

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

Decision No: [2015] NZIACDT 54

Reference No: IACDT 018/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

L Z E

Complainant

AND

Hakaoro Hakaoro

Adviser

**THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE
PUBLISHED**

DECISION

REPRESENTATION:

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

Complainant: Mr N T Tupou, barrister, instructed by Sinisa Law Ltd, solicitors, Auckland.

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 (*E v Hakaoro* [2015] NZIACDT 29; see www.justice.govt.nz).
- [2] Mr Hakaoro accepted instructions to assist the complainant with a request for a visa, she was in New Zealand unlawfully as she did not hold a visa. Mr Hakaoro:
- [2.1] Knew his client's circumstances, she did not have a job offer or New Zealand partner.
- [2.2] He considered it would be advantageous if she did have a job offer and a partner.
- [2.3] Mr Hakaoro lodged two requests with Immigration New Zealand, the first dishonestly misrepresented the complainant had a job offer. That failed, he procured a payment of \$2,000 from the complainant to obtain a job offer. The complainant did not ever receive a job offer.
- [2.4] Mr Hakaoro then lodged a second request with Immigration New Zealand, on this occasion he dishonestly misrepresented both that the complainant had a job offer and a New Zealand partner.
- [2.5] Mr Hakaoro dishonestly told the complainant Immigration New Zealand was considering her request after it had declined both requests.
- [2.6] When this Tribunal cancelled his licence, Mr Hakaoro did not tell his client.
- [3] The Tribunal upheld the complaint. Mr Hakaoro:
- [3.1] Engaged in dishonest and misleading behaviour, which is a ground for complaint pursuant to section 44(2) of the Act. Mr Hakaoro knew that his client's prospects of success with her request were potentially affected by an offer of employment and having a New Zealand partner. He knew she had neither. He procured \$2,000 from the complainant, who never received a job offer from an employer. Mr Hakaoro twice dishonestly told Immigration New Zealand the complainant had a job offer; and once that she had a New Zealand partner. He did so intending to mislead Immigration New Zealand, and probably did so for his personal advantage of justifying fees he procured, including a payment of \$2,000 for a job offer he knew did not exist. The behaviour involved overt dishonesty, it is not necessary to consider the provisions of the 2010 Code which the Registrar identified as alternative grounds.
- [3.2] He also dishonestly misrepresented that Immigration New Zealand was considering the complainant's request, when he knew that was false. That too was dishonest and misleading behaviour.
- [3.3] He also breached clause 1.1(c) the 2010 Code. Mr Hakaoro did not tell his client when he lost his licence, and could not provide any services for her. She needed representation, as she was in New Zealand unlawfully; instead Mr Hakaoro misinformed her. He breached his duties to take reasonable steps to ensure the complainant's interests were represented when he could no longer assist.
- [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 orders relating to Mr Hakaoro's ability to practise, and a financial penalty of \$8,000. In addition, \$5,000 refunding fees he solicited, and \$820 for costs and expenses of the Tribunal's hearing on the papers.

[7] Mr Hakaoro did not make any submissions.

Discussion

Prior licence cancellation and sanctions

[8] 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.

[9] 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

[10] 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

[11] 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).

[12] 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

[13] 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.

[14] 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.

[15] 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

[16] 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

[17] Given Mr Hakaoro's gross dishonesty, the financial penalty will be \$8,000.

[18] A penalty of \$8,000 is a high range penalty, the scale of financial penalties being up to \$10,000. It is appropriate.

¹ *TU v Hakaoro* [2014] NZIACDT 1

Compensation and the refund of fees

[19] The complainant is entitled to a refund of \$5,000 in fees. Mr Hakaoro provided no services of value.

[20] The complainant did not seek compensation; accordingly, there will be no order.

Costs

[21] The complainant is entitled to the costs and expenses of \$820 she seeks.

Prohibition on applying for a licence

[22] 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.

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

Censure

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

Decision

[25] Mr Hakaoro is:

[25.1] Censured.

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

[25.3] Ordered to pay the complainant \$5,000 as a refund of fees.

[25.4] Ordered to pay the complainant \$820 in costs and expenses.

[25.5] Ordered to pay a penalty of \$8,000.

Order prohibiting publication of the complainant's name or identity

[26] As the complainant was in New Zealand unlawfully, the Tribunal orders that her name and any information that may identify her is not to be published.

[27] This order recognises that persons seeking advice regarding their unlawful status in New Zealand are entitled to complain regarding professional misconduct, without fear of publication that may adversely affect them.

[28] Leave is reserved for the complainant or the Registrar to apply to vary this order. The order does not prevent the complainant disclosing the decision to her professional advisers, or any authority she considers should have a copy of the decision.

DATED at WELLINGTON this 14th day of May 2015

G D Pearson
Chair