

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

Decision No: [2013] NZIACDT 22

Reference No: IACDT 013/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

AND

Lindsay Sparks

Adviser

**DECISION
(Sanctions)**

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 Mr Sparks and also Ms Maerean. Mr Sparks was the senior licensed immigration adviser and mentor in the practice where he and Ms Maerean worked.
- [3] There were two companies, Mr Sparks’ company in New Zealand, 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 Mr Sparks failed to meet some of the requirements of the Act and the Code of Conduct; however that was the result of him misunderstanding his obligations. The Tribunal has not found 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 be 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.

Mr Sparks

- [10] For Mr Sparks, his 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. Mr Sparks submitted affidavit evidence, which was not challenged, though the Authority persisted with the more serious allegations.

Discussion

- [12] I am satisfied Ms Maerean's situation is significantly different from Mr Sparks. Ms Maerean was in a position where she, appropriately, relied substantially on Mr Sparks for professional guidance. She held a limited licence, and was employed in the practice Mr Sparks conducted.
- [13] It is true Ms Maerean completed a declaration on a form that 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 [(Mr Sparks)], who himself [had] misunderstood the requirements".
- [14] The sanctions imposed on Ms Maerean have been limited to training after she gains a new licence, if she chooses to apply for a new licence. She has not renewed her licence, and at present does not intend to.
- [15] The Tribunal has found Mr Spark's was not sufficiently careful in ensuring his practice complied with the requirements of the Code. As the senior licensed immigration adviser in his practice, and effectively the proprietor, he was responsible for ensuring he understood the requirements of the Act and the Code, and applied them correctly. In addition to the obvious public interest elements in proper compliance, Mr Sparks ought to have been mindful of his obligations to Ms Maerean as colleague who placed reliance on him.
- [16] I am satisfied it is appropriate to apply a financial penalty to mark the importance of ensuring strict compliance with the Code, and the Act. However, it should be limited as I have regard to the fact the adverse finding was lack of care, not intentional wrong doing.
- [17] Further, I accept the submission Mr Sparks' counsel has 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. It has been costly to deal with that aspect of the complaint.
- [18] Having regard to these factors, I consider that in this particular case a penalty of \$1,500 is appropriate.
- [19] Mr Sparks will also be censured.
- [20] I also accept it is appropriate that Mr Sparks undertake professional development of the kind suggested by the Authority.
- [21] The direction regarding training is not intended as a punishment. Rather the Tribunal would encourage Mr Sparks to consider the value of the Graduate Certificate in full. It is a professional qualification that is of real value and provides insight and knowledge that is not necessarily gained from day to day practice.

Decision

- [22] Mr Sparks is censured.

[23] He is ordered to pay a penalty of \$1,500.

[24] Mr Sparks is required:

[24.1] As soon as practicable to enrol and actively pursue a course of study for Module 10 of the Graduate Certificate in New Zealand Immigration Advice (Level 7); and

[24.2] Shall meet the requirements for successful completion of that module as soon as practicable.

[25] The Tribunal reserves leave for Mr Sparks 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.

[26] Mr Sparks should appreciate that if he were to practice in breach of the requirements set out, such conduct may have professional disciplinary consequences.

DATED at WELLINGTON this 28th day of March 2013

G D Pearson
Chair