

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

Decision No: [2015] NZIACDT 3

Reference No: IACDT 069/12

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Tze (Allan) Loon Lim**

Complainant

**AND**

**Sammi Li Shuang Gu-Chang**

Adviser

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**DECISION  
(SANCTIONS)**

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**REPRESENTATION:**

**Registrar:** In person

**Complainant:** In person

**Adviser:** In person

Date Issued: 26 January 2015

## DECISION

### Introduction

- [1] In a decision dated 29 August 2014 the Tribunal upheld this complaint.
- [2] The grounds of complaint were:
- [2.1] Ms Gu-Chang published a website article which was unprofessional and disclosed confidential information. It concerned a client's detention at a police station and likely deportation.
- [2.2] In addition Ms Gu-Chang charged a fee of \$12,800 to prepare an application to Immigration New Zealand for a visa under the discretionary provisions in the Act, which was alleged not to be a fair and reasonable fee.
- [3] The Tribunal upheld both aspects of the complaint, finding the publication was unprofessional and amounted to a disclosure of confidential information, and that the fees were not fair and reasonable. Accordingly, Ms Gu-Chang breached clauses 1.1, 1.2, and 8 of the Code of Conduct 2010 (the Code).

### The Parties' Positions on Sanctions

#### *The complainant and the Registrar's positions*

- [4] Neither the Registrar nor the complainant presented submissions in respect of sanctions.

#### *Ms Gu-Chang's position*

- [5] Ms Gu-Chang presented a submission which said:
- [5.1] She apologised for the website publication.
- [5.2] Some of the fees were properly earned.
- [5.3] A receipt of \$3,000 for tuition fees was held and not refunded due to a lack of further instructions.

### Discussion

#### *The principles to apply*

- [6] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]:
- “... the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.”
- [7] When imposing sanctions those statutory purposes require consideration of at least four factors which may materially bear upon maintaining appropriate standards of conduct:
- [7.1] *Protecting the public*: section 3 of the Act states “The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ...”
- [7.2] *Demanding minimum standards of conduct*: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) and *Taylor v General Medical Council* [1990] 2 AC 539; [1990] 2 All ER 263 (PC) discuss this aspect.
- [7.3] *Punishment*: the authorities, including *Z v Dental Complaints Assessment Committee*, emphasise that punishment is not the purpose of disciplinary sanctions. Regardless, punishment is a deterrent and therefore a proper element of disciplinary sanctions

(*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007).

- [7.4] *Rehabilitation*: it is important, when practicable, to have the practitioner continue as a member of the profession practising well (*B v B* [1993] BCL 1093; HC Auckland HC4/92, 6 April 1993).
- [8] Protecting the public Ms Gu-Chang has previously had her licence revoked due to the dishonest exploitation of a vulnerable client. On its own, this complaint would result in a less severe sanction as it does not involve a finding of dishonesty. I do not consider it appropriate to set the penalty in this matter on the basis it is repeat offending, as the earlier complaint had not been determined when this complaint arose.
- [9] I do not consider it is appropriate to make any further order concerning Ms Gu-Chang's licence, or her ability to apply for a licence. The existing order applies for a period of two years. After that point, she will have to qualify for the profession and satisfy the Registrar that she otherwise meets the statutory requirements. I note that while it is entirely a matter for the Registrar, not the Tribunal, the fact the order operates for only two years does not indicate she can expect to get a licence after that time. Aside from other standards, section 17(b) of the Act allows the Registrar to take account of Ms Gu-Chang's history of professional offending when deciding if she is fit to hold a licence. Both the previous complaint and this complaint may be considered.
- [10] I am satisfied the public interest is adequately served by the existing orders, and it is not appropriate or necessary to address licensing issues further. As Ms Gu-Chang has already been excluded from the profession, rehabilitation is not a relevant consideration here.
- [11] With regard to the principles of minimum standards and punishment (to the extent that it is a deterrent) I consider the following financial penalties and compensation are necessary.

*The financial penalty on this complaint*

- [12] Ms Gu-Chang's conduct in this matter was serious. She breached her client's confidentiality, and embarrassed him. I recognise Ms Gu-Chang has apologised, and give her credit for that. In addition, she overcharged substantially and failed to provide services likely to be of any value. She did so without her client understanding the reality that the services he paid for would be unlikely to improve his position and in circumstances where it was her responsibility to ensure he understood this.
- [13] A penalty of \$7,000 is proportionate to the offending, in this matter given the two factors. The excessive fees were at a level that makes a substantial penalty in addition to the refund of fees appropriate.

*Compensation*

- [14] The complainant is entitled to a payment of \$1,500 to compensate him for the embarrassment Ms Gu-Chang caused to him by publishing an embellished account of his circumstances in a way recognisable to people who knew him.

*Refund of fees*

- [15] The complainant is entitled to a full refund of fees.
- [16] Ms Gu-Chang submitted she was entitled to all or some of the fees earned. However, her submissions failed to address the findings against her. The findings were:
- [16.1] An examination of the file did not indicate work to the value Ms Gu-Chang claimed had been performed, and the fee for the work actually performed was excessive.
- [16.2] The work was not likely to be useful.
- [17] Ms Gu-Chang essentially reiterated she was entitled to fees for the work contemplated but provided neither a reasoned analysis that indicates the value of the work performed, or that the work was realistic in terms of being likely to lead to a successful outcome. Ms Gu-Chang did

provide details on another client's case, but that does not address the specific concerns set out in the Tribunal's substantive decision.

[18] Given Ms Gu-Chang's failure to establish the work had a realistic prospect of success or that her client understood the poor prospects and instructed her to proceed despite this, I am satisfied the fee of \$12,800 should be refunded in full.

[19] In addition Ms Gu-Chang accepts she holds a sum of \$3,000 for disbursements which was not paid out. There will be an order for payment of that amount also.

*Costs and Expenses*

[20] Neither the Registrar nor the complainant sought costs, so there is no order.

*Censure*

[21] In accordance with the usual practice of disciplinary tribunals, censure will be an express sanction. It is appropriate to make that finding where conduct is not a mere lapse from minimum standards.

**Decision**

[22] Ms Gu-Chang is:

[22.1] Censured,

[22.2] Ordered to pay a penalty of \$7,000.

[22.3] Ordered to pay the complainant \$17,300, being a refund of fees of \$12,800, refund of expenses being an unpaid disbursement of \$3,000, and compensation for his hurt and embarrassment of \$1,500.

**DATED** at Wellington this 26<sup>th</sup> day of January 2015

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**G D Pearson**  
Chair