

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

Decision No: [2015] NZIACDT 13

Reference No: IACDT 070/12

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Rolando L Palad**

Complainant

**AND**

**Alyssa Lopez Tan**

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: 3 March 2015

## DECISION

### This Complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Ms Tan (*Palad v Tan* [2014] NZIACDT 74; see [www.justice.govt.nz](http://www.justice.govt.nz)).
- [2] The complaint arose when Ms Tan performed work to assist the complainant and his family to migrate to New Zealand. The first step was lodging an expression of interest; Ms Tan claimed the complainant and his wife were entitled to 125 points. As a result, Immigration New Zealand invited them to apply for residence. Ms Tan submitted their application and Immigration New Zealand assessed the application as establishing only 75 points, so the application failed.
- [3] The complaint alleged a course of non-compliance with the Code of Conduct 2010 (the Code) and negligence, by failing to assess immigration prospects adequately and lodging an unsatisfactory application. Ms Tan accepted she failed to end the professional engagement in accordance with the Code of Conduct, but says another licensed immigration adviser in her practice was responsible for any other deficiencies.
- [4] The Tribunal identified the work Ms Tan did carry out, and then ascertained the extent to which she was responsible for the related duties under the Code of Conduct. In addition, the Tribunal determined whether Ms Tan was responsible for any non-compliance or negligence within the scope of her professional responsibilities.
- [5] The Tribunal determined:
- [5.1] Ms Tan was personally responsible for the critical work in issue, being an expression of interest and application for residence.
- [5.2] She failed to ensure compliance with essential steps to support her professional work. That non-compliance related to client engagement, fees and termination of the instructions.
- [5.3] In addition, she failed to perform the work to an acceptable standard.
- [6] Accordingly, the Tribunal upheld the complaint on the grounds Ms Tan was negligent and breached the Code of Conduct (sections 44(2)(a) and (e), and clauses 1.1(a), (b) (c); 1.5(a), (b); 2.1(h); 3; 4; 7(c); and 8(b) and (e)).
- [7] The full circumstances are set out in the substantive decision.

### The Parties' Positions on Sanctions

- [8] The Registrar did not provide any submissions on the appropriate sanctions.
- [9] The complainant sought a refund of fees amounting to \$8,501 (converted from PHP 320,000), and interest at 12% as their actual cost of interest in the Philippines where they paid the fees.
- [10] Ms Tan's submission in reply was to the effect she was not personally responsible for refunding the fees and had not personally received the money, she said a third party was responsible. In particular, she said Mr Mehta, who had a role in the practice, should make any payments.

### Discussion

*The Tribunal has already cancelled Ms Tan's licence*

- [11] Ms Tan's licence has already been cancelled by the Tribunal as a result of a separate complaint (refer *NQE v Tan* [2013] NZIACDT 46, [www.justice.govt.nz](http://www.justice.govt.nz)).
- [12] It is not necessary to impose any further period of prohibition on Ms Tan applying for a licence, as she will have to satisfy the Registrar that she is a fit person to hold a licence, and is

otherwise qualified, before she could be reinstated as an adviser. This complaint and her previous disciplinary history are matters the Registrar may consider. In that regard I note, notwithstanding the decisions the Tribunal has issued relating to her failure to meet the requirements of the Code of Conduct, and the Act, Ms Tan still rejects responsibility for the consequences of her wrongful conduct.

*The financial penalty on this complaint*

- [13] Taking account of the other aspects of the sanctions, and importantly my conclusion that Ms Tan failed to initiate the client relationship in accordance with the Code of Conduct, was negligent and has shown no insight or contrition, the penalty will be \$3,000.
- [14] A penalty of \$3,000 is a low to mid-range penalty, the scale of financial penalties being up to \$10,000. It allows some discount, having regard to the compensation that Ms Tan must also pay.

*Compensation and the refund of fees*

- [15] The complainant seeks a refund of \$8,051 plus interest at 12% from 11 November 2009, being he says the actual and foreseeable interest cost in the Philippines.
- [16] Ms Tan has not challenged either the quantum or the rate of interest. She simply says Mr Mehta the director of the company that administered her practice should be responsible.
- [17] However, the substantive decision identifies why Ms Tan is personally responsible for the professional engagement. The Act places personal responsibility on licensed immigration advisers in relation to funds. The Act does not allow companies to hold a licence, and only licensed immigration advisers can give immigration advice. They are personally responsible for making good any losses their clients suffer from their failure to comply with the Code of Conduct and the Act.
- [18] This Tribunal has repeatedly pointed out to licensed immigration advisers; they act at their peril if they put themselves into a situation where they do not have control over their practice.
- [19] Ms Tan is the person who is subject to orders under section 51 of the Act. That includes orders to refund all or any part of fees or expenses (section 51(1)(h)), and to pay reasonable compensation (section 51(1)(i)).
- [20] I am satisfied the complainant is entitled to a full refund of the cost of the failed application; Ms Tan was responsible for the reasons identified in the substantive decision. I consider their actual interests costs are reasonable compensation, the complainant and his wife should not be out of pocket due to Ms Tan's conduct.
- [21] The interest will be at the rate of 12% from 11 November 2009 to 15 March 2015. That amounts to \$5,802.56. The normal interest principles that apply to judgment debts will apply after the complainant or the Registrar registers the orders in the District Court, the 12% rate will not run after 15 March 2015.
- [22] Accordingly, there will be an order that Ms Tan pay the complainant \$13,853.56 as a refund of fees, and compensation.

*Censure*

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

**Decision**

- [24] Ms Tan is:
- [24.1] Censured.
- [24.2] Ordered to pay the complainant \$13,853.56 as a refund of fees and compensation.

[24.3] Ordered to pay a penalty of \$3,000.

**DATED** at WELLINGTON this 3<sup>rd</sup> day of March 2015

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**G D Pearson**  
Chair