

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

Decision No: [2014] NZIACDT 63

Reference No: IACDT 031/12

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**Between**

**Apamah Theyv Appalamy**

Complainant

**AND**

**Lip Funn (James) Yap**

Adviser

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**DECISION**  
IMPOSITION OF SANCTIONS

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**REPRESENTATION:**

**Registrar:** In person

**Complainant:** In person

**Adviser:** In person

Date Issued: 5 May 2014

## DECISION

### Preliminary

- [1] The Tribunal upheld the complaint in this matter in a decision dated 25 February 2014.
- [2] In essence, the complaint was founded on the grounds that:
- [2.1] The adviser accepted instructions to apply for a residence visa without giving adequate advice so that informed instructions could be taken; and
- [2.2] The adviser refused to provide a refund when the complainant ascertained that her circumstances presented difficulties in proceeding to migrate to New Zealand under the proposed visa category.
- [3] In its decision, the Tribunal determined that the adviser was negligent, incompetent and failed to provide a refund. However, the Tribunal dismissed the complaint of dishonest or misleading behaviour.

### The Parties' Positions on Sanctions

#### *The Authority*

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

#### *The Complainant*

- [5] The complainant, took the view the appropriate sanctions were:
- [5.1] Caution and censure,
- [5.2] A requirement for special training,
- [5.3] A financial penalty,
- [5.4] A refund of fees of RM11,560 (approximately NZ\$4,200),
- [5.5] Compensation for hardship and trauma.

#### *The Adviser*

- [6] The adviser's submissions essentially challenge the correctness of the Tribunal's decision; he continued to support his position taken in relation to the complainant seeking to justify his position.

### Discussion

#### *Licence*

- [7] I am concerned the adviser, even when responding to the Tribunal's decision, appears to be uncomprehending of the issues that gave rise to findings of negligence and incompetence.
- [8] That inevitably leaves a concern that the adviser is not achieving the standards of professional practice that the public are entitled to expect from a licensed professional. However, the issues arising are ones of competence, not honesty. The proper approach is remedial, while protecting the public.
- [9] I am satisfied the appropriate course is to require the adviser to undertake the training that is currently required of entrants to the profession in relation to professional standards.

- [10] I have considered whether it would be appropriate to cancel the adviser's full licence, and allow him to apply for a provisional licence. That would have the effect of requiring him to practice under supervision until he qualified. However, I consider a caution is sufficient.
- [11] Accordingly, I formally caution the adviser under section 51(1)(a) of the Act:
- [11.1] The Tribunal has found you were negligent and incompetent; you failed to take instructions with the informed consent of your client.
- [11.2] You then refused to refund fees, and appear to have taken the attitude that you were entitled to keep fees even when it is clear that your client made decisions without the benefit of the information you were obliged to provide.
- [11.3] You should seek a professional mentor to ensure you understand and meet your professional obligations.
- [11.4] If you engage in further conduct that does not meet professional standards after this caution, the outcome might be that your license is cancelled.

#### *Financial penalty*

- [12] The adviser's conduct is serious. It began as a simple mistake; he failed to understand a particular immigration requirement. Mistakes of that kind are inevitable. However, on discovering it, rather than explaining to his client, offering a refund of fees and the opportunity to reconsider, he took the view he was entitled to keep the fees.
- [13] The attitude was unprofessional and sustained right through to his response to the Tribunal's decision. It is appropriate to condemn the behaviour with a financial penalty that is proportionate to the amount withheld.
- [14] I am satisfied a penalty to \$3,500 is proportionate to the offending and the amount of fees.

#### *Compensation*

- [15] The complainant has not identified any specific losses. I am not satisfied it is appropriate to award any compensation in this case.
- [16] However, the complainant has been out of pocket for the fees paid and I have made an allowance for that in relation to the refund of fees.

#### *Refund of fees*

- [17] The complainant is entitled to a full refund of fees for the reasons discussed in the decision upholding the complaint.
- [18] I will award \$4,700 as an approximation of the amount, I have allowed approximately \$500 for possible bank costs and compensation for the time the adviser has held the fees.

#### *Costs and Expenses*

- [19] Neither the Registrar nor the Complainant sought costs, so no order will be made.

#### *Censure*

- [20] 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**

- [21] The Adviser is:
- [21.1] Cautioned in the terms previously set out, and censured,

- [21.2] Ordered to pay a penalty of \$3,500.
- [21.3] Ordered to pay the Complainant \$4,700 as a refund of fees and compensation for the delay.

[21.4] Required to undertake the following training:

[21.4.1] Complete successfully Modules 1, 2 and 10 of the Bay of Plenty Polytechnic course: Continuing Professional Development in New Zealand Immigration Advice.

or alternatively

[21.4.2] He is to meet the requirements for the issue of a Graduate Certificate in New Zealand Immigration Advice Level 7.

This order requires that the adviser will enrol in the first available course, and he is required to complete that training within 18 months of this decision issuing.

- [22] Leave is reserved for the Adviser to apply for an amendment to the order relating to training if there are changes to the courses directed, or the range of courses available, or the availability of courses preclude compliance with the 18 month time limit for completing the training.

**DATED** at WELLINGTON this 5<sup>th</sup> day of May 2014.

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**G D Pearson**  
Chair