

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

Decision No: [2012] NZIACDT 8

Reference No: IACDT 006/10

IN THE MATTER

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

BY

Immigration Advisers Authority
Authority

BETWEEN

Rubalmeet 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 21 October 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 engaged in dishonest behaviour in the course of his practice as a licensed immigration adviser.
 - [3.2] The dishonesty involved Mr Kumar demanding fees he knew he was not entitled to.
 - [3.3] He sought to enforce the dishonest demand by withholding his client's passport.
- [4] Given the findings, disciplinary sanctions under section 51 of the Act may be imposed by the Tribunal.

Submissions on Disciplinary Sanctions

Mr Singh

- [5] Mr Singh made a submission on penalty, particularly the compensation sought.
- [6] He sought compensation under the following heads:
- [6.1] Repayment of \$300 which was paid to Mr Kumar by Mr Singh's aunt on his behalf.
 - [6.2] The costs arising from three or four trips from Rotorua to Auckland to deal with getting his passport and processing his permit, and advancing the complaint. These expenses were not quantified, but Mr Singh referred to the cost of travel, and taking a day or two off work.
 - [6.3] The costs of obtaining bank statements, being \$30.
 - [6.4] The costs of preparing a file, including stationery, postage, and also communications costs (not quantified).

Mr Kumar

- [7] Mr Kumar made a submission, and he pointed to personal factors that had developed. He opened his submission by complaining that he had been treated unjustly in relation to the complaint. It is evident Mr Kumar's focus remains on justifying his wrongful conduct, and he shows no insight as to the standards of behaviour expected of him.
- [8] He identified various personal circumstances, apparently arising from the breakdown of his marriage. His claims appeared to lack connection with reality, complaining as he did that the Family Court condoned his wife entering into another and bigamous marriage, that the Court made a protection order on the basis of a false affidavit, and allowed his wife to take all of the relationship property.

- [9] He identified the following personal circumstances:
- [9.1] He has no money or other assets;
 - [9.2] His mental health has been affected;
 - [9.3] He has lost his memory, to the extent he cannot recognise his clients;
 - [9.4] He cannot distinguish between reality and imagination; and
 - [9.5] He is leaving New Zealand.

Decision

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

Mr Kumar's licence

- [11] Mr Kumar has surrendered his licence, and is no longer a licensed immigration adviser.
- [12] 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 may be prevented from reapplying for a licence for a period not exceeding two years. As Mr Kumar has surrendered his licence, only the second power is relevant.
- [13] I will deal with the prohibition against applying for a licence in the same manner as I would determine whether Mr Kumar's licence should be cancelled. The effect of cancelling a licence and preventing a person applying, in both cases, excludes a person from participation in their profession.
- [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 Mr Kumar to re-enter the profession.
- [18] Any finding of dishonesty will require that this Tribunal 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.
- [19] 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.

- [20] 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.
- [21] 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.
- [22] 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 a migration destination, by providing for the regulation of persons who give immigration advice."
- [23] Mr Kumar's actions in demanding fees he was not entitled to, and withholding a passport to enforce the demand, is typical of the dishonesty the Act was intended to eradicate. Mr Kumar has shown no remorse, little understanding of his professional obligations, and preferred to remove himself from his profession rather than seek to restore himself.
- [24] It is important to impose a sanction that adequately punishes dishonesty to maintain the integrity of the profession. A penalty falling short of removal from the profession would fail to achieve that in the present case, given the overt dishonesty and exploitation of a client.
- [25] Further, I am satisfied Mr Kumar has demonstrated he is unfit to practise as a licensed immigration adviser. He has shown no willingness to review his conduct; his focus has been entirely on justifying himself.
- [26] Accordingly, I will order that Mr Kumar will not be permitted to apply for a licence for two years following the date he is notified of this decision. This period is appropriate given the gravity of the conduct.

Compensation

- [27] I am satisfied Mr Singh is entitled to compensation under the heads he seeks.
- [28] Understandably, apart from the \$300 he seeks and the costs of obtaining bank statements, Mr Singh has had some difficulty quantifying his claim.
- [29] Section 51(1)(i) provides that "reasonable compensation" may be ordered. It is not unusual for the precise quantification of claims to be impossible, but regardless reasonable orders are made. The principles relating to an award of general damages is an illustration.
- [30] In the present case, I am satisfied an appropriate award is \$1,200 to cover the three trips Mr Singh had to make, and his various out-of-pocket expenses. He was put to considerable inconvenience to pursue the complaint; it was very much in the public interest that he did so.
- [31] Accordingly, the compensation award will be \$1,500 in total.

Monetary penalty

- [32] I have regard to the fact Mr Kumar is no longer a licensed immigration adviser, and an order has been made preventing him applying for a licence.

- [33] The sums of money to which the dishonesty related were relatively small. However, there was a concerning element of Mr Kumar appearing to exploit Mr Singh and his aunt, expecting that his professional standing would allow him to do so with impunity. He disparaged them when responding to the complaint. As an illustration, in a letter dated 23 November 2009 to the Authority, Mr Kumar criticised the Authority's investigation. He said of Mr Singh's aunt:
- "Now let us see her background. The investigator did not think it necessary to ask about her educational background. The investigator also did not think it necessary to ask her how long she has been in New Zealand.
- ...
- These questions are important because an illiterate person may be considered as not sharp enough to ask for a receipt."
- [34] In the same letter, he said of Mr Singh:
- "[He] is in fact a liar.
- ...
- [Mr Singh] does not want to pay the amount due to me and he has used the IAA complaint process to blackmail me ..."
- [35] These disparaging characterisations of Mr Singh and his aunt have no connection with reality. They were persisted with, and are typical of how Mr Kumar responded to the complaint.
- [36] I was left in no doubt from Mr Kumar's attitude and actions, he thought his professional standing would allow him to exploit a client, and he systematically sought to do so in this case. This factor makes the offending more serious, and the penalty should reflect that.
- [37] Accordingly, despite the amounts of money being modest, I find Mr Kumar's dishonesty in the serious category of dishonest offending. The financial penalty should reflect the gravity of the conduct.
- [38] The maximum monetary penalty is \$10,000.
- [39] I consider the appropriate penalty, based on the circumstances of the offending but taking account of the prohibition from holding a licence, should be at a starting point of \$7,500. A lesser penalty would not adequately reflect the Act's intolerance for dishonesty, and deliberate exploitation of migrants.
- [40] The personal mitigating factors advanced by Mr Kumar are unconvincing. He claims the New Zealand Family Court has failed to protect his rights. He has provided no evidence to support the claim, and the claim is implausible. He relies on that assertion to say he has no money to pay the sanctions that flow from his offending.
- [41] In the decision upholding the complaint, Mr Kumar was invited to provide a statement of assets and liabilities, and particulars of income and outgoings if he was to submit he had a limited ability to meet a financial penalty. However, he has simply said he has no assets, no income, and cannot meet his liabilities.
- [42] Mr Kumar claims his mental functioning is so disturbed he cannot work, but wrote a coherent account of that claim. He provided no independent support, medical or otherwise, for this claim.

[43] I do not find Mr Kumar's claims regarding his personal circumstances to be likely to be true. They are implausible. Mr Kumar has provided no evidence on which I could conclude they are probably true. Unfortunately, Mr Kumar's statements follow an ongoing series of claims which the Tribunal has found to be false. Accordingly, I am not willing to reduce the penalty on account of the mitigating factors he has put forward.

Censure

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

[45] Mr Kumar's dishonest conduct has no place in his profession. It is inevitable he will be censured.

Costs

[46] There has been no application for costs or expenses pursuant to section 51(1)(g), Accordingly, no further is made.

Determination and Orders


[47] Mr Kumar is censured.

[48] Mr Kumar 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 him.

[49] He is ordered to pay compensation of \$1,500 to Mr Singh.

[50] He is also ordered to pay a penalty of \$7,500.

DATED at WELLINGTON this 16th day of March 2012


G D Pearson
Chair

