

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

Decision No: [2015] NZIACDT 56

Reference No: IACDT 043/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

Between

D S

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**THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE
PUBLISHED**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 (*S v Hakaoro* [2015] NZIACDT 31; 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] Failed to take any of the steps required to establish a professional relationship in accordance with the 2010 Code.
 - [2.2] He dishonestly told the complainant, her family, and Immigration New Zealand that the complainant and her siblings had job offers.
 - [2.3] Mr Hakaoro used his wife to offer immigration services in exchange for sexual availability, and the provision of domestic services.
 - [2.4] When this Tribunal cancelled his licence, Mr Hakaoro did not tell his client and made no provision for continued representation.
- [3] The Tribunal upheld the complaint. Mr Hakaoro:
 - [3.1] Breached clauses 1.5(a), (b) and (d), and 8(b) of the 2010 Code; he wholly failed to comply with the mandatory requirements for establishing a client relationship. He breached the disclosure requirements and the obligation to set out particulars in writing.
 - [3.2] Mr Hakaoro also engaged in dishonest and misleading behaviour, which is a ground for complaint pursuant to section 44(2)(d) of the Act. Knowing the representations were false, he:
 - [3.2.1] Told the complainant and her siblings he had altered their status with Immigration New Zealand.
 - [3.2.2] Later, told them he had procured job offers, to assist with their immigration situation.
 - [3.2.3] Provided the same false information to Immigration New Zealand.
 - [3.2.4] Told the complainant Immigration New Zealand was considering her request, when it had been declined.
 - [3.3] The information was calculated to convince the complainant to pay Mr Hakaoro for his services, persuade her he was providing services, and potentially influence Immigration New Zealand to make a favourable decision. Mr Hakaoro was aware the information was false. He has not provided any justification or excuse that explains his conduct; the dishonest motivations implicit in his behaviour are self-evident. It is not necessary to consider whether the same conduct breached the 2010 Code, as the behaviour was at the higher level of dishonesty.
 - [3.4] That Mr Hakaoro engaged in unprofessional and disrespectful conduct by having his wife seek to procure the complainant to enter a sexual relationship with him, and provide domestic services for both of them. Mr Hakaoro, was required to treat his client with respect, and act professionally pursuant to clause 1.1(a) of the 2010 Code. His conduct was grossly disrespectful, and unprofessional.
 - [3.5] Mr Hakaoro had an obligation to return passports and other personal documents on request, without delay and in a secure manner pursuant to clause 1.3(b) of the 2010 Code. The complainant and her siblings provided Mr Hakaoro with death certificates to provide to Immigration New Zealand. He did not return them, despite requesting that he do so.

[3.6] Mr Hakaoro failed to inform the complainant he could not continue with his instructions after his licence was cancelled, in breach of clause 1.1(c) of the 2010 Code. He had an obligation to do so pursuant to clause 1.1(c); his client needed that information as she had a current immigration issue, and was trying to address it. Mr Hakaoro should have provided support for her to obtain alternative representation.

[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 only 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] Mr Hakaoro's offending in respect of the complaint involved:
- [16.1] Attempted sexual exploitation,
 - [16.2] Failure to comply with the Code of Conduct's disclosure and documentation requirements,
 - [16.3] Dishonesty in relation to his client, and dishonesty in relation to Immigration New Zealand,
 - [16.4] Failure to deal with the complainant's documents properly and otherwise deal with his professional obligations to her at the end of his engagement.
- [17] These discrete elements of appalling exploitation are sufficiently independent to amount to separate complaints, and justify imposing a financial penalty for each. While dealt with in one proceeding, they are separate complaints. Further, each of them, including the attempted sexual exploitation of a client are behaviours exhibited in relation to other complaints. I am satisfied in these circumstances; the penalty should reflect each of the dimensions of systematic exploitation of the complainant. The penalties will be:
- [17.1] \$10,000 for attempting to sexually exploit the complainant;
 - [17.2] \$3,000 for failing to comply with the disclosure and client engagement requirements of the Code of Conduct;
 - [17.3] \$8,000 for the dishonesty in relation to the complainant and Immigration New Zealand, they are in essence the elements of the same dishonesty and appropriately marked by one penalty; and
 - [17.4] \$3,000 for failing to return documents and deal with his client properly when he could no longer act. The two are related elements and properly treated as one.
- [18] A penalty of \$24,000 in total is proportionate to Mr Hakaoro's sustained abusive and disrespectful treatment of his client, and his dishonesty toward Immigration New Zealand.

Compensation and the refund of fees

- [19] The complainant is entitled to a refund of \$3,000 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 parties did not seek costs or expenses, so there will be no order.

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 he is never likely to be able to apply successfully for a licence.

¹ *TU v Hakaoro* [2014] NZIACDT 1

[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 \$3,000 as a refund of fees.

[25.4] Ordered to pay a penalty of \$24,000.

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