

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

Decision No: [2015] NZIACDT 52

Reference No: IACDT 014/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Sefilina Tangitau

Complainant

AND

Hakaoro Hakaoro

Adviser

DECISION

REPRESENTATION:

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

Complainant: In person

Adviser: In person

Date Issued: 14 May 2015

DECISION

This Complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Mr Hakaoro (*Tangitau v Hakaoro* [2015] NZIACDT 27; see www.justice.govt.nz).
- [2] Mr Hakaoro accepted instructions to assist the complainant with her application for residence without entering a written agreement. He then:
 - [2.1] Failed to report to his client when he lodged the agreement,
 - [2.2] Failed to deal with Immigration New Zealand's proper inquiries,
 - [2.3] Failed to tell his client Immigration New Zealand declined her application, due to the lack of response to the inquiries,
 - [2.4] He then lodged an appeal without instructions, and
 - [2.5] Failed to report to his client when this Tribunal cancelled his licence.
- [3] The Tribunal upheld the complaint. Mr Hakaoro:
 - [3.1] Breached clauses 1.5(a), (b), and (d) and also 8(d) of the 2010 Code. He failed to enter a complying written agreement.
 - [3.2] Breached clauses 1.1(a), (b) of the 2010 Code. He failed to address Immigration New Zealand's concerns when he had a duty to do so, and he lodged an appeal without instructions.
 - [3.3] Breached clause 3(a) of the 2010 Code. He failed to notify the complainant of the steps he took, and the issues Immigration New Zealand raised.
 - [3.4] Breached clauses 1.1(c), and 3(b) of the 2010 Code. He failed to inform his client he could no longer provide immigration advice, and protect her interests when his licence was cancelled.
- [4] The full circumstances are set out in the substantive decision.

The Parties' Positions on Sanctions

- [5] The Registrar provided submissions on sanctions; she provided a review of the general principles rather than suggesting specific sanctions. She also reported on Mr Hakaoro's history of offending and his non-compliance with sanctions imposed for earlier complaints.
- [6] The complainant and Mr Hakaoro did not make any submissions.

Discussion

Prior licence cancellation and sanctions

- [7] The Tribunal cancelled Mr Hakaoro's licence and prohibited him from reapplying for two years from 27 May 2013. It dealt with a series of seven complaints. Multiple complaints would have justified cancelling Mr Hakaoro's licence, but the Tribunal only cancelled the licence for one two year period.
- [8] The Tribunal also made orders for Mr Hakaoro to refund fees, and pay financial sanctions amounting to \$85,400. Mr Hakaoro has not made any payments at all; the Registrar has not bankrupted Mr Hakaoro or taken other action as she considers it is uneconomic to incur further costs with virtually no chance of recovering any money.

This is one of a series of current complaints

- [9] Mr Hakaoro has had a further six complaints upheld, and this decision is part of that series where it is making orders in respect of those current complaints.

Mr Hakaoro's circumstances

- [10] The Registrar's report indicates Mr Hakaoro has no ability to pay any financial sanctions. He was recently released from prison after serving a sentence in respect of offending against the Immigration Advisers Licensing Act 2007 (the Act).
- [11] While the Registrar makes the decision, given Mr Hakaoro's history of professional and criminal offending against the Act, there can be little doubt Mr Hakaoro will never successfully apply for a licence under the Act.

The options available to the Tribunal

- [12] The only relevant sanctions the Tribunal can impose on Mr Hakaoro are financial, and a prohibition on applying for a licence for a period of up to two years. The reality is those orders will have no effect, as Mr Hakaoro could not successfully apply for a licence and it appears he will not pay any financial sanctions, and there will be no consequences.
- [13] The sanctions the Tribunal can impose are accordingly simply a marker of the gravity of Mr Hakaoro's offending, and a denunciation of it. Of course, if Mr Hakaoro were to have the means to pay in the future, the financial orders would take effect.
- [14] The Tribunal must of course impose sanctions on a principled basis, reflecting the gravity of the professional offending, and the overall circumstances.

The relevance of Mr Hakaoro's inability to pay

- [15] For reasons discussed in previous sanctions decisions concerning Mr Hakaoro, the Tribunal does not consider lack of means should result in an order lower than what would otherwise apply¹. However, the Tribunal is willing to make orders that will favour payment of compensation and the refund of fees to complainants. In this case, it does not appear Mr Hakaoro will pay any financial sanction.

The financial penalty on this complaint

- [16] Given Mr Hakaoro's delinquent failure to comply with the Code of Conduct, and disgraceful failure to inform and take instructions from his client the financial penalty will be \$5,000.
- [17] A penalty of \$5,000 is a mid-range penalty, the scale of financial penalties being up to \$10,000.

Compensation and the refund of fees

- [18] The complainant is entitled to a refund of \$4,000 in fees.
- [19] The complainant did not seek compensation; accordingly, there will be no order.

Costs

- [20] There is no application for cost, so there will be no order.

Prohibition on applying for a licence

- [21] Mr Hakaoro has failed to pay any disciplinary penalties, has a history of criminal offending against clients, a disciplinary history of: attempting to exploit clients sexually, systematic dishonesty against clients, and repeated failure to comply with the Code of Conduct. It is likely the only effect of this decision is denunciation of Mr Hakaoro's conduct. Those factors together make it appropriate to impose a further prohibition on Mr Hakaoro applying for a licence on

¹ *TU v Hakaoro* [2014] NZIACDT 1

each of the six current charges; notwithstanding that he is never likely to be able to apply successfully for a licence.

[22] Accordingly, the Tribunal will order that Mr Hakaoro is prohibited from applying for a licence for two years from 28 May 2015.

Censure

[23] The Tribunal censures Mr Hakaoro for his conduct.

Decision

[24] Mr Hakaoro is:

[24.1] Censured.

[24.2] Prevented from applying for a licence for a period of two years from 28 May 2015.

[24.3] Ordered to pay the complainant \$4,000 as a refund of fees.

[24.4] Ordered to pay a penalty of \$5,000.

DATED at WELLINGTON this 14th day of May 2015

G D Pearson
Chair