

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

Decision No: [2016] NZIACDT 11

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

FINAL DECISION
IMPOSING SANCTIONS

REPRESENTATION:

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

Complainants: In person.

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

Date Issued: 17 March 2016

FINAL DECISION

BACKGROUND

- [1] This is a final decision, following two interim decisions¹ relating to imposing sanctions. As is evident from two interim decisions, and particularly the first of them, the Tribunal found:

Provision of immigration advice by unlicensed personnel

- [1.1] The Code of Conduct 2010 (clause 2.1(b)) required that Mr Li act in accordance with immigration legislation including the Immigration Act 2009.

- [1.2] He failed to do so in that:

[1.2.1] He allowed an unlicensed person to provide immigration advice in the course of engaging the complainant, and to assist with his application for a visitor visa.

[1.2.2] With Mr Li's knowledge, the unlicensed person performed actions that breached section 6 of the Act.

- [1.3] The Code of Conduct (clause 3) required that Mr Li maintain professional business practices relating to contracts and staff management.

- [1.4] He failed to do so in that:

[1.4.1] He was not usually present in the Auckland office of his practice, and had to manage that situation.

[1.4.2] He allowed staff in his Auckland office to engage a client when he was not present, and did not use a means such as a telephone or video link to communicate with his client.

[1.4.3] He allowed the unlicensed staff to provide immigration services.

[1.4.4] He had an obligation to ensure he properly managed the staff in his practice. That required that he put reasonable practices in place to ensure that staff did not provide immigration advice or engage clients without a licensed immigration adviser providing the essential advice and disclosure required. He permitted them to do so.

Failure to commence the professional engagement in accordance with the Code of Conduct

- [1.5] Mr Li failed to personally engage with his client and make him aware of all significant matters relating to the agreement to provide professional services to apply for a visitor visa; he accordingly breached clause 1.5(a) of the Code of Conduct in that respect.

- [2] The first interim decision explains that inherent in the first ground of complaint is that serious criminal offending occurred in Mr Li's practice. It also explains the starting point for sanctions following Mr Li's offending is:

[2.1] Cancellation of his licence;

[2.2] Prohibition against applying for any licence for two years (though he could have no expectation the Registrar would then, or potentially ever, regard him as a fit and proper person to hold a licence);

[2.3] A financial penalty of \$7,500;

[2.4] A refund of fees paid for the services provided unlawfully;

¹

[2015] NZIACDT 83, and [2015] NZIACDT 59

[2.5] Compensation for any consequent loss; and

[2.6] Costs.

- [3] Mr Li's response to the Tribunal's decision to uphold the complaint was to trivialise the findings against him. The Tribunal has gone to very considerable lengths to give Mr Li the opportunity to reflect, and demonstrate that he now has a better appreciation of his professional responsibilities.
- [4] Mr Li has consistently failed to engage with the Tribunal. Accordingly, it is inevitable the Tribunal must proceed on the basis there is neither mitigation in the circumstances concerning Mr Li's professional offending, nor in his response to the complaint.
- [5] Mr Li no longer holds a licence, he did not renew it; the Tribunal prohibited him from applying for a licence from 26 August 2015. In the absence of mitigating factors, the Tribunal will impose the maximum temporal prohibition of two years on reapplying for a licence, which will run from 26 August 2015. In any case, he must comply with the orders in this decision before applying for another licence. Should Mr Li ever seek a licence, he must then meet the requirements for a licence to issue. That is a matter for the Registrar, and she is entitled to take account of Mr Li's disciplinary history. Mr Li should not assume he will be able to successfully apply for a licence in the future.
- [6] The financial penalty will be \$7,500, it is the starting point and there are no mitigating factors. Potentially Mr Li's trivialisation of the complaint and failure to engage with the Tribunal's concerns aggravates the complaint. However, the overall sanctions do meet the principles the Tribunal must apply. The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]:
- ... the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.
- [7] The complainant is entitled to a refund of the \$640 he paid. Mr Li provided services in breach of the Act, and without the protection, the Code of Conduct provides.
- [8] There is no claim for costs or compensation; accordingly, there will be no orders.

Decision

- [9] The Tribunal orders that Mr Li is:
- [9.1] Censured.
- [9.2] Prevented from reapplying for a licence until he has complied with the following orders, or until 25 August 2017, whichever is the later in time.
- [9.3] Pays a penalty of \$7,500.
- [9.4] Refunds fees of \$640 to the complainant.

DATED at WELLINGTON this 17th day of March 2016

G D Pearson
Chair