

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

Decision No: [2014] NZIACDT 106

Reference No: IACDT 39/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Vasanthi Somlu

Complainant

AND

Richard Uday Prakash

Adviser

DECISION
IMPOSITION OF SANCTIONS

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: Noel King, solicitor, King Law, Auckland

Date Issued: 2 October 2014

DECISION

This complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Mr Prakash in [2014] NZIACDT 68. The circumstances are set out fully in the decision upholding the complaint (which can be located on the Ministry of Justice website: www.justice.govt.nz).
- [2] The grounds on which the complaint was brought was that Mr Prakash:
- [2.1] Asked for, and accepted, a deposit of \$2,000, and did so improperly as he had not first completed the client engagement process in relation to setting out fees, disclosure or a written agreement.
 - [2.2] Later he drafted a defective agreement and failed in other respects to complete the client engagement process properly.
 - [2.3] Did not issue invoices for all the fees paid.
 - [2.4] Did not return documents when asked.
- [3] The grounds on which the Tribunal upheld the complaint were that Mr Prakash failed to initiate the client engagement properly and failed to return documents. They are obligations imposed by clauses 1.5(a), (b), 8(c), (d) and 1.3(b) of the Code of Conduct. The Tribunal did not uphold the complaint in relation to invoices.
- [4] The full circumstances are set out in the substantive decision.

The Parties' Positions on Sanctions

- [5] The parties did not present submissions.

Discussion

The principles to apply

- [6] 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.
- [7] When imposing sanctions those statutory purposes require consideration of at least four factors which may materially bear upon maintaining appropriate standards of conduct:
- [7.1] *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 ..."
 - [7.2] *Demanding minimum standards of conduct*: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) and *Taylor v General Medical Council* [1990] 2 AC 539; [1990] 2 All ER 263 (PC) discuss this aspect.
 - [7.3] *Punishment*: The authorities, including *Z v Dental Complaints Assessment Committee*, emphasise that punishment is not the purpose of disciplinary sanctions. Regardless, punishment is a deterrent and therefore a proper element of disciplinary sanctions (*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007).
 - [7.4] *Rehabilitation*: It is important, when practicable, to have the practitioner continue as a member of the profession practising well (*B v B* [1993] BCL 1093; HC Auckland HC4/92, 6 April 1993).

Two complaints

- [8] This complaint is one of two. In relation to another, unrelated complaint, the Tribunal cancelled Mr Prakash's licence and issued an order prohibiting him from applying for a licence for a period. Neither of the two present matters is serious enough to justify the Tribunal exercising the power under section 51 of the Act to impose a further period during which Mr Prakash cannot apply for a licence.
- [9] Each of the two current complaints involved an independent course of conduct on Mr Prakash's part. This is not a case where there is effectively one transaction resulting in two complaints.
- [10] Within each of the two complaints, there are overlapping elements of unprofessional conduct. I have taken each complaint as a single series of events and imposed a penalty appropriate to the single course of conduct. Some of the findings reflect overlapping provisions of the Act and the Code of Conduct. Accordingly, it is not appropriate to regard each finding as necessarily adding to the totality of the wrongdoing.

The financial penalty on this complaint

- [11] Mr Prakash's conduct in this matter was significant in that he failed to complete documentation to establish a professional relationship in accordance with the Code of Conduct. That led to conflict over Mr Prakash's duties, and he eventually refused to undertake work for his clients. He behaved with a sense of entitlement that was highly inappropriate, given he knew or ought to have known he had wholly failed to commence a professional relationship with his clients in accordance with the Code. In respect of retaining documents however, the finding is that there were a few days of delay in returning the documents. The finding was simply of delayed compliance, not failure to comply. Accordingly, the professional offending is not at the lowest level, but it is in the low to mid range.
- [12] Mr Prakash is no longer in the profession, and can only return if he satisfies the Registrar that, notwithstanding his professional disciplinary history, he is fit to hold a licence (section 17 of the Act). Accordingly, the sanctions do not need to focus on rehabilitation and protection of the public. It is sufficient to impose a penalty that is proportionate as a deterrent.
- [13] In these particular circumstances I am satisfied a financial penalty of \$2,000 is a proportionate punishment.

Refund of fees

- [14] The Tribunal will order Mr Prakash to repay the fees he received in full. As he did not complete the client engagement process, he deprived his client of the opportunity of giving informed consent to purchasing the services. The defective documentation also resulted in a lack of clarity regarding what Mr Prakash was obliged to do. The order will be made for a refund of \$3,200, the precise quantum is in dispute (Mr Prakash says he invoiced fees of \$3,087.50). However, any excess is a modest addition to account for the delay in refunding the fees.

Costs and Expenses

- [15] Neither the Registrar nor the complainant sought costs, so there is no order.

Censure

- [16] In accordance with the usual practice of disciplinary tribunals, censure will be an express sanction. It is appropriate to make that finding where conduct is not a mere lapse from minimum standards.

Decision

- [17] Mr Prakash is:
- [17.1] Censured.

[17.2] Ordered to pay the sum of \$3,200 to the complainant.

[17.3] Ordered to pay a penalty of \$2,000.

DATED at WELLINGTON this 2nd day of October 2014

G D Pearson
Chair