

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

Decision No: [2015] IACDT 104

Reference No: IACDT 012/13

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Navneel Nitesh Chand

Complainant

AND

Madhur (Maddox) Ahuja

Adviser

DECISION
(IMPOSING SANCTIONS)

REPRESENTATION:

Registrar: Mr A Dumbleton, lawyer, MBIE, Auckland.

Complainant: In person.

Adviser: Mr R Chambers and Mr D Shellenberg, Barristers, Auckland.

Date Issued: 21 December 2015

DECISION

BACKGROUND

- [1] This is one of three complaints the Tribunal upheld against Mr Ahuja, the respective grounds for the complaints the Tribunal upheld were:
- [1.1] In this complaint, *Chand v Ahuja* [2014] NZIACDT 119 (IACDT 012/13), the Tribunal upheld the complaint on the basis Mr Ahuja failed to refund fees of \$2,288.50, when the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code) required him to do so.
- [1.2] In *Kumar v Ahuja* [2014] NZIACDT 120 (IACDT 013/13), the Tribunal has upheld the complaint on the basis Mr Ahuja failed to refund fees of \$1,490.00, when 2010 Code required him to do so..
- [1.3] In the *Shankar* complaint, *Shankar v Ahuja* [2015] NZIACDT 36 (IACDT 014/13), in the course of his professional relationship with the complainant:
- [1.3.1] Was negligent and breached the service delivery standards in the 2010 Code, as he failed to manage issues relating to passport expiry, and he lodged an application with several sections incomplete. He then negligently managed the process of lodging a further application as a result of the first application failing; notwithstanding Immigration New Zealand communicating with him, and that he was informed of the importance of the issues.
- [1.3.2] He breached the Licensed Immigration Advisers Code of Conduct 2010 in relation to his obligations to communicate with his client.
- [2] The circumstances are set out fully in the respective decisions (www.justice.govt.nz).
- [3] Given the complainant in the *Shankar* complaint seeks substantial compensation, and that affects Mr Ahuja's ability to meet a financial penalty I will consider the three complaints together. There is also a need to consider the totality principle, though that is secondary in the particular circumstances.
- [4] Given the interrelationship, I will discuss both the positions taken by the respective complainants, Mr Ahuja, and the Registrar for each complaint.

The Registrar and the Complainant's positions in relation to the *Shankar* complaint

- [5] The Registrar noted the three complaints occurred in a short space of time after Mr Ahuja became a licensed immigration adviser. She further placed some emphasis on Mr Ahuja's evidence in response to the *Shankar* complaint, and submitted it illustrated the high degree to which Mr Ahuja is unfit to practise. In short, the Registrar's position is that Mr Ahuja's response involved an attempt to deceive this Tribunal; and that was all the more serious as Mr Ahuja has a legal background.
- [6] Because of Mr Ahuja's conduct the complainant suffered severe consequences, and his response to the complaint failed to address the harm he caused.
- [7] The Authority submitted the Tribunal should bar Mr Ahuja from the profession for two years, and then re-entry would require that he satisfied the Registrar of the statutory criteria. She also said a penalty was appropriate to denounce the conduct, but if that compromised Mr Ahuja's ability to pay compensation and other orders in favour of the complainants, those orders should have priority.
- [8] The Complainant sought an order for the refund of fees and compensation amounting to \$93,721.00. In essence, the grounds for the compensation were that the complainant lost her ability to work due to Mr Ahuja's negligence, with competent representation, she regained her immigration status, and her employment resumed. In the interim her losses were:

- [8.1] Lost wages of \$87,696.00
- [8.2] Legal and professional fees to restore her immigration status \$4,300; and
- [8.3] A refund of fees of \$1,725.00.

Mr Ahuja's response to the *Shankar* complaint

- [9] Mr Ahuja through his counsel acknowledged the findings against him, and said he was anxious to make amends as best he could. By that time, he had surrendered his licence as a licensed immigration adviser, and said he would not seek to renew it in the future.
- [10] He had recently qualified in law in New Zealand, his counsel indicated Mr Ahuja understood if he sought to practise, he would have to disclose his disciplinary history to the New Zealand Law Society, and it was unlikely the Law Society would allow him to practise, at least for a considerable time.
- [11] It suffices to say that Mr Ahuja has responsibilities for a young child, and his personal financial situation is not good. He did not contest the quantum of the claim for compensation, but said he was not in a position to meet reasonable compensation as it was far beyond his means.
- [12] His counsel submitted that *Guinness v New Zealand Police* [2015] NZHC 883 is authority for the Tribunal not making a compensation order if it causes undue hardship.

The parties' position in the *Kumar* complaint, and this complaint

- [13] Parties made no separate submissions in respect of the *Kumar* complaint, and this complaint.

Discussion

The key factors

- [14] Mr Ahuja plainly had little understanding of his professional responsibilities in relation to fees, or the fact his status as a licensed immigration adviser was the foundation to operate the practice where he worked. He lacked experience; unfortunately, as the Registrar noted, his attempt to deceive the Tribunal in the *Shankar* complaint reflects more adversely on his fitness for professional practise than the grounds for complaint themselves.
- [15] The failure to refund fees, even after time for reflection is a significant matter. The *Shankar* complaint relates to a series of negligent actions, and a failure to communicate with his client. That complaint is a more serious matter. The negligence in that complaint was at the high end, as Mr Ahuja was dealing with a vulnerable client, and Immigration New Zealand put him on notice of their requirements. He never treated that client's instructions with the seriousness her circumstances required. The outcome for her and her family were devastating. Mr Ahuja has shown little comprehension of either his responsibilities or the gravity of the consequences for any of the three clients.
- [16] It is important to consider Mr Ahuja's conduct in the course of the hearing dealing with the *Shankar* complaint. Mr Ahuja was required to respond honestly to the Registrar when he answered the complaint, and again when he gave evidence on oath regarding what occurred. The decision upholding the complaint sets out what Mr Ahuja said and the Tribunal's findings. The short point is Mr Ahuja blamed his client, to avoid responsibility. He effectively said his client broke into his office and took away the incomplete papers Mr Ahuja had signed, and his client filed the defective papers. He also claimed his clients took a file note from his office, so he could not produce it. Further, he claimed his client had not made a payment; until confronted with his own handwriting, acknowledging the payment. After examining the evidence, I had to conclude:

"I am satisfied Mr Ahuja has developed his response to the complaint as matters have emerged, and I cannot rely on his evidence. Mr Ahuja's essential claim that his clients took over their own immigration affairs is implausible, inconsistent with the record, and developed through changing evidence presented by Mr Ahuja."

- [17] While that finding is not made in the present complaint, it is an important element in deciding how to address the three complaints, including the present complaint.

The starting point

- [18] For this and the other matter relating to a failure to refund fees, the starting point would be orders to refund the fees, and a financial penalty of \$2,000. Given Mr Ahuja's reluctance to accept his professional responsibilities, a warning would accompany the orders.
- [19] In relation to the negligence and failure to communicate in the *Shankar* complaint, the starting point would be a financial penalty of \$6,000, mentored practice, and a requirement to undertake approved training.
- [20] However, Mr Ahuja's response to the *Shankar* complaint puts it into a quite different category. I have found his response to the complaint involved an attempt to deceive the Tribunal, and that raises the question as to whether Mr Ahuja has the personal qualities to practise as a licensed immigration adviser. Where a person has attempted to evade their professional responsibilities by fabricating a false explanation on oath, for them to hold a licence under the Act may not be consistent with the consumer protection the Act provides.

Cancellation of licence

- [21] For the purpose of this decision, it is sufficient to note the Tribunal has excluded Mr Ahuja from the profession for the statutory maximum period. The reasons are set out in full in the Tribunal's decision imposing sanctions in the *Shankar* complaint; issued contemporaneously with this decision.

Mr Ahuja's financial position

- [22] I accept the Registrar's view that if Mr Ahuja is unable to pay both a financial penalty; and refund fees and pay compensation, then the orders to meet obligations to the complainants should take priority.
- [23] However, I do not accept the submission for Mr Ahuja that either directly, or by analogy, the decision in *Guinness v New Zealand Police* [2015] NZHC 883 is relevant to the orders this Tribunal will make. For the purposes of this decision, it is sufficient to note the Tribunal has made orders for compensation and the refund of fees. The reasons are set out in the decision imposing sanctions in the *Shankar* complaint.

The orders in the three matters

- [24] I will make the order prohibiting Mr Ahuja from applying for a licence in each of the complaints, on the basis that in respect of the two lesser matters, including this complaint, it is the reason for not imposing other penalties. I record, that if those matters stood alone, then the orders would be for a financial penalty of \$2,000, and for the refund of fees. There are no significant mitigating factors. There will be a censure in each case.
- [25] The other orders will be:
- [25.1] In this, the *Chand* complaint, an order the Mr Ahuja refund fees of \$2,288.50 to the complainant.
- [25.2] In the *Kumar* complaint, an order that Mr Ahuja refund fees of \$1,490.00 to the complainant.
- [25.3] In the *Shankar* complaint, that Mr Ahuja refund fees of \$1,725.00, and pay compensation of \$91,996.00.

Determination and Orders

- [26] In the this complaint, Mr Ahuja is:
- [26.1] Censured.

[26.2] Ordered to refund \$2,288.50 in fees to the complainant; and

[26.3] Prevented from reapplying for any category of licence as a licensed immigration adviser for a period of two years from the date of this decision.

[27] The orders all take immediate effect.

DATED at Wellington, this 21st day of December 2015

G D Pearson
Chair