

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

Decision No: [2015] NZIACDT 68

Reference No: IACDT 040/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Zelin Ye**

Complainant

**AND**

**Shu (Louisa) Chen**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** M Denyer, Ministry of Business Innovation and Employment, Auckland.

**Complainant:** S Laurent, Laurent Law, Auckland.

**Adviser:** In person.

Date Issued: 28 May 2015

## DECISION

### Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal.
- [2] While the original complaint was on more serious grounds; the only matter the Registrar found to have potential substance, was a failure to have a written agreement. Ms Chen accepted she did not have an agreement, should have, and concedes the Tribunal should uphold the complaint in that respect. However, she says the situation only arose due to her misunderstanding over her duties as a contractor to a company she understood was responsible for the client relationship.
- [3] Ms Chen accepted she was in error, but said; the lack of an agreement did not cause a difficulty in this case, she had put her practice in order, and been fully complying since this incident, which occurred some 4 years ago. She asked that the Tribunal uphold the complaint, but take no further action given the circumstances.
- [4] The Tribunal upheld the complaint, and will now consider what action to take. It will first give the complainant and the Registrar the opportunity to respond.

### The complaint

- [5] The Registrar, having investigated the complaint, lodged a Statement of Complaint that said "the complaint may disclose" a breach of clause 1.5 of the Licensed Immigration Advisers Code of Conduct 2010 (the Code of Conduct). Ms Chen accepted she did not have a written service agreement.
- [6] The Complainant has not sought to pursue other issues, though the complaint originally included allegations that are more serious. The Registrar did not find support for those more serious allegations.

### Ms Chen's position

- [7] Through her counsel, Ms Chen contended:
- [7.1] The complaint did not originally include the lack of a written agreement, there was no harm resulting.
- [7.2] The reason for having no agreement was a misunderstanding concerning Ms Chen's authority.
- [7.3] The issue occurred some four years ago, when relevant principles about adviser/client relationships were not settled.
- [7.4] Since the Authority identified its concern, Ms Chen has been compliant.
- [8] As a result, Ms Chen's position was to ask the Tribunal to uphold the complaint, but take no further action.

### Discussion

#### *The facts*

- [9] Given Ms Chen's position, it is only necessary to consider why she did not have a written agreement. The essential facts were that Ms Chen understood her client had an agreement with a company, which did not and could not hold a licence as a licensed immigration adviser. Ms Chen provided contractual services to the company, and she thought she did not have an obligation in relation to an agreement with her client.
- [10] After the complaint, she obtained legal advice, corrected her practice and has since complied with her obligations.

*The gravity of the matter*

- [11] The Act and the various versions of the Code of Conduct are clear, licensed immigration advisers carry responsibility for client relationships. They have to accept personal responsibility for instructions, and be identified as the person who will provide the services.
- [12] While there has been a consistent approach from the Authority and this Tribunal, it is reasonable to say that some members of the profession have been slow to grasp the implications. An example of continuing debate on the issue is the recent decision in *McHugh v Wiezoreck* DC Christchurch CIV-2013-085-001004, 28 January 2015. That decision affirms the approach the Authority and the Tribunal have consistently taken.
- [13] I accept Ms Chen did not offend intentionally, applying the Code and the Act requires an application of principles of legal personality, and an understanding of the policy foundation. Namely, that only individuals can hold a licence, and an individual must hold the professional relationship (though a company may have some commercial obligations). None-the-less licensed immigration advisers are required to, and should readily, understand practical implication that they are the responsible professional, and any licensed immigration adviser providing services must be identified in writing.
- [14] Accordingly, this is not a matter where Ms Chen is without fault, and the lapse is sufficiently serious to require an adverse disciplinary finding; it is to Ms Chen's credit she accepts that position.
- [15] Ms Chen contends there are at least three mitigating factors:
- [15.1] The lack of an agreement was not the cause of a difficulty in the professional relationship;
- [15.2] Ms Chen took advice when the Authority raised the issues, accepted she was wrong, and put her practices in order;
- [15.3] The incident is now historic, and no longer of ongoing significance.
- [16] I will consider whether those factors make this an appropriate case to take no further action, however I will first give the parties the opportunity to provide submissions.

**Decision**

- [17] The Tribunal upholds the complaint pursuant to section 50 of the Act; Ms Chen's breached the 2010 Code in the respect identified and that is a ground for complaint pursuant to section 44(2)(e) of the Act.
- [18] In other respects, the Tribunal dismisses the complaint.

**Submissions on Sanctions**

- [19] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions or take no further action.
- [20] The Authority and the Complainant have the opportunity to provide submissions on the appropriate action, whether they do so or not, Ms Chen is entitled to make submissions and respond to any submissions from the other parties.

*Timetable*

- [21] The timetable for submissions will be as follows:
- [21.1] The Authority and the Complainant are to make any submissions within 10 working days of the issue of this decision.
- [21.2] The adviser may make any further submissions (whether or not the Authority or the Complainant makes submissions) within 15 working days of the issue of this decision.

[21.3] The Authority and the Complainant may reply to any submissions made by the Adviser within 5 working days of her filing and serving those submissions.

**DATED** at Wellington, this 28<sup>th</sup> day of May 2015.

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**G D Pearson**  
Chair