

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

Decision No: [2012] NZIACDT 81

Reference No: IACDT 026/10

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Shalini Rao

Complainant

AND

Prem Adeep Singh

Adviser

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Adviser

In person

Complainant

In person

Date Issued: 18 October 2012

DECISION

Introduction

- [1] This complaint was upheld in a decision issued on 27 March 2012.
- [2] The key elements of the findings were:
- [2.1] Ms Rao engaged Mr Singh, who was a licensed immigration adviser, to assist her and her family in relation to their immigration situation.
 - [2.2] Mr Singh lodged an application with Immigration New Zealand. The application was declined, and he told Ms Rao he had referred the matter to the Ombudsmen.
 - [2.3] Mr Singh could not be contacted after that point. Accordingly, Ms Rao contacted Immigration New Zealand directly, and found there were no processes in train and she and her family were simply unlawfully in New Zealand without permits.
 - [2.4] Ms Rao complained about Mr Singh's failure make the appropriate applications and advise her and her family of their situation. In addition, she wanted her family's personal documents to be returned by Mr Singh.
 - [2.5] Mr Singh systematically failed to act with care, diligence and professionalism. He failed to commence his engagement in accordance with the Code of Conduct, failed to provide advice, and did not keep personal documents secure.
 - [2.6] In short, there was a comprehensive failure to meet minimum professional standards.

The Parties' Positions on Sanctions

- [3] Mr Singh has not responded to the decision. It appears that he has absented himself, and failed to maintain a current address. The processes in dealing with this complaint have been served in accordance with the Act, however it may well be that Mr Singh has not received them. It was his responsibility to ensure that he maintained contact.
- [4] Ms Rao has requested compensation for the loss of her family's personal documents, but not provided details of the cost of getting replacements.

Decision

- [5] The grounds on which the complaint has been upheld amount to a contemptuous disregard for the privileges of holding a licence under the Act. Mr Singh's failure to respond to the complaint with any sense of obligation or concern leaves the Tribunal with the impression he has no intention of meeting the obligations that apply to the holder of a licence under the Act.
- [6] Mr Singh is not currently holding a licence, as it expired. However, the gravity of Mr Singh's conduct requires the Tribunal to consider Mr Singh's entitlement to apply for, or hold, a licence.
- [7] The authorities indicate 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.
- [8] Rehabilitation of a practitioner is an important factor when appropriate (*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), the Court stressed 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”.

- [9] If Mr Singh held a licence I am satisfied it would have to be cancelled, and rehabilitation is not, at this point, a realistic option.
- [10] I hold that view for two reasons. First, the complaint has been upheld due to repeated and serious breaches of fundamental professional obligations. This was not an isolated lapse; in the course of his instructions Mr Singh consistently failed to act professionally. Mr Singh was conducting himself throughout his dealings with Ms Rao with no regard to his duties as a professional licence holder.
- [11] Second, there is no evidence Mr Singh either appreciates the gravity of his misconduct or that he has any intention to attain the standards expected of a professional person holding a licence under the Act in the future.
- [12] These circumstances require the public to be protected from Mr Singh presenting himself as a licensed professional in whom they can place confidence.
- [13] This Tribunal only has power to prevent the issue of a licence for a two-year period. However the legislation does allow the Authority to decline a licence indefinitely after taking into account disciplinary proceedings. Consequently, the long-term issues relating to licensing are appropriately addressed by the statute, but as a matter for the Authority rather than the Tribunal.
- [14] Accordingly, the Tribunal will record that if Mr Singh held a licence it would be cancelled, and will order that he may not reapply for any licence under the Act for a period of two years from the date of this decision.
- [15] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]:
- “... the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.”
- [16] The statutory purpose is achieved by considering at least four factors which materially bear upon maintaining appropriate standards of conduct:
- [16.1] Protecting the public: section 3 of the Act states “The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ...”
- [16.2] Demanding minimum standards of conduct: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) and *Taylor v General Medical Council* [1990] 2 All ER 263 (PC), discuss this aspect.
- [16.3] Punishment: the authorities, including *Z v Dental Complaints Assessment Committee*, emphasise that punishment is not the purpose of disciplinary sanctions. Regardless, there is an element of punishment that serves as a deterrent to discourage unacceptable conduct (*Patel v Complaints Assessment Committee* (HC Auckland CIV-2007-404-1818, 13 August 2007).
- [16.4] Rehabilitation: it is an important object to have the practitioner continue as a member of the profession practising well, when practicable (*B v B* HC Auckland HC4/92, 6 April 1993, [1993] BCL 1093).
- [17] Having already considered rehabilitation and found it is not a realistic objective at this point, I am satisfied that in addition to the prohibition on holding a licence, a financial penalty of \$3,000 is appropriate to achieve those objectives. The conduct was serious in terms of being delinquent disregard for professional obligations.

- [18] There are no mitigating factors identified, given the sustained nature of the misconduct and Mr Singh's failure to redress the issues with his client.
- [19] It has been a longstanding criticism of some professional disciplinary processes that they do not include jurisdiction to require a professional who is at fault to compensate the client. That often required a separate, and potentially expensive, second process.
- [20] The Act addresses that perceived shortcoming by providing that this Tribunal may require an adviser to refund fees and pay reasonable compensation when a complaint has been upheld.
- [21] Section 51 of the Act confers these powers using general language. The application of the power is relatively uncomplicated where the grounds on which the complaint has been upheld would establish a civil claim for breach of contract, negligence, or another tort; given the standard of proof before this Tribunal is no less than would be the case for bringing the claim in a civil proceeding. Accordingly, in such circumstances, the Tribunal will ordinarily apply the same principles as in a civil claim, including causation, quantum and the other principles that regulate entitlement.
- [22] Ms Rao is entitled to have the fees of \$1,480 she paid refunded; Mr Singh provided no services that met the standards required of him. Accordingly, it is not appropriate for him to retain any of the fees.
- [23] It is clear Ms Rao has been put to the expense of replacing personal documents, and she is entitled to be compensated for that. Her loss will be the time and trouble, and fees for the relevant authorities. I accept it is appropriate to treat this as a claim for general damages, and award damages of \$1,200 as compensation under this head.

Order

- [24] The Tribunal orders that Mr Singh:
- [24.1] Is censured.
- [24.2] Is prevented from applying for, or holding, any licence under the Immigration Advisers Licensing Act 2007 for a period of two years from the date of this decision.
- [24.3] Will pay a penalty of \$3,000 pursuant to section 51(1)(f) of the Act.
- [24.4] Will refund fees of \$1,480 to Ms Rao, pursuant to section 51(1)(h) of the Act.
- [24.5] Will pay compensation of \$1,200 to Ms Rao, pursuant to section 51(1)(i) of the Act.

DATED at WELLINGTON this 18th day of October 2012.

G D Pearson
Chair