

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

Decision No: [2012] NZIACDT 18

Reference No: IACDT 032/10

IN THE MATTER

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

BY

Immigration Advisers Authority
Authority

BETWEEN

Fraser Williamson

Complainant

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Adviser

In person

Complainant

In person

Date Issued: 8 May 2012

DECISION

The Decision on the Complaint

- [1] In a decision dated 28 March 2012, the Tribunal upheld the complaint in this matter. There were two separate complaints from different complainants, 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 28 March 2012. The key findings were:
 - [3.1] Ms Tangilanu systematically failed to act with care, diligence and professionalism in performing her services, by ignoring the requirements of the Code.
 - [3.2] She failed to commence her professional engagement as a licensed immigration adviser with a written agreement, as the Code required.
 - [3.3] She failed to carry out her client's (Mr Hakaumotu's) instructions to apply for a residence visa.
 - [3.4] She failed to report to Mr Hakaumotu.
 - [3.5] She failed to use Mr Hakaumotu's funds only for the purpose for which they were given, and did not deal with them as client funds in accordance with the Code.
- [4] Ms Tangilanu was also dishonest and misleading. She dishonestly told Mr Williamson (Mr Hakaumotu's representative) an application had been lodged, and that a fee of \$750 had been paid to Immigration New Zealand. In fact, she knew no such fee had been paid, as no application was lodged. She made the dishonest representation with the intention of misappropriating that sum of money.

Submissions on Disciplinary Sanctions

- [5] Following the decision, Mr Williamson drew attention to the effects of Ms Tangilanu's conduct on Mr Hakaumotu. In particular, the loss of the opportunity to remain in New Zealand, and the personal and financial consequences of that, and the wasted fees he paid to Ms Tangilanu. He emphasised the importance of recovering the money for Mr Hakaumotu.
- [6] Ms Tangilanu principally continued to deny the complaint, and asserted the decision on it was incorrect. However, in making that assertion, she did not engage with the reasoning in the decision. Her position was that she should accept "no blame at all".
- [7] Ms Tangilanu claimed that \$2,500 had been paid on a "no win no fees" basis, before she was licensed, and should not be subject to a compensation order. She did not address the potential findings issued in the minute prior to the substantive decision, or the conclusion in the substantive decision which followed. That conclusion was that the funds were client funds, held when she became a licensed immigration adviser, and consequently subject to the jurisdiction of the Tribunal.

Decision

- [8] The potential sanctions are prescribed by section 51 of the Act.
- [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 service. There was,

unfortunately, a small minority of unskilled and unscrupulous people providing immigration services.

- [10] 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.
- [11] 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.
- [12] 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

- [13] 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. It was a particularly serious example of dishonesty, as the finding against her is that she made the misrepresentation that \$750 had been expended in paying fees to Immigration New Zealand, knowing that was false, and intending that she would keep that money for herself.
- [14] Inevitably, the Tribunal must consider whether Ms Tangilanu's licence should be cancelled.
- [15] 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.
- [16] 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.
- [17] 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”.
- [18] These principles apply to imposing sanctions under this Act.
- [19] 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.
- [20] 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.
- [21] Ms Tangilanu's actions in attempting to deceive a client's representative to dishonestly keep fees she was not entitled to is a serious example of the dishonesty the Act was intended to eradicate. Ms Tangilanu has shown no remorse, and little understanding of her professional obligations.

- [22] 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 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.
- [23] I note the other complaint which has been upheld is strikingly similar, and that complaint standing on its own also makes it necessary to cancel Ms Tangilanu's licence, and prevent her reapplying for at least two years.
- [24] 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

- [25] The finding of the Tribunal in its substantive decision was that Ms Tangilanu held \$2,500 in fees as client funds when she became a licensed immigration adviser.
- [26] Mr Hakaumotu paid \$2,500 to Ms Tangilanu on 7 January 2009. She now says this was on a "no win no fees" basis in her submission on sanctions. Regardless, I find she did not carry out the work she was instructed to carry out, and there was certainly no "win".
- [27] She was still holding the fees on 24 September 2010 when she became a licensed immigration adviser. She still had a client relationship, and the unearned fees became client funds she was required to deal with in accordance with the Code.
- [28] After that Ms Tangilanu did not earn the fees by providing professional services. It follows she must refund the fees in full.

Financial penalty

- [29] Ms Tangilanu 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.
- [30] Accordingly, I can only regard Ms Tangilanu's failure to meet the obligations on her as sustained and intentional.
- [31] Ms Tangilanu has not demonstrated any remorse, and identified no mitigating factors.
- [32] I will have regard to the loss of Ms Tangilanu's licence, as it is a penalty to be weighed along with the monetary penalty. There is another complaint which has been upheld where penalties are to be imposed contemporaneously with the present decision.
- [33] The maximum monetary penalty is \$10,000, in addition to other sanctions.
- [34] I consider the appropriate penalty, based on the circumstances of the offending, and taking account of the prohibition from holding a licence, has a starting point of \$7,500. The offending involves misrepresentation in relation to client funds, and a failure to deal with those funds in accordance with the Code. Ms Tangilanu dishonestly said funds had been paid to Immigration New Zealand, with the intention of deceiving a client and keeping the money for herself. This is at the most serious end of dishonest offending in a professional capacity. A lesser penalty would not adequately reflect the Act's intolerance for dishonesty, and deliberate exploitation of migrants.

- [35] There is, however, a significant disparity in the starting point for the financial penalty in the other matter, this present case being the more serious. This matter involves a deception intended to dishonestly misappropriate a sum of money paid as client fees. 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.
- [36] 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.
- [37] To achieve the total penalty, there will be a penalty in this case of \$6,000, and \$2,000 in relation to the other matter.
- [38] 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 these.

Publication

- [39] Ms Tangilanu has sought non-publication of her name, and the decision.
- [40] 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.
- [41] 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’.”
- [42] 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.
- [43] 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)).
- [44] 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.
- [45] Accordingly, the decision upholding the complaint and the present decision will be published in the usual way.

Determination and Orders

- [46] The complaint is upheld.
- [47] Ms Tangilanu is:

- [47.1] Censured.
- [47.2] Ordered to pay a penalty of \$6,000.
- [47.3] Ordered to refund fees of \$2,500 to Mr Hakaumotu.
- [48] Any licence presently held under the Act by Ms Tangilanu is cancelled.
- [49] 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 8th day of May 2012

G D Pearson
Chair