

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

Decision No: [2015] NZIACDT 83

Reference No: IACDT 012/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Lingchao Kong

Complainant

AND

Yangyang (Paul) Li

Adviser

SECOND INTERIM DECISION
IMPOSING SANCTIONS

REPRESENTATION:

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

Complainant: In person.

Adviser: Mr R Chen, lawyer, MBC Law Ltd., Auckland.

Date Issued: 26 August 2015

INTERIM DECISION**BACKGROUND**

- [1] This is the second interim decision addressing sanctions in relation to this complaint. It follows *Kong v Li* [2015] NZIACDT 59 (see www.justice.govt.nz).
- [2] In that decision, the Tribunal identified Mr Li appeared to have some serious misconceptions regarding the complaint and the potential consequences. The Tribunal gave Mr Li the opportunity of appearing before the Tribunal, with a view to explaining his circumstances. He has not done so.
- [3] Mr Li requested an adjournment and, on 15 June 2015, the Tribunal issued a minute that explained that if Mr Li attended before the Tribunal, modest sanctions could potentially apply. The Tribunal gave Mr Li the option of attending at that point or adjourning if he chose to do so. He chose to defer his appearance. He then failed to appear without notice on the day set for his appearance.
- [4] The Tribunal requested Mr Li's counsel appear, and asked him to make it clear to Mr Li that the Tribunal did require him to appear. Counsel was told that the Tribunal's focus would be to restore Mr Li to practice if possible, but with appropriate regard to protecting the public.
- [5] In a minute issued after that message was given to Mr Li's counsel, the Tribunal set out the background and the Tribunal's intention to focus on rehabilitation, provided Mr Li responded appropriately.
- [6] That minute gave Mr Li two options:
 - [6.1] Appear before the Tribunal and deal with the issues;
 - [6.2] Provide an affidavit from a medical practitioner saying he is unable to attend a hearing, in which case the Tribunal would issue an interim decision suspending his licence until he could attend.
- [7] The Tribunal pointed out that if Mr Li was not in a position to attend before the Tribunal, he would, ostensibly, not be in a position to offer professional services to the public.
- [8] The Tribunal provided a deadline for Mr Li to reply, he did not reply by the deadline. Since then he has provided a declaration from a medical practitioner, which does not address whether he is able to attend a hearing, but does say he "is advised not suitable for work". The Tribunal accepts Mr Li's responses and that his preceding failure to respond related to his health, rather than wilful defiance.
- [9] Mr Li has not renewed his licence, and accordingly it has expired.
- [10] While the information from the medical practitioner is not the information requested, as to whether he is able to attend a hearing, I will assume it implies Mr Li is temporarily unable to attend before the Tribunal. As Mr Li's licence has expired, I will make a temporary order that he is not to apply to renew his licence until he does appear before the Tribunal.
- [11] The first interim decision explains that the Tribunal has upheld a serious complaint. The appropriate sanctions, in relation to Mr Li's licence, depend in large part on Mr Li's willingness to acknowledge fault and satisfy the Tribunal that he will, in future, operate his practice in accordance with the law. After upholding a complaint, the Tribunal must, in a timely manner, address the issue of sanctions. That is particularly so where the potential orders address whether a licensed immigration adviser will offer services to the public in a safe manner. Given the time that has passed since the Tribunal upheld the complaint, I am not willing to defer dealing with whether Mr Li will offer services safely. Until Mr Li satisfies the Tribunal he will practise in accordance with the law, he should not be providing professional services to the public.

- [12] Accordingly, the Tribunal will make interim orders that prevent Mr Li reapplying for a licence until 15 March 2016. At any time prior to then, Mr Li may request the Tribunal to convene a hearing for him to appear, and deal with the outstanding issues.
- [13] If Mr Li has not appeared before the Tribunal on or before 1 March 2016, the Tribunal will make final orders dealing with sanctions based on the information the Tribunal has at that point in time. The Tribunal will not issue further notice before imposing sanctions.

OBSERVATION

- [14] The Tribunal is concerned to ensure that Mr Li has the opportunity to address the issues arising from the complaint, and demonstrate he will manage his practice properly. The Tribunal expects to allow Mr Li to continue to practise, provided he acknowledges the gravity of the issues, demonstrates an understanding of his obligations, and the Tribunal is satisfied he is committed to practising safely and in compliance with the law.
- [15] The Tribunal also records this interim decision is made to give Mr Li the opportunity to adequately present his case, which is apparently not presently possible. The alternative is to make final orders now; in my view, simply deferring making orders without sufficient protection for the public is not appropriate for the reasons discussed.

ORDERS

- [16] The Tribunal orders that Mr Li is prevented from reapplying for a licence under the Immigration Advisers Licensing Act 2007 until 15 March 2016.
- [17] This order is an interim order, the Tribunal reserves leave for Mr Li to apply at anytime to appear before the Tribunal and reserves the power to rescind this order and make final orders imposing sanctions.
- [18] The Tribunal also reserves leave for either the Registrar or the complainant to apply to have the Tribunal issue final orders at anytime.
- [19] If Mr Li has not appeared before the Tribunal on or before 1 March 2016, it will make final orders imposing sanctions based on the information before it without further notice.

DATED at WELLINGTON this 26th day of August 2015

G D Pearson
Chair