

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

Decision No: [2014] NZIACDT 107

Reference No: IACDT 10/13

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Chandra Kanta

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] NZIACTD 64. 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 Tribunal found the material supporting the complaint established:
- [2.1] The original written agreement governing Mr Prakash's professional engagement did not comply with the Code and he did not take steps to comply after getting a licence;
 - [2.2] There was no written agreement when Mr Prakash accepted instructions to apply for a residence visa;
 - [2.3] Mr Prakash undertook some additional work, again with no written agreement;
 - [2.4] Mr Prakash then attempted to recover interest and collection costs on top of fees.
- [3] The Tribunal accordingly found Mr Prakash breached his professional duties to:
- [3.1] Have a written agreement covering all the professional services provided (clause 1.5(a), (b), (d) and (e) of the Code of Conduct 2010).
 - [3.2] Set out the costs of those services in advance (clause 8(b), (c) and (d) of the Code). He also claimed interest and collection costs, which were not fair or reasonable, and accordingly he breached his duties in relation to setting fees (clause 8(a) of the Code).
 - [3.3] Issue accurate invoices and in doing so breached his duties in relation to maintaining professional business practices (clause 3 of the Code).
- [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. The Tribunal in relation to another complaint 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, and imposing 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 current 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, and then engaged in improper conduct in which he sought to recover money he could not properly claim. He behaved with a sense of entitlement that was highly inappropriate, given he knew or ought to have known he had failed to commence and perform his engagement in accordance with the Code.
- [12] Mr Prakash is excluded from the profession, and could 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 proportionate, given the order the Tribunal will make that Mr Prakash refund fees he took in full.

Refund of fees

- [14] The Tribunal will order Mr Prakash to repay the fees he received. He did not complete the client engagement process, and accordingly deprived his client of the opportunity to make an informed decision to purchasing the services. Further, the defective documentation resulted in a lack of clarity regarding what Mr Prakash was obliged to do. The order is to refund \$5,790, the full amount of the fees. While Mr Prakash performed some services for the payments, his client did not have the protection she was entitled to under the Code of Conduct 2010. She was entitled to know what services Mr Prakash would provide so she could agree to the terms on an informed basis. Mr Prakash put the complainant to considerable trouble and expense because of his failure to comply with the Code and did not have a proper basis to accept the fees he received.

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 \$5,790 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