

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

Decision No: [2014] NZIACDT 112

Reference No: IACDT 55/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Sunitha Varghese Kuttikkatt

Complainant

AND

Glen William Standing

Adviser

DECISION
IMPOSITION OF SANCTIONS

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: In person

Date Issued: 14 October 2014

DECISION

This Complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Mr Standing in [2014] NZIACDT 40.
- [2] The complainant engaged Mr Standing to apply for residence visas for her and her family, but the adviser did not complete the process. This Tribunal cancelled his licence due to an unrelated complaint. The adviser did not tell the complainant what had happened, refund the fees he had taken in advance or arrange for ongoing representation.
- [3] The Tribunal found Mr Standing had breached the following provisions in the Licensed Immigration Advisers Code of Conduct 2010 (the Code); clause 1(c), 3(b) and 3(d).
- [4] The circumstances are set out in the substantive decision.

The Parties' Positions on Sanctions

The Authority

- [5] The Authority did not make any submissions on sanctions.

The complainant

- [6] The complainant sought compensation and the refund of fees amounting to a total of \$23,640.
- [7] The fees amounted to \$7,400, and in addition, a migrant levy of \$1,240 included in the funds Mr Standing held for the complainant.
- [8] The remainder included general damages for stress and other consequences; and she referred to specific losses of \$4,500 for training, and \$15,000 for loss of income, to which she says Mr Standing caused or contributed.

Mr Standing

- [9] Mr Standing did not make any submissions.

Discussion

The principles to apply

- [10] 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.
- [11] When imposing sanctions those statutory purposes require consideration of at least four factors which may materially bear upon maintaining appropriate standards of conduct:
 - [11.1] *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 ...”
 - [11.2] *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.
 - [11.3] *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).

- [11.4] *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).

Absence of significant mitigating factors

- [12] There is little or no mitigation. Mr Standing has not taken responsibility for his conduct in any way.

Mr Standing's licence

- [13] Mr Standing has a lengthy history of professional offending. He has previously had his licence cancelled. To reapply successfully for a licence would require him to satisfy the Registrar he meets the statutory requirements. If he applied for a licence, Mr Standing would face the effect of section 17(b) of the Act, which allows the Registrar to take account of Mr Standing's history of professional offending when deciding if he is fit to hold a licence.
- [14] Mr Standing's disciplinary history includes systematic dishonesty. This complaint is another example of him failing to account for client funds; in short, his failure to properly end the professional engagement and refund unearned fees amounts to misappropriation of funds that he was required to hold in trust. Mr Standing had to bank unearned fees in a separate account, and he has been unable to produce the fees.
- [15] Accordingly, while the Tribunal would make an order preventing Mr Standing applying for a licence for two years, the order is unnecessary. The existing orders have already removed Mr Standing from the profession; readmission will only occur if he meets the notoriously high threshold for readmission applying after systematic dishonesty.

The financial penalty on this complaint

- [16] Mr Standing's conduct in this matter was serious; he has failed to account for and refund money he held as client funds.
- [17] Failing to account for funds held on trust is a serious breach of duty. The financial penalty will be \$7,500. The figure is proportionate to the offending. It is in the upper range of the maximum of \$10,000. There is no justification for failing to account for money that should have been in a separate bank account, and Mr Standing has offered none.

Compensation

- [18] The complainant seeks compensation.
- [19] The Tribunal has discretion in relation to awarding compensation, but generally applies standard legal principles relating to rights to recover when deciding whether to make an order.
- [20] The foundation of the claim for compensation is problematic. The professional offending does not necessarily have a causative link with all of the losses the complainant claims.
- [21] The complainant paid \$9,500 to Mr Standing. He submitted a successful skilled migrant application, which allowed the complainant to travel to New Zealand and seek employment.
- [22] Mr Standing also promised job search services, which he linked with the immigration services. Part of the linkage was that he promised a full refund if the complainant obtained work successfully and did not then get a residence visa. Accordingly, I am satisfied all of the fees paid were related to Mr Standing's immigration practice and it is appropriate to take account of the whole of the fees and services provided.
- [23] The Statement of Complaint identifies that on 1 August 2011 the complainant received a visa allowing her to come to New Zealand and obtain work. Some two weeks later on 15 August 2011 this Tribunal cancelled Mr Standing's licence.

- [24] The complainant came to New Zealand, gained full time employment in June 2012 and permanent residence in July 2012. Accordingly, her migration was successful.
- [25] Mr Standing at the time he lost his licence should have facilitated the complainant to engage another adviser, and accounted for the money he held. Given he had elected to promise a full refund if the complainant did not gain residence, that should have potentially included all of the funds he received as the complainant had not gained residence by that point. It certainly included all the unearned fees and unexpended disbursements.
- [26] As matters transpired, although she had no assistance from Mr Standing, the complainant did eventually gain qualifying work, and permanent residence.
- [27] Accordingly, the obvious losses are:
- [27.1] Any harm from the lack of support after Mr Standing no longer provided services;
- [27.2] The cost of any further professional assistance and disbursements (or a refund for services not provided if the complainant completed the work herself).
- [28] The most straightforward element of the claim is the residency fee of \$1,400 and migrant levy fee of \$300, which it appears, were unexpended disbursements included in the fees taken by Mr Standing¹. Ultimately, the complainant did obtain residence; accordingly, in relation to fees a portion representing the value of the uncompleted work is refundable. Neither the complainant nor Mr Standing provided a principled basis for quantifying the refund. Given the Tribunal's understanding of the work involved, Mr Standing delivered more than half of the agreed immigration service when the engagement terminated. However, Mr Standing had also promised assistance with seeking employment as part of his service, and the consequences of him not delivering that is the causal basis for most of what the complainant claims.
- [29] I consider the employment services offered were an integral part of Mr Standing's offer to his client, and accordingly fall within the scope of the complaint. However, the material before me does not establish that the failure to deliver those services resulted in the losses the complainant claims. I do accept the complainant paid a substantial amount of money, and Mr Standing had an obligation to deliver critical relocation support. She reasonably complains the failure of that support structure caused financial stress, and to a greater or lesser extent may have hampered her search for employment. However, relocating to another country and taking time to gain optimal employment is far from exceptional and the complainant could have sought assistance from an alternative employment search provider. Indeed, the agreement sets out that the inability of the client to gain suitable employment within their preferred time frame will not result in a refund of fees, the time taken to gain employment was clearly at the client's risk.
- [30] I now apply those considerations to the claim. Given the failure to provide critical relocation services, and part of the immigration service, I am satisfied a reasonable estimation of the refund of fees is two thirds of the total of \$7,400, being \$4,933. There will be no order for interest. Mr Standing is currently an undischarged bankrupt. As this order post-dates his adjudication, the existing bankruptcy does not discharge the order. However, I do not consider it appropriate to award interest relating back prior to the adjudication, or for the period prior to discharge. However, when the complainant registers this order in the District Court, any issues relating to interest will be a matter of law applied to the judgment of the District Court from that point.
- [31] I am not satisfied the complainant's cost of retraining or taking time to gain optimal employment, given the option of alternative service providers has a causal nexus with Mr Standing's professional offending. However, I am satisfied Mr Standing did leave his client in an invidious position, and did so delinquently, given the vulnerability of a person migrating to a new country. Accordingly, this aspect of the compensation will be limited to an award in the nature of general damages for the disruption, and distress caused by the failure to provide services, or arrange for continuing support.
- [32] The Tribunal does not simply award such compensation as a matter of routine, as it becomes little more than an additional penalty. Virtually any failure to maintain professional standards

¹ The figures are taken from the Statement of Complaint. The complainant provided a figure of \$1,240 for the residency fee.

results in stress and disappointment for consumers. I am, however, satisfied the particular circumstances of this complaint went beyond the usual. An award of \$3,000 is appropriate under section 51(1)(i) to recognise the distress caused by Mr Standing's conduct, and the disruption to the complainant's relocation.

[33] Accordingly, the compensation will be \$9,633 in total comprising:

[33.1] Disbursements not refunded \$1,700,

[33.2] Refund of fees for services not provided \$4,933,

[33.3] Compensation for distress and disruption of \$3,000.

Costs and Expenses

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

Censure

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

Decision

[36] Mr Standing is:

[36.1] Censured,

[36.2] Ordered to pay a penalty of \$7,500.

[36.3] Ordered to pay the complainant \$9,633.

DATED at WELLINGTON this 14th day of October 2014

G D Pearson
Chair