

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

Decision No: [2012] NZIACDT 7

Reference No: IACDT 016/10

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**Paramjit Singh**  
Complainant

**AND**

**Rajesh Kumar**  
Adviser

---

**DECISION**  
**IMPOSITION OF DISCIPLINARY SANCTIONS**

---

Date Issued: 16 March 2012

## DECISION

### The Decision on the Complaint

- [1] In a decision dated 18 August 2011, the Tribunal upheld the complaint in this matter.
- [2] There has been another complaint relating to Mr Kumar, and it too has been upheld. The decisions on penalty in relation to the two complaints are being issued contemporaneously.
- [3] The facts and background are set out in the earlier decision upholding this complaint. The key findings were:
- [3.1] Mr Kumar was unprofessional and incompetent. He gave inappropriate advice to pursue an appeal to the Removal Review Authority, and failed to advance the appeal competently.
- [3.2] Mr Kumar was also unprofessional through being rude and abusive in dealing with the complaint against him.
- [4] The Tribunal also found Mr Kumar to be openly contemptuous of New Zealand's Parliament, the immigration laws it enacted, immigration policy through which those laws are devised and implemented, and also the Authority that regulates his profession.
- [5] Given the findings, disciplinary sanctions under section 51 of the Act may be imposed by the Tribunal.

### Submissions on Disciplinary Sanctions

#### *Mr Singh*

- [6] Counsel for Mr Singh made a submission on penalty, particularly the compensation sought.
- [7] He sought compensation under the following heads:
- [7.1] Loss of net wages \$4,926 for three months from the end of August 2009.
- [7.2] An application fee of \$260 paid to Immigration New Zealand for an application under section 35A.
- [7.3] A photocopying fee of \$75, which Mr Kumar charged to Mr Singh.
- [7.4] Fees of \$3,015 for counsel to deal with Mr Singh's immigration status, and the complaint.
- [8] The total compensation sought was \$8,276.

#### *Mr Kumar*

- [9] Mr Kumar submitted Mr Singh would not have been granted a work permit had he applied for one, and so no compensation for lost wages should be paid.
- [10] Professional fees should not be recovered, as the invoices were in the name of Mr Singh's wife, and no invoice had been rendered for the work relating to the complainant.
- [11] According to Mr Kumar, clients always pay for photocopying.

- [12] He sought to justify his views that led to the finding he was openly contemptuous of the institutions he needed to interact with professionally.
- [13] He also notified the Tribunal that he was surrendering his licence and would no longer be an immigration adviser.
- [14] Counsel for Mr Singh responded, and explained that the invoices supporting the fees charged were addressed to Mr Singh's wife as she had approached him on behalf of Mr Singh.

### **Decision**

- [15] The potential disciplinary sanctions able to be imposed are prescribed by section 51.

#### *Mr Kumar's licence*

- [16] It would be necessary to make an order in relation to Mr Kumar's licence, apart from the fact he no longer holds a licence. The other complaint for which a penalty is being imposed contemporaneously involves dishonesty. Accordingly, it will result in an order that Mr Kumar may not apply for a licence for a two-year period, which is the maximum that may be imposed by the Tribunal.
- [17] If this matter stood alone there would be an order that Mr Kumar be permitted to practice only under defined terms of supervision, and be permitted to hold only a provisional licence for a period. Mr Kumar's misconduct is largely a result of his wrong, and contemptuous views of the immigration regime he is required to work with. He would require a mentor who could supervise him, and lead him to appreciate what is required of a person offering professional services to the public.
- [18] As it is not necessary to make an order relating to Mr Kumar's licence, the issues to be addressed are compensation, and the monetary penalty.

#### *Compensation*

- [19] I am satisfied Mr Singh is entitled to the compensation of \$8,276 which he seeks. Pursuant to section 51(1)(i), the Tribunal may order Mr Kumar to pay reasonable compensation.
- [20] If Mr Kumar had responded to Immigration New Zealand's invitation to deal with Mr Singh's application in a different way, I am satisfied that Mr Singh would probably have obtained a work permit by the end of August 2009, and been in work from that point. Instead, Mr Kumar pursued a hopeless appeal which did not advance his client's position.
- [21] I am satisfied Mr Singh's loss of the ability to work was a direct and inevitable result of Mr Kumar's incompetence.
- [22] I am also satisfied Mr Singh should be compensated for the professional fees he has paid to his counsel (including the fees yet to be recovered for pursuing the complaint); and the new application fee.
- [23] The immigration services provided by Mr Singh's counsel were required to put Mr Singh into the position he would have been in if Mr Kumar had acted competently. Mr Singh incurred the costs and consequences of Mr Kumar pursuing a hopeless course of action. Mr Kumar must compensate his client for his failure to pursue a timely, and likely simple, action which Immigration New Zealand had invited him to explore. The position became much more difficult to put in order when the inappropriate approach failed. Mr Kumar's work gained no advantage,

and incurred costs. The additional work and fees were a direct and inevitable consequence of the incompetent actions of Mr Kumar.

- [24] Mr Kumar has responded to the complaint unprofessionally, causing Mr Singh to incur unnecessary expense. His conduct was such that it is an aspect of the disciplinary findings against him. In these circumstances, he, not his former client, should bear the cost. Mr Kumar's response to the legitimate grounds of complaint made assistance from counsel both appropriate and necessary. The expenses of dealing with the complaint include the \$75 cost of Mr Kumar supplying his file.
- [25] Accordingly, professional fees for counsel of \$1,775 to pursue immigration issues, and \$1,240 to deal with the complaint will be awarded. In addition, the \$75 Mr Kumar charged to supply a copy of his file and the filing fee of \$260 for the new application are also awarded.

*Monetary penalty*

- [26] The two separate disciplinary matters being addressed contemporaneously involve different complainants, and facts. The cases also involve distinct circumstances. Accordingly, I have had regard to the two separate matters only in relation to the status of Mr Kumar's licence, which for the reasons discussed will not be subject to any orders in the present case.
- [27] There are two grounds on which this complaint has been upheld:
- [27.1] Incompetence, and
- [27.2] An unprofessional response to the complaint.
- [28] In relation to the first ground Mr Kumar failed to respond to a simple and clear invitation from Immigration New Zealand, and pursued an alternative approach ineptly.
- [29] The concerning aspect of that professional failing was that his failure to respond to Immigration New Zealand's invitation was a product of his contemptuous view of Immigration New Zealand, and immigration law and policy in New Zealand.
- [30] In this case, my approach is that the penalty imposed will be a monetary penalty that reflects the incompetence.
- [31] I will not have regard to the reasons for the error. Mr Kumar's contemptuous views that led to the error may well justify punishment, and particularly so given their impact on his client. His expression of disparaging views of New Zealand's Parliament and the Authority before the Tribunal too may be worthy of punishment. However, I regard those matters as more appropriately addressed by considering whether Mr Kumar should continue to hold a licence. As he no longer holds a licence, and a complaint of dishonesty has been established against him, I will have no regard to those matters in setting the level of monetary penalty.
- [32] In my view the appropriate penalty for Mr Kumar's incompetence, given that he no longer holds a licence, is \$2,000.
- [33] The other ground on which the complaint has been upheld is Mr Kumar's failure to deal professionally with the complaint. The personal denigration of a former client and their counsel as a response to a complaint is wholly unprofessional, and I regard that conduct as reprehensible. I take account of the fact that Mr Kumar has expressed regret for that conduct. I consider an appropriate penalty for that behavior would have been \$3,000. The penalty will be \$2,000 having regard to Mr Kumar's expression of regret.

[34] A total monetary penalty of \$4,000 will be imposed.

*Censure*

[35] Section 51(1)(a) provides power for the Tribunal to censure a person against whom a complaint has been upheld.

[36] Mr Kumar's conduct has been unprofessional on a sustained basis, which extended to his behavior before the Tribunal at an oral hearing. It is inevitable he will be censured; his conduct has fallen far short of the minimum standards required of a person in professional practice.

*Costs*

[37] There has been no application for costs or expenses pursuant to section 51(1)(g), other than the costs Mr Singh incurred to engage counsel, which have been addressed above. Accordingly, no further order is made.

**Determination and Orders**

[38] Mr Kumar is censured.

[39] He is ordered to pay compensation of \$8,276 to Mr Singh.

[40] He is also ordered to pay a penalty of \$4,000.

**DATED** at WELLINGTON this 16<sup>th</sup> day of March 2012



G D Pearson  
Chair

