

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

Decision No: [2012] NZIACDT 84

Reference No: IACDT 005/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Peter Cavanagh

Complainant

AND

**Barbara Bernadette Nassiep (aka
Parker)**

Adviser

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Complainant: In person

Adviser: In person

Date Issued: 18 October 2012

DECISION

Introduction

- [1] This complaint was upheld in a decision issued on 31 July 2012.
- [2] It concerned a complaint that Ms Nassiep failed to lodge visa applications for Mr Cavanagh competently. The first was late, and relied on the grounds that were bound to fail.
- [3] When Ms Nassiep became licensed, she did not go through the process for establishing a professional relationship, which included having a written agreement.
- [4] Ms Nassiep did not provide the professional support and service delivery Mr Cavanagh was entitled to expect. She then ended her practice and failed to refund him fees, or provide appropriate ongoing professional support. Further, during the last part of the time she was undertaking work illegally, as her licence had expired.
- [5] Ms Nassiep was not licensed during the whole time she was providing immigration services to Mr Cavanagh. This Tribunal only deals with the conduct of licensed immigration advisers, and what formerly licensed people did when they were licensed.
- [6] Accordingly this Tribunal could only deal with the second of the two applications, how Ms Nassiep progressed it, her failure to establish the professional relationship, and how she managed the termination of her practice and refund of fees when her licence lapsed.
- [7] The Tribunal found Ms Nassiep:
- [7.1] Failed to account for client funds of \$7,505.
 - [7.2] Failed to enter into a written agreement for the provision of professional services as required by the Code of Conduct.
 - [7.3] Lodged the second application without the required care and informed consent.
 - [7.4] Failed to make arrangements for professional support for Mr Cavanagh at the time her licence lapsed.
- [8] Beyond that, the issues were not for this Tribunal to determine.

The Parties' Positions on Sanctions

- [9] After the decision was issued, Ms Nassiep contacted the Tribunal by email dated 3 August 2012. She claims not to have been aware of the proceedings. If that occurred, it appears it was a result of Ms Nassiep failing to meet her professional obligations to maintain a current address, as the proceedings were properly served in accordance with the Act. The issue was discussed in the Tribunal's decision upholding the complaint.
- [10] Ms Nassiep was told by the Tribunal that she had the opportunity to provide submissions on the appropriate sanctions, or apply for a rehearing. She responded saying she had instructed her solicitor who would respond accordingly.
- [11] There has been no further communication from Ms Nassiep or her solicitor.
- [12] Mr Cavanagh did not make submissions on sanctions.

Decision

- [13] Serious issues arose prior to Ms Nassiep being licensed, and after her licence lapsed. I must put those issues to one side, as they fall outside the Tribunal's jurisdiction.

- [14] The grounds on which the complaint has been upheld do amount to a sustained failure to meet professional standards.
- [15] Ms Nassiep is not currently holding a licence, as it expired. The grounds on which this complaint was upheld are sufficiently serious to require the Tribunal to consider Ms Nassiep's entitlement to apply for, or hold, a licence.
- [16] 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 (HC).
- [17] 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".
- [18] I am left in no doubt Ms Nassiep should not be in a position of being entitled to be licensed and offer professional services to the public. As a minimum, she must be prevented from holding a full licence under the Act for an extended period.
- [19] The question is whether it would be appropriate to allow Ms Nassiep to practice with a provisional licence, which would allow her to practice under supervision.
- [20] I am satisfied that it is not appropriate to allow Ms Nassiep to hold any licence for two years, giving weight to the following factors:
- [20.1] Ms Nassiep's professional service delivery was clearly deficient; and while that in itself is manageable by supervision and mentoring;
- [20.2] Ms Nassiep was only licensed by demonstrating she understood the Code of Conduct, and its requirements. Given her knowledge, her failure to apply the Code to her existing relationship with Mr Cavanagh is concerning and indicates she has never accepted the responsibilities of professional practice. Three significant manifestations of that were evidenced by her failure to:
- [20.2.1] have a written agreement;
- [20.2.2] deal with the client funds she held by banking them appropriately; and
- [20.2.3] account for the unearned fees when her licence expired.
- These failures to comply with the Code put Ms Nassiep's integrity in issue. This was not simply an issue of lack of care; she held funds she had no entitlement to, did not bank them appropriately, and then left the country. These issues are not matters a supervisor should be left to address.
- [20.3] Ms Nassiep's lack of remorse, insight, or even willingness to engage with what is clearly a serious complaint, is significant. The gravity of the issues were made clear by this Tribunal's decision, and Ms Nassiep has done nothing more than express her concern about the consequences for her. This leaves the Tribunal with no confidence supervision and mentoring would result in changed attitudes and behaviour on the part of Ms Nassiep.
- [21] Given these elements, I am satisfied if Ms Nassiep held a licence it would have to be cancelled, and rehabilitation is not, at this point, a realistic option.

- [22] 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.
- [23] Accordingly, the Tribunal will record that if Ms Nassiep held a licence it would be cancelled, and will order that she may not reapply for any licence under the Act for a period of two years from the date of this decision.
- [24] 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.”
- [25] The statutory purpose is achieved by considering at least four factors which materially bear upon maintaining appropriate standards of conduct:
- [25.1] 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 ...”
- [25.2] 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.
- [25.3] 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).
- [25.4] 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).
- [26] 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 \$4,000 is appropriate to achieve those objectives. The conduct was serious in terms of being delinquent disregard for professional obligations, and the amount of fees not accounted for requires a penalty that has some proportion. While the penalty is substantially less than the fee, I am satisfied the prohibition on holding a licence and an order for a refund of the fee will in total achieve the deterrence required; particularly as there is no finding of dishonesty during the period Ms Nassiep was a licensed immigration adviser.
- [27] There are no mitigating factors identified, given the sustained nature of the misconduct and Ms Nassiep’s failure to redress the issues with her client or deal with this complaint.
- [28] Mr Cavanagh is entitled to have the fees of \$7,505 he paid refunded. Ms Nassiep provided no services that met the standards required of her, so it is not appropriate for her to retain any of the fees she received.

Order

- [29] The Tribunal orders that Ms Nassiep:
- [29.1] Is censured.
- [29.2] 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.

[29.3] Will pay a penalty of \$4,000 pursuant to section 51(1)(f) of the Act.

[29.4] Will refund fees of \$7,505 to Mr Cavanagh, pursuant to section 51(1)(h) of the Act.

DATED at WELLINGTON this 18th day of October 2012.

G D Pearson
Chair