

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

Decision No: [2014] NZIACDT 114

Reference No: IACDT 005/13

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Inderpal Saul

Complainant

AND

**Genoveva Evelyn (Gennie) Ramos (Sta
Maria)**

Adviser

DECISION
IMPOSITION OF SANCTIONS

REPRESENTATION:

Registrar: In person

Complainant: Tuariki Delamere, TDA Immigration and Student Services Ltd, Auckland

Adviser: In person

Date Issued: 21 October 2014

DECISION

This Complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Ms Ramos (refer decision *Saul v Ramos* [2014] NZIACDT 48; www.justice.govt.nz).
- [2] The complainant engaged Ms Ramos to assist with migrating to New Zealand. She entered an agreement with the complainant that contemplated first a student visa, followed by work and residence visas. Immigration New Zealand issued the student visa. The visa sticker in the complainant's passport contained an error as it allowed a date of arrival in New Zealand that was significantly later than the date contemplated as the extent of the permitted stay in New Zealand.
- [3] The complainant had some difficulties and Ms Ramos sought a work visa just before his student visa expired; the application failed. When the student visa expired, she made further applications, under a provision allowing persons with an expired visa to seek discretionary relief.
- [4] Ms Ramos led the complainant to believe his visa did not expire until the later of the two dates in the visa sticker; in fact, it expired on the first of the two dates.
- [5] Ms Ramos did not prepare a new or amended written agreement to deal with the applications following the complainant's visa expiring, and the original agreement did not cover that work.
- [6] Ms Ramos took \$2,000 from a fund deposited with her by the complainant for tuition fees. She used the funds to pay fees she claims were owed to her, when there was a dispute over fees and she had no agreement setting out what fees were owed. She has, however, since repaid the money.
- [7] The Tribunal determined Ms Ramos gave unsatisfactory advice, failed to enter a new written agreement, and used funds for an unauthorised purpose. Accordingly, she breached clauses 1.1(a), 1.5 and 4(c) the Code of Conduct.
- [8] The full circumstances are set out in the substantive decision.

The Parties' Positions on Sanctions

- [9] The parties did not provide submissions on sanctions after the decision. However, the initial complaint did seek a refund of fees and compensatory and exemplary damages.

Discussion

The gravity of the professional offending

- [10] This decision largely turns on the gravity of the professional offending. That principally concerns the use of client funds for a purpose other than the purpose authorised. There is no doubt Ms Ramos did take funds that she held as client funds to pay for tuition, for her own fees. Significantly, she was aware there was a dispute over the fees when she took the funds.
- [11] To Ms Ramos's credit, she was open with her client, and the Tribunal about what she did. I am prepared to infer from that she acted in ignorance rather than dishonestly. If that were not the case, it would be close to inevitable that the Tribunal would exclude Ms Ramos from the profession. The Tribunal has given Ms Ramos the benefit of the doubt. Taking a client's money for your own purposes is simple dishonesty, and the Tribunal treats it that way.
- [12] The lack of care and the failure to document her engagement properly are significant matters also.

Training

- [13] I have considered cancelling Ms Ramos' full licence and only permitting her to hold a provisional licence and practice under supervision. However, my view of the circumstances in which the unauthorised use of funds occurred, do not make such an order necessary. Further, the Registrar has not provided grounds that suggest it is necessary in the public interest to make such an order. However, the Tribunal will include orders that ensure Ms Ramos is committed to rehabilitating herself, and putting her practice in order.
- [14] I have determined the appropriate course is to require Ms Ramos' to undertake training. She will be required to complete a Bay of Plenty Polytechnic course. The course is now the standard required for entry to the profession.

The financial penalty on this complaint

- [15] Taking account of the other aspects of the sanctions, and importantly my conclusion that Ms Ramos dealt improperly with client funds in ignorance, the financial penalty will be \$4,000.
- [16] A penalty of \$4,000 is a mid-range penalty, the scale of financial penalties being up to \$10,000. I do not consider a lesser penalty adequately marks the gravity of improperly using client funds. Ms Ramos had an obligation to understand her duties relating to client funds. She did not, and that is an issue of significant concern to the Tribunal.

Compensation and the refund of fees

- [17] The complainant sought a refund of the fees and disbursements paid to, and taken by Ms Ramos. She has already refunded the \$2,000 taken without authority. The balance is a further \$2,000.
- [18] Given the findings of unprofessional conduct in dealing with her instructions, I am satisfied it is reasonable to require the adviser to refund all of the fees she received. Her lack of care and diligence, and her unprofessional conduct deprived the work she did of value to the complainant. A full refund is reasonable. Accordingly, there will be an order for the refund of the \$2,000 the complainant paid originally.
- [19] He also sought compensation. It is necessary to relate a claim for compensation to losses with a causative nexus to the findings of professional offending.
- [20] Ms Ramos' conduct put the complainant to considerable trouble because she gave incorrect advice. That affected his status of being in New Zealand lawfully, and elements of her conduct were unprofessional.
- [21] However, the Tribunal does not award compensation as a matter of routine, as that becomes little more than an additional penalty. Virtually any failure to maintain professional standards results in stress and disappointment for consumers. However, I am satisfied the particular circumstances of this complaint go beyond that. In particular, the service delivery involved lack of care and diligence, and also unprofessional conduct. That put the complainant into a difficult position. He had to get assistance from an alternative licensed immigration adviser, and while difficult to quantify, it clearly involved significant work. As he was in New Zealand unlawfully the complainant had to explain his circumstances to Immigration New Zealand, before he could attempt to have his affairs put in order. In addition to the financial cost, there was clearly a great deal of distress and concern. Ms Ramos exacerbated the latter elements making an unprofessional attack on the complainant's integrity. The compensation for the financial costs of remediating his situation, and the distress and concern resulting from her conduct, will be an award of \$3,000. The amount is not precisely quantified due to the nature of the harm, however, I am satisfied that a total award of \$3,000 for the refund of fees and compensation is a reasonable measure. The cost of dealing with the fact the complainant was in New Zealand unlawfully has added significantly to the complexity of his immigration situation, and accordingly the costs of representation.

Costs and Expenses

- [22] The complainant sought costs of having his new licensed immigration adviser lodge the complaint. The material prepared was extensive, and clearly, a substantial amount of work

was required. I am satisfied a figure of \$2,500 is appropriate as a contribution to the costs, given the submissions, and material collated in support of the complaint.

- [23] The Registrar did not seek costs, and accordingly there will be no award in favour of the Registrar.

Censure

- [24] 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.

Direction to remedy deficiency

- [25] For the reasons I have expressed, the Tribunal will allow Ms Ramos to continue in practice on her own account. However, the Tribunal is doing so as a matter of trust with the expectation she will undertake the training to ensure she demonstrates competence and understanding of professional standards.

- [26] Meeting professional responsibilities when a licensed immigration adviser is providing services to the public on their own account is essential. Ms Ramos must discharge the obligations arising out of this complaint; until she does so, and completes the training requirements, there is a deficiency.

- [27] The Tribunal pursuant to section 51(1)(b) of the Act, now specifies periods within which Ms Ramos must remedy the respective deficiencies. **The Tribunal gives Ms Ramos notice she must demonstrate to the Registrar she has complied with the orders in this decision within the specified periods, or section 51(4) of the Act will have the effect of cancelling her licence.** The specified periods are:

[27.1] Ms Ramos must pay the complainant \$7,500 (being the refund of fees, compensation and costs) within 28 days of this decision.

[27.2] She must pay the penalty of \$4,000 within 60 days of this decision.

[27.3] She must, as soon as practicable, enrol in the Bay of Plenty Polytechnic course: for a Graduate Certificate in New Zealand Immigration Advice Level 7.

[27.4] She must successfully complete the course for a Graduate Certificate in New Zealand Immigration Advice Level 7 within 18 Months of this decision issuing.

- [28] This direction does **not** suspend the enforcement of disciplinary sanctions pursuant to section 52 of the Act and the consequential processes in the District Court, it simply provides a point where sustained failure to comply with the orders has a licensing consequence.

Caution

- [29] The Tribunal cautions Ms Ramos, and puts her on notice she is required to conform to the Act and the Code of Conduct in relation to all of her professional work. She should immediately ensure that all the immigration services and advice she provides is within client relationships and service delivery structures that meet her professional obligations. She must approach existing clients where necessary, and rectify any deficiencies.

- [30] The Tribunal has not cancelled Ms Ramos's licence giving her the benefit of the doubt. She holds client funds on trust, and the obligations relating to them are strict. This decision is notice that Ms Ramos must ensure she fully understands those obligations and applies them in her practice. Furthermore, client engagement processes are essential. The requirements relating to written engagements are mandatory, and invariable.

- [31] The Tribunal also puts Ms Ramos on notice her level of professional skills are a matter of concern based on the complaint the Tribunal has determined and her response to it. The Tribunal is particularly concerned regarding her unprofessional allegations against her client. She can expect no further leniency. She holds an occupational licence that assures consumers they can have confidence the holder will deliver professional services at the

necessary standard. The Tribunal has directed Ms Ramos to undertake training, and she is required to ensure she attains the standards required. In the interim, she must get any assistance she needs to ensure current clients are not at risk.

Decision

[32] Ms Ramos is:

[32.1] Censured and cautioned in the terms appearing above.

[32.2] Ordered to pay the complainant \$7,500 (being a refund of fees of \$2,000, compensation of \$3,000, and costs of \$2,500).

[32.3] Ordered to pay a penalty of \$4,000.

[32.4] Required to commence and successfully complete the Bay of Plenty Polytechnic course: for a Graduate Certificate in New Zealand Immigration Advice Level 7, within the periods specified above.

[33] The Registrar and Ms Ramos are reserved leave to apply for an amendment to the order relating to training if there are changes in the course directed, or the range of courses available. The Tribunal also reserves leave for Ms Ramos to apply regarding the specified period to enrol and complete the requirements for further training.

DATED at WELLINGTON this 21st day of October 2014

G D Pearson
Chair