

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

Decision No: [2015] NZIACDT 12

Reference No: IACDT 001/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Rizaleo Apollo Cabagnet

Complainant

AND

Eduardo Sampang

Adviser

DECISION
IMPOSITION OF SANCTIONS

REPRESENTATION:

Registrar: Ms K England, solicitor, Ministry of Business Innovation and Employment, Auckland.

Complainant: In person.

Adviser: In person.

Date Issued: 27 February 2015

DECISION

This Complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Mr Sampang (*Cabagnot v Sampang* [2014] NZIACDT 75; see www.justice.govt.nz).
- [2] The complaint arose when Mr Sampang performed work to assist the complainant and his family to gain residence in New Zealand. He recommended lodging an expression of interest under the skilled migrant scheme. Then he submitted an expression of interest, which claimed the complainant and his wife were entitled to 170 points under that scheme. As a result, Immigration New Zealand invited them to apply for residence. Mr Sampang submitted their application and Immigration New Zealand assessed the application as supporting only 50 points. Mr Sampang did not establish any grounds for a different view, so the application failed.
- [3] The Tribunal determined Mr Sampang was negligent in:
 - [3.1] Not properly evaluating the complainant's immigration opportunities under the skilled migrant scheme;
 - [3.2] Advising the complainant he could apply under the scheme;
 - [3.3] Failing to identify that the complainant could not qualify under the scheme based on the application; or alternatively, in providing a wholly inadequate response to Immigration New Zealand when it raised difficulties with the application he submitted.
- [4] In addition, Mr Sampang failed to comply with the documentation and disclosure requirements for commencing a professional relationship as set out in the Code of Conduct. He accepted that element of the complaint.
- [5] Accordingly, the Tribunal upheld the complaint based on negligence and a failure to attend to documentation and disclosure requirements in the course of the client engagement process (section 44(2)(a) and (e), and clauses 1.4(a); 1.5(a), (b), (d); 8(b), (d); and 9(b) of the Code of Conduct 2010 (the Code)).
- [6] The full circumstances are set out in the substantive decision.

The Parties' Positions on Sanctions

- [7] Mr Sampang provided no submissions on sanctions.
- [8] The Registrar submitted the conduct was such that it evidenced a failure to meet basic and essential compliance with the requirements of the Code of Conduct. She said the shortcomings in Mr Sampang's professional service delivery deprived the complainant of the things the Act provided for consumers. Furthermore, she said Mr Sampang lacked insight into his deficiencies, and attributed responsibility for his own failings to his client. The Registrar submitted the sanctions should include a requirement to undertake the Graduate Certificate in New Zealand Immigration Advice Level 7. That is the entry-level requirement for full membership of the profession. Mr Sampang, it appears, gained entry to the profession prior to the qualification coming into effect.
- [9] The complainant sought a refund and compensation for the costs of the failed application. Those costs amounted to \$12,120 including the cost of travel and accommodation resulting from the failed application.
- [10] He also sought \$3,000 in the nature of general damages for the anxiety and disruption caused by Mr Sampang's defective advice and professional conduct.
- [11] He also submitted Mr Sampang should have his licence revoked.

Discussion

The gravity of the professional offending

- [12] This decision in relation to Mr Sampang's licence largely turns on the gravity of the professional offending. It is not possible to regard this complaint as other than serious. A core objective of the Act was to put an end to the very type of conduct identified in the complaint, the Registrar justifiably makes that point, and I agree with the submission. The case was not one of a simple negligent act, it extended to a failure to apply the mandated process for establishing a professional relationship. The Code of Conduct, which has the standing of legislation mandates that process in clear terms. Mr Sampang's conduct was a systematic failure to deliver minimum professional standards.
- [13] The complainant was entitled to the protection the Act envisages. I have found Mr Sampang was responsible for failing to deliver that. Furthermore, the negligent acts were at a gross level. An application for residence is an important and life changing matter to a family, it is necessary for licensed immigration advisers to treat the process with sufficient seriousness to ensure they deliver sound advice.
- [14] The Registrar rightly expresses concern that Mr Sampang has not shown insight; indeed, he has not seen fit to present submissions or express contrition after considering the Tribunal's reasoning for its decision.

Training

- [15] I have considered making orders that would result in Mr Sampang having to practice under supervision. That would provide protection for the public in the short-term. However, the Immigration Advisers Competency Standards 2013 makes the mechanism problematic, when the Tribunal cancels an adviser's licence they must meet certain requirements before they can apply for a provisional licence. Further, the Registrar has not suggested that it is necessary to make such an order. As the Registrar has the power to investigate and makes inquiries when licensees renew their licences, I give the Registrar's silence significant weight and will allow Mr Sampang to continue to hold a full licence.
- [16] I have determined the appropriate course is to require Mr Sampang to undertake training, while continuing to hold a full licence. He will be required to complete the Bay of Plenty Polytechnic's Graduate Certificate in New Zealand Immigration Advice. It is now the standard required for entry to the profession.
- [17] The Tribunal will order that Mr Sampang enrol in the Bay of Plenty Polytechnic course for a Graduate Certificate in New Zealand Immigration Advice Level 7. He is required to do as soon as practicable.
- [18] He must successfully complete the course for the Graduate Certificate in New Zealand Immigration Advice Level 7 within 18 Months of this decision issuing.

The financial penalty on this complaint

- [19] Taking account of the other aspects of the sanctions, and importantly my conclusion that Mr Sampang failed to initiate the client relationship in accordance with the Code of Conduct and was negligent, the penalty would be \$4,500. However, I give some credit for the limited acknowledgement by Mr Sampang he did breach the Code, and further recognise he must pay compensation. Accordingly I reduce the penalty to \$3,500.
- [20] A penalty of \$3,500 is a low mid-range penalty, the scale of financial penalties being up to \$10,000. It allows some discount having regard to the compensation that Mr Sampang must also pay.

Compensation and the refund of fees

- [21] The complainant seeks an order for \$12,120 for the cost of the unsuccessful application, remediation (including travel), and further costs of pursuing his application. The losses claimed are, it appears, the foreseeable consequences of Mr Sampang's negligence. Mr Sampang prior to the substantive decision queried the quantum of the loss. In support of the claim in

relation to the imposition of sanctions, the complainant provided an itemised list of the expenses. Since receiving the complainant's list, Mr Sampang has not challenged either the quantum or the claim that his conduct caused the loss. The claim appears reasonable, and unsurprising given the foreseeable consequences of the defective application.

- [22] Accordingly, I am satisfied an order for the amount sought is reasonable.
- [23] In relation to the compensation in the nature of general damages of \$3,000, the Tribunal is cautious regarding awards of that kind, as they can readily become little more than a supplementary penalty. However, the disruption the complainant and his family suffered was at a high level. The poor immigration advice disrupted the security of their life in New Zealand; the complainant's employment. Understandably, the complainant and his family found that profoundly distressing and harmful. In similar cases the Tribunal has from time to time awarded modest compensation of this kind and I am satisfied it is reasonable in this case. There will be an award of \$1,500. In addition to some modest recognition of the harm Mr Sampang caused, it also compensates for the delay in the complainant receiving a refund of fees and compensation for his expenses caused by Mr Sampang's negligence. There will not be a separate award for interest on the compensation down to the time of this decision. The normal interest principles that apply to judgment debts will apply if the complainant or the Registrar registers the orders in the District Court.
- [24] Accordingly, there will be an order that Mr Sampang pay the complainant \$13,620 as a refund of fees and compensation.

Censure

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

Caution

- [26] The Tribunal cautions Mr Sampang. The Tribunal is extending an element of trust in allowing him to continue to practice with a full licence. He should expect any failure to maintain the standards required of the holder of a full licence to have serious consequences. He should consider seeking the support of a professional mentor while he undertakes further training, he will be held to account if he fails to work professionally and within his limits of knowledge and skills.

Decision

- [27] Mr Sampang is:
- [27.1] Censured and cautioned in the terms appearing above.
- [27.2] Ordered to pay the complainant \$13,620 as a refund of fees and compensation.
- [27.3] Ordered to pay a penalty of \$3,500.
- [27.4] Required as soon as practicable to commence, and within 18 months of this decision successfully complete the Bay of Plenty Polytechnic course for a Graduate Certificate in New Zealand Immigration Advice Level 7.
- [28] The Registrar and Mr Sampang 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 Mr Sampang to apply regarding the specified period to enrol and complete the requirements for the training.

DATED at WELLINGTON this 27th day of February 2015

G D Pearson
Chair