

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

Decision No: [2014] NZIACDT 90

Reference No: IACDT 66/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

Between

Maina Elisara

Complainant

AND

Theresa (Terry) Aasa

Adviser

DECISION
IMPOSITION OF SANCTIONS

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: In person

Date Issued: 16 September 2014

DECISION

This complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Ms Aasa in [2014] NZIACDT 69. The circumstances are set out fully in the decision upholding the complaint (refer: www.justice.govt.nz).
- [2] The essential background is that the complainant sought to migrate to New Zealand and apply for a residence class visa under the Samoan Quota scheme. While still in Samoa, she engaged the adviser who lodged an application for her. A necessary part of the application was that the applicant must have a job offer, which the adviser had arranged. The Tribunal found:
 - [2.1] The complainant did not know about the particular job offer at the time the adviser lodged it with her application.
 - [2.2] The adviser failed to adequately respond when Immigration New Zealand raised its concerns regarding the job offer which clearly did not meet Immigration New Zealand's requirements.
 - [2.3] The adviser took nearly a month to tell the complainant that her application had failed.
- [3] The Tribunal found Ms Aasa was:
 - [3.1] Negligent as she failed to properly deal with Immigration New Zealand's inquiries,
 - [3.2] Incompetent as she failed to address elementary and clear requirements of Immigration New Zealand's policy,
 - [3.3] The same circumstances amounted to a breach of the Code of Conduct 2010 (failure to carry out lawful informed instructions with care diligence and professionalism (clause 1.1(b) of the Code)); and
 - [3.4] She failed to report as required (clause 3(a) of the Code).
 - [3.5] The full factual circumstances are set out in the substantive decision.

The Parties' Positions on Sanctions

The Authority

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

The complainant

- [5] The complainant sought a refund of fees, disbursements and compensation amounting to \$2,955.98.

Ms Aasa

- [6] Ms Aasa sent an email indicating she challenges the Tribunal's decision. She provided what purport to be further letters from the prospective employer discussed in the substantive decision, and a list of prospective employers she says she approached.
- [7] The information is neither relevant nor persuasive. The Tribunal made its decision on the information before it at the time. On any view, the material does not establish Ms Aasa carried out her obligations with care and competence.
- [8] The Tribunal did not uphold the complaint on a basis of dishonesty or misleading behaviour, which is an issue Ms Aasa sought to answer. The Tribunal did not find Ms Aasa knew or believed the job offer was falsified. Accordingly, evidence that the offer was real cannot assist her. The finding was the job offer was deficient in material respects (the letters purportedly

from the prospective employer do nothing to answer that issue). Furthermore, the apparent writer of the letters has not authenticated them by an affidavit, or even provided a street address. The letters have the same characteristics that gave rise to concerns regarding the original job offer. They also include a fatuous explanation from the writer of the letters that he would not disclose information to Immigration New Zealand as it was “highly commercially sensitive”. Dealing with sensitive information is a routine circumstance for Immigration New Zealand.

- [9] Similarly, though Ms Aasa has provided a list of companies she says she contacted, she has provided no evidence to support that claim. She should have file records. Regardless, it does not deal with the findings against her.
- [10] Ms Aasa did not challenge the claim for compensation, or make any submissions relevant to the sanctions.

Discussion

The principles to apply

- [11] 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.”
- [12] When imposing sanctions those statutory purposes require consideration of at least four factors which may materially bear upon maintaining appropriate standards of conduct:
 - [12.1] *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 ...”
 - [12.2] *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.
 - [12.3] *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).
 - [12.4] *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

- [13] This complaint is one of two similar complaints, where the Tribunal is imposing disciplinary sanctions on Ms Aasa.
- [14] The other complaint includes a finding of dishonesty, this complaint is confined to negligence, incompetence and breaching the Code of Conduct.
- [15] Each of the two complaints involved an independent course of conduct on Ms Aasa’s part. This is not a case where there is effectively one transaction with two victims, though the circumstances are similar.
- [16] In respect of the other complaint, the Tribunal has ordered that Ms Aasa cannot apply for any licence for two years. As this complaint does not involve dishonesty, it does not make an order of that kind in this decision.

Absence of significant mitigating factors

- [17] There is little or no mitigation, significantly Ms Aasa has not taken responsibility for her conduct, and appears to continue to deny wrongdoing or having fallen short of minimum professional standards.

The financial penalty on this complaint

- [18] A penalty of \$3,500 is proportionate to the offending in this matter. Ms Aasa was dealing with an important matter for a client, which had significant consequences for the complainant and her family. The complainant would have had good immigration prospects if she had received the professional services promised to her; instead, at best, Ms Aasa provided services that were grossly substandard and could have no outcome other than the complainant losing her opportunity of migrating after selection under the quota system. That resulted in serious and foreseeable consequences for the complainant.
- [19] I am conscious there are sanctions imposed in respect of the other complaint. In my view the total imposition is proportionate to the two complaints, which involved independent conduct on Ms Aasa's part.

Compensation, refund of fees, and costs

- [20] The complainant seeks an order for \$2,955.98. Ms Aasa has not challenged the quantum, it has been particularised, and is reasonable. There will a global order of that amount to cover the refund of fees, costs, and expenses.

Censure

- [21] 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

- [22] Ms Aasa is:
- [22.1] Censured,
- [22.2] Ordered to pay a penalty of \$3,500.
- [22.3] Ordered to pay the complainant \$2,955.98.

DATED at WELLINGTON this 16th day of September 2014

G D Pearson
Chair