

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

Decision No: [2015] NZIACDT 57

Reference No: IACDT 046/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Taufa Uatahausi and 'Ana Mohulamu  
Uatahausi**

Complainant

**AND**

**Hakaoro Hakaoro**

Adviser

---

**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 (*Uatahausi v Hakaoro* [2015] NZIACDT 32; see [www.justice.govt.nz](http://www.justice.govt.nz)).
- [2] Mr Hakaoro accepted instructions to assist the complainants with a request for a visa; they wished to remain in New Zealand after their temporary permits expired:
  - [2.1] Immigration New Zealand identified why the complainants could not remain in New Zealand beyond the 9 months allowed. Mr Hakaoro told them they could expect to apply successfully to renew their visas.
  - [2.2] Mr Hakaoro wrote to Immigration New Zealand, but he provided reasons that supported or exacerbated the concerns Immigration New Zealand raised.
  - [2.3] After allowing Mr Hakaoro more time, he provided further unsatisfactory reasons to Immigration New Zealand.
- [3] The Tribunal upheld the complaint. Mr Hakaoro:
  - [3.1] Breached clause 1.1(a) of the 2010 Code, any competent licensed immigration adviser ought to have recognised the complainants were in a difficult situation when they consulted Mr Hakaoro. They could imperil their prospects of returning to New Zealand, if they did not comply with their visas. They had family in New Zealand, and that was potentially a significant matter for them. It was wholly inappropriate to say they could expect to apply successfully to remain in New Zealand. They were entitled to a clear explanation that remaining in New Zealand carried risks, unless there were truly compelling circumstances, which was not the case.
  - [3.2] Mr Hakaoro then wholly failed to have regard to, and answer the issues Immigration New Zealand raised. He raised nothing else of merit that could, or should have caused Immigration New Zealand to take a different view. They did not take different view, and reaffirmed their position.
  - [3.3] Those matters evidence a lack of care and professionalism in dealing with the complainants' instructions.
- [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 submitted the Tribunal should make orders relating to Mr Hakaoro's ability to practise, be subject to a penalty of \$10,000, and pay the costs and expenses of the complainants of \$5,000, refund fees of \$1,000 and pay compensation of \$2,000 to each complainant. There was no evidence to support the level of costs, or the amount of compensation.
- [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, when 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 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*

- [17] Mr Hakaoro's offending in this complaint is in the mid-range. He was dealing with a family who would potentially be in a difficult position if they did not receive accurate and realistic advice. Failure to ensure his clients understand their options, and complied with New Zealand immigration law and policy would potentially make any future immigration options very problematic; and complying with New Zealand law had to be their priority. Mr Hakaoro led his clients to have unrealistic expectations, and failed to respond professionally to an uncomplicated communication from Immigration New Zealand. He wholly failed to meet minimum professional standards.
- [18] However, I do not consider this is a case where the maximum financial penalty of \$10,000 can be justified as the complainants contend. The professional offending is in the lower mid-range, arguably exacerbated by Mr Hakaoro's history of similar and systematic professional offending.

---

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

- [19] In all the circumstances I am satisfied that a penalty of \$4,000 is proportionate, being in the mid-range where the maximum penalty is \$10,000.

*Compensation and the refund of fees*

- [20] The complainant is entitled to a refund of \$1,000 in fees. Mr Hakaoro provided no services of value
- [21] The complainants seek compensation of \$2,000 each. However, they provided no evidence of quantified loss. The Tribunal on some occasions has awarded compensation in the nature of general damages, for the suffering, inconvenience and expense of rectifying the failure of a licensed immigration adviser to deliver professional services to minimum standards. However, the awards are modest, and the Tribunal is concerned to ensure they are not simply an additional financial penalty.
- [22] The complainants clearly did require professional assistance after Mr Hakaoro put them into a difficult situation, and they no doubt faced substantial difficulties. I am satisfied it is reasonable to award compensation of \$1,500 to each of them on that basis.

*Costs*

- [23] The parties sought costs and expenses of \$5,000 but provided no evidence of actual costs. The Tribunal heard this complaint on the papers, Mr Tupou provided submissions on sanctions. I am not satisfied an award of \$5,000 is justified. A proper level of costs for Mr Tupou to take instructions and provide submissions, and the inevitable expense of lodging the complaint and assisting with the investigation is \$1,000. The Tribunal will make an award of that level; any higher award would require proof of actual costs.

*Prohibition on applying for a licence*

- [24] 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.
- [25] Accordingly, the Tribunal will order that Mr Hakaoro is prohibited from applying for a licence for two years from 28 May 2015.

*Censure*

- [26] The Tribunal censures Mr Hakaoro for his conduct.

**Decision**

- [27] Mr Hakaoro is:
- [27.1] Censured.
  - [27.2] Prevented from applying for a licence for a period of two years from 28 May 2015.
  - [27.3] Ordered to pay a penalty of \$4,000.
  - [27.4] Ordered to pay the complainants:
    - [27.4.1] \$1,000 as a refund of fees,
    - [27.4.2] \$3,000 (being \$1,500 each) in compensation,

[27.4.3] \$1,000 for costs and expenses.

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

---

**G D Pearson**  
Chair