

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

Decision No: [2015] NZIACDT 14

Reference No: IACDT 002/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Langafaiva and Moeakiola Pole

Complainants

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

DECISION
IMPOSITION OF SANCTIONS

REPRESENTATION:

Registrar: In person

Complainant: Mr R Small, solicitor, Pacific Legal Ltd., Wellington.

Adviser: In person

Date Issued: 3 March 2015

DECISION

This complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Ms Tangilanu published as *Pole v Tangilanu* [2014] NZIACDT 76. The circumstances are set out in that decision (which can be located on the Ministry of Justice website: www.justice.govt.nz).
- [2] In summary, the circumstances giving rise to the complaint were:
- [2.1] The complainants and their family were in New Zealand unlawfully. However, the family had had their residence application referred back to Immigration New Zealand by the Residence Review Board. The complainants paid Ms Tangilanu to apply for visas to end their unlawful status, and she was dealing with the residence application.
- [2.2] Ms Tangilanu took some three months to apply for visas and then, despite clear warnings of the consequences, failed to pass on the information Immigration New Zealand required to re-evaluate the residence application. The family's residence application failed as a result.
- [3] The Tribunal upheld the complaint based on negligence and a failure to meet her obligations of care, diligence and professionalism under the Code.

The Parties' Positions on Sanctions

The Authority

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

The Complainant

- [5] The complainants through their counsel emphasised the seriousness of Ms Tangilanu's conduct; both in the context of her grave history of professional disciplinary offending, and the nature of this complaint. Her conduct resulted in the complainants losing their potential pathway to residence.
- [6] The complainants sought a substantial financial penalty, and the following orders:
- [6.1] The refund of \$2,665.00.
- [6.2] That Ms Tangilanu pay \$4,200 in compensation from a total of \$12,200 worth of expenses incurred in dealing with the consequences of Ms Tangilanu's negligence and failure to deliver services at an acceptable standard. They relate \$2,000 of the claim to compensation in the nature of general damages for the harm caused to them.
- [6.3] A financial penalty.
- [6.4] An order preventing Ms Tangilanu from applying for a licence for two years.

Ms Tangilanu

- [7] Ms Tangilanu did not provide submissions on sanctions.

Discussion

Absence of significant mitigating factors

- [8] There is little or no mitigation for this or any of the complaints Ms Tangilanu has faced. Ms Tangilanu has not taken responsibility for her indefensible behaviour across a large number of complaints.

Ms Tangilanu's licence

- [9] On two previous occasions, the Tribunal ordered that Ms Tangilanu could not apply for a licence for a period of two years (separate and accordingly cumulative periods). If Ms Tangilanu were to apply for a licence after that period, she would have to qualify for the profession and satisfy the Registrar that she otherwise meets the statutory requirements.
- [10] It is entirely a matter for the Registrar, not the Tribunal, however the fact an order operates for only two years (the statutory maximum) does not indicate Ms Tangilanu can expect to get a licence after that time. Aside from other standards she will need to meet, section 17(b) of the Act allows the Registrar to take account of Ms Tangilanu's history of professional offending when deciding if she is fit to hold a licence.
- [11] Ms Tangilanu is on any realistic view permanently excluded from the profession. Any re-entry to the profession would be subject to a requalification and rehabilitation process that would be rigorous.
- [12] Accordingly, a further period of prohibition on applying for a licence would be no more than an empty gesture. There will be no further order in these circumstances.
- [13] The other sanctions imposed on Ms Tangilanu take into account the Tribunal has excluded Ms Tangilanu from the profession.

The financial penalty on this complaint

- [14] Ms Tangilanu's conduct in this matter was serious. She accepted instructions to deal with immigration issues that were of high importance to the complainants. She failed to carry out her instructions to the standard required and that gravely affected her clients.
- [15] Given that Ms Tangilanu has previously been excluded from the profession, a penalty of \$5,500 is proportionate to the professional offending, in this matter and overall. The failure to address an urgent situation, which led to the loss of a pathway to migration, was at the level of gross negligence.
- [16] I am also mindful Ms Tangilanu may not have the means to compensate her former clients (the Tribunal has made a number of orders on other complaints), and this penalty will only make that more difficult. Accordingly, and having regard to the consequences of Ms Tangilanu having been excluded from the profession, I will reduce the penalty to \$4,500.

Compensation

- [17] The complainants are entitled to an order for the sum of \$2,200, though it is only a portion of their costs of remediating Ms Tangilanu's failure to deliver services in compliance with the Code of Conduct and the Act, and the costs of pursuing this complaint. They also sought \$2,000 in the nature of general damages; they have actual losses well in excess of that figure. They are entitled to the additional claim. Accordingly, an order for compensation of \$4,200 follows; the quantum is the reduced amount the complainants sought. Their losses are, unsurprisingly in the circumstances, in excess of that amount.

Refund of fees

- [18] The complainants are entitled to a full refund of fees for the reasons discussed in the decision upholding the complaint; they have established the claim for \$2,665.

Costs and Expenses

- [19] The Registrar has not sought costs, so there is no order.
- [20] The complainants seek legal costs as part of the compensation; they are included in that figure.

Censure

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

Decision

[22] Ms Tangilanu is:

[22.1] Censured,

[22.2] Ordered to pay a penalty of \$4,500.

[22.3] Ordered to pay the Complainants \$6,865, being a refund of fees, compensation and payment of costs.

DATED at WELLINGTON this 3rd day of March 2015

G D Pearson
Chair