

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

Decision No: [2013] NZIACDT 39

Reference No: IACDT 031/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Michael Nicholson and Kathryn Jozsa

Complainants

AND

Marion Chase-Seymour

Adviser

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Complainants: In person

Adviser: In person

Date Issued: 26 June 2013

DECISION

Introduction

- [1] This complaint was upheld in a decision issued on 11 April 2013.
- [2] Mr Nicholson and Ms Jozsa, the complainants, wished to migrate to New Zealand. They sought professional assistance from Ms Chase-Seymour who is a licensed immigration adviser.
- [3] Ms Chase-Seymour advised them they were eligible to gain residence in New Zealand, they engaged her to assist with that process.
- [4] In fact, the basis on which Ms Chase-Seymour advised them they could seek residence was wrong, and in their circumstances they could not expect to be eligible to gain residence. There were other possibilities that could have been pursued. However, such alternative avenues required either an appropriate offer of employment being obtained or recognition of Ms Jozsa's qualifications.
- [5] Aside from the wrong advice, Mr Nicholson and Ms Jozsa's complaint also concerned the quality of Ms Chase-Seymour's professional service, including inadequate communication, and the loss of personal documents.
- [6] The complaint was upheld in respect of the failure to provide appropriate and professional advice regarding Mr Nicholson and Ms Jozsa's immigration opportunities, and then proceeding with an application that could not succeed.

The parties' position on sanctions

- [7] Mr Nicholson and Ms Jozsa sought a full refund of the fees and disbursements paid, being \$3,460, and compensation for medical fees of \$1,088 which were lost due to the failed application. They also sought compensation for the original qualification certificates lost by Ms Chase-Seymour.
- [8] They also sought compensation for stress following Ms Chase-Seymour's breach of her obligations.
- [9] Mr Nicholson and Ms Jozsa also questioned whether Ms Chase-Seymour's licence should be cancelled. They pointed to her having previously been subject to a complaint that had been upheld, and they were of the view that she was incompetent and still lacked understanding of her incompetence.
- [10] Ms Chase-Seymour produced material relating to a client who was satisfied, and an example of work they say she performed competently.
- [11] Ms Chase-Seymour also challenged the finding against her on this complaint. In effect, the main thrust of Ms Chase-Seymour's submission was that she had examples of clients who were in a hopeless position, and she had been able to achieve successful results.
- [12] Ms Chase-Seymour did not address the finding against her, namely that she had failed to inform her clients of their true immigration opportunities and then proceed on informed instructions.

The sanctions imposed on this complaint

Penalty and remedial training

- [13] In terms of the gravity of the complaint, Ms Chase-Seymour's failure to give her clients adequate and proper advice regarding their immigration prospects was a serious failure. Clients, who are embarking on life altering decisions in relation to immigration, are entitled to

be informed accurately of their true immigration prospects. Ms Chase-Seymour failed to do that; she embarked on a course of action that was ill-conceived and the outcome was that it failed.

- [14] I accept that Mr Nicholson and Ms Jozsa correctly identify that the findings are consistent with Ms Chase-Seymour failing to appreciate her professional obligations.
- [15] Ms Chase-Seymour's response to the findings against her do not exhibit contrition, insight or any other response that indicates she now appreciates where she failed in her professional obligations.
- [16] However, I am not satisfied that this matter on its own is of sufficient gravity to require suspension, or cancellation of Ms Chase-Seymour's licence. Nonetheless, this complaint is one of three that the Tribunal has upheld against Ms Chase-Seymour.
- [17] Each of the three complaints is different in character. Accordingly, in my view each complaint should be subject to sanctions that are determined on the issues relating to that complaint alone.
- [18] In respect of this complaint, my view is the penalty should be financial, and Ms Chase-Seymour should be required to undertake appropriate training and, unless she does so, her license should be suspended.
- [19] However, in relation to one of the other complaints an order has been that Ms Chase-Seymour's licence is cancelled. Accordingly I will make the order requiring remedial training, but it will only take effect if the order cancelling Ms Chase-Seymour's license is set aside.
- [20] I am satisfied the appropriate financial penalty is \$2,500, which takes account of Ms Chase-Seymour's overall circumstances, in particular that she has had her licence cancelled in relation to another complaint. A higher penalty would be appropriate if that were not the case. The deficiency in the advice given and the predictable consequences were serious. The lack of concern and contrition leave little to mitigate the conduct.

Compensation and refund of fees

- [21] Ms Chase-Seymour failed to give Mr Nicholson and Ms Jozsa proper advice on what their immigration prospects were, and then lodged an application, which essentially had no prospect of success; the application subsequently failed.
- [22] Accordingly, Mr Nicholson and Ms Jozsa were induced into agreeing to pay fees as they did not have the essential information required to make an informed decision as to whether to proceed with the engagement. The work produced nothing of value. They are entitled to have the fees they paid, including disbursements, refunded in full. They are also entitled to compensation for the cost of medical examinations that had to be repeated, the amount is \$1,088.
- [23] Accordingly there will be orders for:
 - [23.1] The refund of fees and compensation for disbursements of \$3,460, and
 - [23.2] Compensation for medical fees of \$1,088.
- [24] As there was no adverse finding in relation to the loss of documents, there can be no order made for compensation in respect of that issue.
- [25] I am not satisfied this is a case where a claim for damages to compensate for stress and inconvenience is appropriate. Generally, any professional failing that results in a complaint being upheld will involve stress and inconvenience for a client. The Act does not suggest that as a matter of routine compensation should be awarded, though there are particular cases where compensation may be appropriate.

Order

- [26] The Tribunal orders that Ms Chase-Seymour:
 - [26.1] Is censured.
 - [26.2] Will pay a penalty of \$2,500 pursuant to section 51(1)(f) of the Act, in respect of this complaint.
 - [26.3] The complainants are to be paid by Ms Chase-Seymour:
 - [26.3.1] A refund of fees and compensation for disbursements of \$3,460 in total; and
 - [26.3.2] Compensation for medical fees of \$1,088.
 - [26.4] Any licence held under the Act by Ms Chase-Seymour 12 months after the issue of this decision will be suspended at that time, and she will be prevented from applying for any licence for a period of two years from that date **unless or until** she has:
 - [26.4.1] Paid the financial penalty imposed in this decision, and in addition, either:
 - [26.4.1.1] Successfully completed Modules 1, 2 and 10 of the Bay of Plenty Polytechnic 'Continuing Professional Development in New Zealand Immigration Advice' Course.
 - Or
 - [26.4.1.2] Met the requirements to be issued a Graduate Certificate in New Zealand Immigration Advice Level 7.
 - [26.5] The Tribunal reserves leave for Ms Chase-Seymour to apply for any necessary or appropriate amendments to the immediately preceding order, in the event there are changes to the professional development modules, the graduate certificate or the range of training available.
- [27] The Tribunal notes Ms Chase-Seymour's licence has been cancelled by order of this Tribunal in relation to a different complaint. The orders made in the present complaint do not affect that order. In particular, the orders in paragraph [26.4] above do not create any right for Ms Chase-Seymour to apply for a licence if another order of this Tribunal prohibits her applying for a license under the Act at the material time.
- [28] There has been no application for an order for payment of the costs and expenses of the inquiry, so no such order is made.

DATED at WELLINGTON this 26th day of June 2013

G D Pearson
Chairperson