

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

Decision No:

Reference No: IACDT 021/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

Between

**Michael Carley (Immigration New
Zealand)**

Complainant

AND

Rosemarie Navarette-Scholes

Adviser

DECISION
(IMPOSING SANCTIONS)

REPRESENTATION:

Registrar: Ms S Blick, lawyer, MBIE, Auckland.

Complainant: In person.

Adviser: In person.

Date Issued: 19 January 2016

DECISION

BACKGROUND

- [1] This is one of two complaints the Tribunal upheld against Ms Navarette-Scholes, the respective grounds for the complaints the Tribunal upheld were:
- [1.1] In this complaint *Carley v Navarette-Scholes* [2015] NZIACDT 42 (IACDT 021/14) the Tribunal upheld the complaint on the basis Ms Navarette-Scholes paid Immigration New Zealand fees for clients using cheques that were dishonoured. The Tribunal found she breached the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code), in relation to maintaining professional business practices.
- [1.2] In *Ly v Kim* [2015] NZIACDT 46 (IACDT 029/14), the Tribunal upheld the complaint on the basis:
- [1.2.1] Ms Navarette-Scholes did not properly manage a situation created by an associate in her practice.
- [1.2.2] She failed to keep appropriate records, make adequate inquiries when the associate misappropriated client funds, and did not manage documents correctly.
- [2] The circumstances are set out fully in the respective decisions (www.justice.govt.nz).
- [3] I will discuss both the positions taken by the respective complainants, Ms Navarette-Scholes, and the Registrar for each complaint. I will also apply the totality principle. Ms Navarette-Scholes's personal circumstances require consideration of the overall position.

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

- [4] The Registrar presented submissions; the complainant did not provide any submissions. The Registrar reviewed the general provisions relating to sanctions, and Ms Navarette-Scholes's disciplinary history. She provided information regarding a previous complaint, and the two present complaints.
- [5] The Registrar reported that as far as she was aware, Ms Navarette-Scholes had complied with financial sanctions in the previous matter. In relation to a requirement to undertaking further training (a sanction in the previous complaint), Ms Navarette-Scholes was within the timeframe to commence that, but did not renew her licence.
- [6] The Registrar considered that the Tribunal may order that Ms Navarette-Scholes not apply for a licence for a period, and should impose a financial sanction.

Ms Navarette-Scholes's response to this complaint

- [7] Ms Navarette-Scholes said she was suffering from a medical condition, and she was not able to work.

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

- [8] The Registrar took the same approach to the Ly complaint, as this complaint.
- [9] The complainant did not provide any submissions.

Ms Navarette-Scholes's response to the Ly complaint

- [10] Ms Navarette-Scholes responded through her counsel. She acknowledged she had accepted, and learned from the Tribunal's decision. Her counsel observed her failure to act was due to lack of understanding in relation to a difficult issue, not bad faith.
- [11] Ms Navarette-Scholes indicated she would not seek to renew her licence, but submitted a prohibition on reapplying would be a disproportionate response.

- [12] She explained that she faced financial difficulties arising from both business failure, and a significant medical difficulty. She confirmed she had met the financial sanctions in the Tribunal's order relating to the previous complaint.

Discussion

The key factor

- [13] Ms Navarette-Scholes is to be commended for meeting the obligations the Tribunal imposed in the past. Ms Navarette-Scholes's health requires a compassionate response. The submissions made on her behalf contain somewhat conflicting submissions, namely, she will not apply to renew her licence, a restriction on doing so would be disproportionate, but she is not well placed to meet the alternative of a financial penalty.
- [14] It is inevitable the Tribunal must denounce what occurred. I accept this is not a case where Ms Navarette-Scholes was dishonest, and accordingly rehabilitation would be the appropriate response when considering her licence. However, the Tribunal has already made an order relating to further training, which in my view would be essential for Ms Navarette-Scholes to practise safely. In making that observation, I am equally mindful of Ms Navarette-Scholes's safety, and her clients.
- [15] Ms Navarette-Scholes's medical condition is a chronic illness, and she faces difficult financial circumstances following a business failure. She is not currently practising, and if she sought to return to practice, she would have to undertake at least some training regardless of the Tribunal's orders. In these circumstances, I am satisfied that the most just outcome is to prohibit Ms Navarette-Scholes from applying for a licence for two years, and in recognition that this a harsh sanction impose no financial penalty. However, I will provide a mechanism to allow Ms Navarette-Scholes to return to practice if she commences appropriate training.

The starting point

- [16] For the two complaints, they are mid-level matters. The payments using dishonoured cheques reflected systematic failure to manage her practice; and the defective response to an associate exploiting a client reflected a lack of expertise in managing the risks in a professional practice. In each complaint, the starting point would be:
- [16.1] Censure,
- [16.2] A compulsory retraining requirement;
- [16.3] A financial penalty of \$5,000;
- [16.4] Compensation for any consequent loss; and
- [16.5] Costs.

Ms Navarette-Scholes's licence

The principle

- [17] The authorities indicate it is a "last resort" to deprive a person of the ability to work as a member of their profession. However, regard must be had to the public interest when considering whether a person should be excluded from a profession due to a professional disciplinary offence: *Complaints Committee of Waikato Bay of Plenty District Law Society v Osmond* [2003] NZAR 162 (HC) at 13-14.

A response addressing Ms Navarette-Scholes's circumstances

- [18] I would not ordinarily prohibit Ms Navarette-Scholes from practising, and look to a mechanism to allow Ms Navarette-Scholes to continue practising safely, likely in a mentored environment. However, for the reasons noted, I will impose a prohibition on Ms Navarette-Scholes applying for any licence under the Act for two years, or until she has enrolled in and completed four of the eight papers in the Graduate Diploma in New Zealand Immigration Advice (Level 7). Consequently, there will be no financial penalty.

Compensation

- [19] The complainants have not sought compensation, so no orders will be made.
- [20] In relation to the Ly complaint, I record I have not exercised the jurisdiction to award compensation under section 51(i) of the Act. The complainant has not sought an order, accordingly the issues are not adequately before the Tribunal to exercise the jurisdiction; furthermore, the issue potentially involves a third party over whom the Tribunal has no jurisdiction. In these circumstances, if any issues arise as to compensation they properly lie in the concurrent jurisdiction of the Disputes Tribunal and the Courts, not this Tribunal.

Costs and Expenses

- [21] Neither the Registrar nor the Complainant sought costs, so there is no order.

Censure

- [22] In accordance with the usual practice of disciplinary tribunals, censure will be an express sanction.

Orders

- [23] Ms Navarette-Scholes is censured.
- [24] The Tribunal orders that Ms Navarette-Scholes is prevented from applying for a licence for a period of two years from the date of this decision, or until she has enrolled in and completed four of the eight papers in the Graduate Diploma in New Zealand Immigration Advice (Level 7). The Tribunal notes that whether the Registrar would grant a licence, and the terms on which a licence may be granted are matters for the Registrar to decide.
- [25] The Tribunal reserves leave to vary the order, or provide further particulars of the terms in the event of any matter arising regarding the application of the order.

DATED at WELLINGTON this 24th day of December 2015

G D Pearson
Chairperson