

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

Decision No: [2015] NZIACDT 55

Reference No: IACDT 022/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Koli Nau Makahili

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 (*Makahili v Hakaoro* [2015] NZIACDT 30; see www.justice.govt.nz).
- [2] Mr Hakaoro accepted instructions to assist the complainant with a request for a visa; he was in New Zealand unlawfully as he did not hold a visa. Mr Hakaoro:
- [2.1] Failed to provide information relating to fees in writing prior to signing the written agreement; and the written agreement did not contain details of the services he would provide.
- [2.2] He lodged an application under section 61, when his client was not eligible. Apparently, he did not realise that, because he failed to make a routine inquiry with Immigration New Zealand.
- [2.3] When a person applies for a visa under section 61 their immigration history is a vital factor, and available from Immigration New Zealand.
- [2.4] Mr Hakaoro has not explained why he did not make such a request; and it was essential in this.
- [3] The Tribunal upheld the complaint. Mr Hakaoro:
- [3.1] Was negligent, which is a ground for complaint pursuant to section 44(2) of the Act. Mr Hakaoro negligently failed to request his client's immigration history from Immigration New Zealand. To make such an inquiry was routine, necessary in this case, and Mr H has failed to provide any reason why he could have reasonably thought otherwise at the time. As Mr Hakaoro was negligent, it is not necessary to consider the provisions of the 2010 Code, which the Registrar identified as alternative grounds.
- [3.2] He also breached clauses 1.5(b) and 8(d) the 2010 Code. Mr Hakaoro did set out details of his fees and payment terms before signing the written agreement to provide services; and he did not set out a full description of the services in the agreement. Those provisions of the 2010 Code required him to do so; and he has not provided any justification for his failure to do so.
- [4] The full circumstances are set out in the substantive decision.

The Parties' Positions on Sanctions

- [5] The Registrar provided submissions on sanctions; she reviewed 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 carelessness, and failure to comply with the Code of Conduct, the financial penalty will be \$4,000. His actions were detrimental to his client, she was entitled to professional services, and she did not receive them. This complaint is one of many occasions where Mr Hakaoro did not provide professional services to the standards mandated by the Code of Conduct.
- [17] A penalty of \$4,000 is in the mid range, with a maximum penalty of \$10,000.

Compensation and the refund of fees

- [18] The complainant is entitled to a refund of \$2,050 in fees. Mr Hakaoro provided no services of value
- [19] The complainant did not seek compensation; accordingly, there will be no order.

Costs

- [20] The parties did not seek costs or expenses, 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

¹ *TU v Hakaoro* [2014] NZIACDT 1

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 \$2,050 as a refund of fees.

[24.4] Ordered to pay a penalty of \$4,000.

DATED at WELLINGTON this 14th day of May 2015

G D Pearson
Chair