

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

Decision No: [2012] NZIACDT 33

Reference No: IACDT 008/10

IN THE MATTER

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

BY

Immigration Advisers Authority
Authority

BETWEEN

Bowen Zhang
Complainant

AND

Ran Deng
Adviser

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Adviser

Mr P McPherson, Hesketh Henry, Lawyers, Auckland

Complainant

Mr J Cheng, Barrister, Auckland

Date issued: 29 June 2012

DECISION

The Decision on the Complaint

- [1] In a decision dated 31 May 2012, the Tribunal upheld a complaint, in part, in this matter.
- [2] The facts and background are set out in the earlier decision.
- [3] The element of the complaint which was upheld concerned the failure to enter into a written agreement to provide services, which the Code required.

Submissions on Disciplinary Sanctions

Ms Zhang

- [4] Ms Zhang did not make any submissions on penalty. As recorded in the earlier decision Ms Zhang reached a settlement with Ms Deng, and agreed she would seek to withdraw the complaint. Accordingly, she has not participated in the hearing since that point.

Ms Deng

- [5] Ms Deng through her counsel did provide submissions, and sought to have no sanction imposed beyond the finding, and inevitable publicity.
- [6] In effect, the request is to uphold the complaint, and take no further action. That is a course provided for in section 50(b) of the Act.
- [7] Mr McPherson made a number of points, in support of his submission for Ms Deng.
- [8] The first is that the circumstances were unusual, in that the failure to enter into written terms of engagement occurred at the time Ms Deng was first licensed as an immigration adviser. She had existing instructions from Ms Zhang, and failed to document that engagement. The failure to document the engagement was through lack of understanding of the obligation relating to existing clients, not intentional non-compliance.
- [9] Second Ms Deng has already reached a financial settlement with Ms Zhang on generous terms.
- [10] In addition, publicity, and the adverse disciplinary finding amount to a significant imposition in themselves. In addition, Ms Deng is no longer licensed, so ongoing compliance is not an issue.

Decision

- [11] The intentional failure to meet the requirements of the Code in establishing a professional relationship is a serious departure from professional standards. However, this case concerns an error of judgment, not deliberate misconduct.
- [12] Further, I accept the consequences of an adverse finding, publicity, and the compensation already paid make further sanctions unnecessary and inappropriate.
- [13] I am satisfied, having upheld the complaint in part; no further action should be taken.

DATED at WELLINGTON this 29th day of June 2012

G D Pearson
Chair