

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

Decision No: [2013] NZIACDT 21

Reference No: IACDT 012/11

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**

Authority

**AND**

**Ionelia Maerean**

Adviser

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**DECISION  
(Sanctions)**

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**REPRESENTATION:**

**Complainant:** In person

**Adviser:** Mr G Riach, Harman's Lawyers, Christchurch

Date Issued: 28 March 2013

## DECISION

### Introduction

- [1] This matter was an “own motion complaint” presented by the Registrar pursuant to section 46 of the Act. It concerned a New Zealand-based adviser dealing with a potential migrant located outside New Zealand. The complaint was upheld in a decision dated 7 February 2013.
- [2] The same circumstances resulted in this complaint against Ms Maerean and Mr Sparks. Mr Sparks was the senior licensed immigration adviser and mentor in the practice where Ms Maerean worked.
- [3] There were two companies, Mr Sparks’ company in New Zealand (where Ms Maerean worked), and a company in the Philippines. The Philippines company is independent. However, the two companies worked together cooperatively, which was required for compliance with Philippines law.
- [4] The Philippines company had its employee (not a licensed immigration adviser) fill out all the relevant immigration paperwork, and had the client sign an agreement for Mr Sparks’ company to provide immigration services.
- [5] The New Zealand company first became aware of the client when the paperwork arrived, and Ms Maerean checked it and submitted it to Immigration New Zealand as a licensed immigration adviser. Mr Sparks and Ms Maerean first had contact with their client when he arrived in New Zealand from the Philippines to take up work. They met him in person when he arrived, not having previously had any form of direct communication.
- [6] The Authority investigated, and to put the matter briefly, complained that:
  - [6.1] Mr Sparks and Ms Maerean failed to act professionally in having Philippines colleagues provide immigration services, which should have been personally provided by a licensed immigration adviser.
  - [6.2] Mr Sparks created a false record, and Ms Maerean made false representations to Immigration New Zealand that she was acting for her client when, in fact, the Philippines company was undertaking the bulk of the immigration work.
  - [6.3] Mr Sparks was misleading in how he dealt with the Authority when it investigated, and Ms Maerean was a party to this.
- [7] The Tribunal concluded Ms Maerean failed to meet some of the requirements of the Act and the Code of Conduct; however, that was the result of her misunderstanding her obligations. The Tribunal has not found the allegations of intentional deception or wilful impropriety to be made out.

### Submissions on Sanctions

#### *The Authority*

- [8] The Authority referred to the accepted principles that apply to imposing sanctions in relation to professional disciplinary processes.
- [9] The appropriate sanctions were submitted to be that:
  - [9.1] Mr Sparks be required to undertake Module 10 of the Graduate Certificate in New Zealand Immigration Advice (Level 7) within a specified time; and a penalty of \$2,000.
  - [9.2] Ms Maerean is prevented from applying for a licence for two years unless she first completes the same training as Mr Sparks and also a penalty of \$2,000.

*Ms Maerean*

- [10] For Ms Maerean, her counsel emphasised the nature of the findings, in particular that they related to a failure to take care, rather than deliberate misconduct, and in the circumstances the Tribunal should regard the situation as requiring an educative rather than punitive response.
- [11] He said that a financial penalty was not required or appropriate, and there had already been significant cost in dealing with the complaint. Further that the complaint was based on more serious allegations than the elements of the complaint that were upheld. Ms Maerean submitted affidavit evidence, which was not challenged, though the Authority persisted with the more serious allegations.
- [12] Ms Maerean has decided not to renew her licence.

**Discussion**

- [13] I am satisfied Ms Maerean's situation is significantly different from Mr Sparks. Ms Maerean was in a position where I am satisfied she appropriately relied substantially on Mr Sparks for professional mentoring. She held a limited licence, and was employed in the practice Mr Sparks conducted.
- [14] It is true Ms Maerean completed a declaration on a form which was not accurate. However, the finding is she did so believing it was correct. The Tribunal specifically found "it [was] an understandable situation where a less experienced person [was] working with a mentor, who himself [had] misunderstood the requirements."
- [15] I accept the submission Ms Maerean's counsel had made that the complaint was put forward on a much more serious basis than was established. The Authority's complaint was that a false paper trail was created to hide unprofessional conduct that was a very serious allegation.
- [16] I am also conscious the complaint has had a serious adverse effect on Ms Maerean, and she had decided not to renew her licence as a result of the complaint. That outcome is disproportionate to the adverse findings.
- [17] A financial penalty would be appropriate for the complaint. However, the serious allegations that were not established have had a serious effect on Ms Maerean. For that reason there will be no financial penalty, my view in that regard is reinforced by my view that Ms Maerean should have consequences that are significantly different from Mr Sparks who was the senior professional and must take primary responsibility.
- [18] I accept it is appropriate that Ms Maerean undertake professional development if she wishes to apply for another licence, however I do not accept the Authority's submission that she should do so before a licence is issued. Such a direction would be harsher than what the Authority urges for Mr Sparks who would continue to hold a licence while undertaking training.
- [19] What the requirements are for the issue of any category of licence Ms Maerean may apply for from time to time is not a matter for this Tribunal.
- [20] I am however satisfied it would be appropriate to direct that if Ms Maerean is entitled to a licence, she should within 18 months complete Module 10 of the Graduate Certificate if that is not a condition for the issue of the licence.
- [21] This direction is not intended as a punishment. Rather the Tribunal would encourage Ms Maerean to complete the Graduate Certificate in full should she wish to return to practising; that would ensure she has the skills and qualifications to practise with confidence. The findings against her should not be regarded as in any way indicating she does not have the qualities required, or the opportunity, to return to practice should she wish to do so.

**Decision**

- [22] In the event of Ms Maerean being issued with a licence under the Act within two years from the date of this decision she must (unless she had already done so):
- [22.1] Enrol and actively pursue a course of study for Module 10 of the Graduate Certificate in New Zealand Immigration Advice (Level 7) as soon as practicable; and
- [22.2] Meet the requirements for successful completion of that module as soon as practicable.
- [23] The Tribunal reserves leave for Ms Maerean or the Authority to apply for any necessary or appropriate amendments to the preceding order, in the event there are changes to the training opportunities, or if is necessary to give a direction as to what is practicable in the circumstances from time to time.
- [24] Ms Maerean should appreciate that if she were to practice in breach of the requirements set out, such conduct may have professional disciplinary consequences.

**DATED** at WELLINGTON this 28<sup>th</sup> day of March 2013

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**G D Pearson**  
Chair