled her client, as:
  - [4.1] In January 2011 she told Ms TG a residence application had been resubmitted in November 2010, when she knew that was false.
  - [4.2] She also misled Ms TG by informing her applications for student permits were in progress, knowing that representation was false.

### **Submissions on Disciplinary Sanctions**

- [5] Ms TG did not make submissions on disciplinary sanctions.
- [6] Ms Tangilanu made a submission challenging the findings in the decision upholding the complaint, and in a separate email sought an order preventing publication of the decision. She effectively made no submission directed to the penalty to be imposed.

### **Decision**

- [7] The potential sanctions are prescribed by section 51.
- [8] 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.
- [9] 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.

- [10] Immigration advisers have an important professional role in informing clients of their immigration options, and assisting them to present their case to Immigration New Zealand. Honesty in dealing with Immigration New Zealand, and their clients, is fundamental.
- [11] The Act records in section 3 that its purpose is:
- “... to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.”

*Cancellation of Ms Tangilanu's licence*

- [12] Ms Tangilanu misled her client; it is a serious finding that goes to her honesty, it arose in the context of a client relationship, and concerned her professional duties. Inevitably, the Tribunal must consider whether Ms Tangilanu's licence should be cancelled.
- [13] Section 51(1)(d) allows the Tribunal to cancel a licence as a disciplinary sanction, and paragraph (e) of that subsection allows an order that the person be prevented from reapplying for a licence for a period not exceeding two years.
- [14] 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.
- [15] Rehabilitation of a practitioner is an important factor to consider (*B v B* HC Auckland HC4/92, 6 April 1993), [1993] BCL 1093. In *Patel v Complaints Assessment Committee* (HC Auckland CIV-2007-404-1818, 13 August 2007 per Lang J), the Court stressed that 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”.
- [16] These principles apply to imposing sanctions under this Act.
- [17] I now consider whether there are alternatives available in this case, balancing the need to protect the public, and provide the opportunity for Ms Tangilanu to continue in the profession.
- [18] Any finding of dishonesty will require that this Tribunal consider 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.
- [19] Ms Tangilanu's actions in misrepresenting the work she was doing for a client is typical of the dishonesty the Act was intended to eradicate. Ms Tangilanu has shown no remorse, and little understanding of her professional obligations.
- [20] In the present case, I cannot regard Ms Tangilanu's dishonest conduct as an isolated lapse. Her failure to comply with fundamental professional obligations was also reflected in what amounted to a disregard for all her professional obligations under the Code. I must accordingly conclude Ms Tangilanu's licence should be cancelled, and that she be prevented from reapplying for re-entry to the profession for at least two years. I do not consider a lesser penalty would meet the objectives of the Act, and protect the public from serious misconduct.

- [21] I note that the other complaint which has been upheld is strikingly similar, though more serious, in that the dishonesty involved an attempt to misappropriate client funds. Each of the two complaints standing on their own would make it necessary to cancel Ms Tangilanu's licence, and prevent her reapplying for at least two years.
- [22] Accordingly, I will order that any licence Ms Tangilanu holds will be cancelled, and she will not be permitted to apply for a licence for two years following the date she is notified of this decision. This period is appropriate given the dishonesty, and flagrant disregard for her professional obligations.

#### *Compensation*

- [23] Ms TG sought the recovery of the fees she paid. However, in the decision upholding the complaint the finding was that the fees paid for work to be done after Ms Tangilanu became a licensed immigration adviser had been refunded. There had been other fees paid prior to that time, however that work had been done and the fees expended prior to Ms Tangilanu becoming licensed. Accordingly, there are no fees outstanding in respect of which the Tribunal has jurisdiction.

#### *Financial penalty*

- [24] Ms Tangilanu only gained the status of a licensed immigration adviser by demonstrating an understanding of the obligations of a practitioner in her profession, and she flagrantly breached those obligations.
- [25] Accordingly, I can only regard Ms Tangilanu's failure to meet the obligations on her as sustained and intentional.
- [26] I have had regard to the loss of Ms Tangilanu's licence; it is a penalty to be weighed along with the monetary penalty.
- [27] As noted, there is another complaint which has been upheld where penalties are to be imposed contemporaneously with the present decision.
- [28] Were this matter standing on its own, taking account of the dishonesty, and also the various breaches of the Code, I would regard the starting point as a penalty of \$3,000 (in addition to the cancellation of licence). There is a serious element of deception of a client, and it concerns the status of immigration applications. Such deception had the potential to significantly affect the client's circumstances.
- [29] There is, however, a significant disparity in the starting point for the financial penalty in the other matter, as it involved a deception intended to dishonestly misappropriate a sum of money paid as client fees. In that matter the starting point is \$7,500. Misappropriating client fees is invariably a fundamental breach of core professional values which has no justification, and for which there is no tolerance. The penalty must condemn and deter such behaviour.
- [30] The totality principle is a key element in setting the monetary penalty. Across the two cases, a total monetary penalty of \$8,000 (exclusive of compensation) is appropriate. That, together with the cancellation of her licence, reflects the sustained breach of fundamental professional obligations in dealing with multiple clients.
- [31] To achieve the total penalty, there will be a penalty in this case of \$2,000. Ms Tangilanu has not demonstrated any remorse, and identified no mitigating factors.

- [32] There has been no application for payment of the costs and expenses of the inquiry, or other orders, so no order is made in relation to them.

### **Publication**

- [33] Ms Tangilanu has sought non-publication of her name, and the decision.
- [34] There is no specific statutory direction concerning the power to direct either publication, or non-publication of decisions. However, for a professional disciplinary body in contemporary New Zealand to operate without its decisions being available to the public would be a truly exceptional situation.
- [35] The Court of Appeal in *R v Liddell* [1995] 1 NZLR 538 at 546 per Cooke P said, in relation to the question of name suppression:
- “[T]he starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings, and the right of the media to report the latter fairly and accurately as ‘surrogates of the public’.”
- [36] While the *Liddell* case dealt with a criminal conviction and attendant publication issues, the principles apply to a professional disciplinary body. The function of a professional disciplinary body is concerned with accountability of members of the profession to the public. Public confidence in a disciplinary body achieving fair outcomes, and accountability, is not well served by a secret process, and there is nothing in the Act indicating that it does create such a process. For the Tribunal to operate without being open and publicly accountable would not be in the interests of either the public or the profession.
- [37] Publication of the Tribunal’s decisions will follow as a matter of course, as there is no prohibition on publication. Directions to limit or prohibit publication are a matter within the scope of the Tribunal’s power to regulate its own procedure (section 49(1)).
- [38] In the present case Ms Tangilanu has applied for suppression of her name and identifying details. However, she has not advanced any reason that can sensibly be weighed in favour of restricting publication. On the contrary, she has had a finding made against her that she has been responsible for serious professional failings, and it is in the public interest that the decisions relating to that be published in full.
- [39] Accordingly, the decision upholding the complaint and the present decision will be published in the usual way.

### **Determination and Orders**

- [40] The complaint is upheld.
- [41] Ms Tangilanu is:
- [41.1] Censured.
- [41.2] Ordered to pay a penalty of \$2,000.
- [42] Any licence presently held under the Act by Ms Tangilanu is cancelled.
- [43] Ms Tangilanu is prevented from reapplying for any category of licence as a licensed immigration adviser for a period of two years from the date this decision is notified to her.

**DATED** at WELLINGTON this 8<sup>th</sup> day of May 2012

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**G D Pearson**  
Chair