

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

Decision No: [2015] NZIACDT 53

Reference No: IACDT 017/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Errol Anthony Darlerbe**

Complainant

**AND**

**Hakaoro Hakaoro**

Adviser

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**DECISION**

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**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 (*Darlerbe v Hakaoro* [2015] NZIACDT 28; see [www.justice.govt.nz](http://www.justice.govt.nz)).
- [2] Mr Hakaoro accepted instructions to assist the complainant with his application for residence and received fees; and then:
- [2.1] He lost his licence, as this Tribunal cancelled it.
- [2.2] He could no longer lawfully undertake the work he agreed to provide.
- [2.3] He did not tell his client. His client needed to know, as he needed to obtain the services Mr Hakaoro could no longer provide, and he needed to know about his immigration situation.
- [2.4] The complainant eventually found out what had happened from Immigration New Zealand.
- [2.5] Mr Hakaoro has never refunded the fees he took, and did not provide the services he agreed to provide.
- [3] The Tribunal upheld the complaint. Mr Hakaoro:
- [3.1] Breached clauses 1.1(c) and 3(b) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). Clause 3(b) required Mr Hakaoro to confirm in writing when work ceases. Work had to cease when he did not have a licence. He did not inform his client, accordingly he breached clause 3(b). When he could no longer act, his client required representation. Mr Hakaoro did nothing, he did not tell his client he could no longer act, he was left to make his own inquiries. His client needed to know what his immigration circumstances were, and have the professional representation he had paid for. Mr Hakaoro breached clause 1.1(c).
- [3.2] Breached clause 3(d) of the 2010 Code. Mr Hakaoro received \$3,000, he had not lodged the application he had been paid to lodge. There is no apparent benefit of any kind from work Mr Hakaoro did, if he did any work at all. The complainant was entitled to some or all of the fees he paid. Clause 3(d) required Mr Hakaoro to refund the fees, and he failed to do so. Accordingly, he breached clause 3(d).
- [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 sought a refund of fees; 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 apply<sup>1</sup>. 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 perform work for a client, and not account for the fees the financial penalty will be \$5,000. Mr Hakaoro has systematically taken money from clients and failed to provide the professional services he promised.
- [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 \$3,000 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.

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<sup>1</sup> *TU v Hakaoro* [2014] NZIACDT 1

*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 each of the six current charges; notwithstanding that 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 \$3,000 as a refund of fees.
  - [24.4] Ordered to pay a penalty of \$5,000.

**DATED** at WELLINGTON this 14<sup>th</sup> day of May 2015

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**G D Pearson**  
Chair