

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

Decision No: [2016] NZIACDT 28

Reference No: IACDT 042/15.

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Bum Suk Yu

Complainants

AND

Kotaro Mizoguchi

Adviser

DECISION

REPRESENTATION:

Registrar: Mr A Dumbleton, lawyer, MBIE, Auckland.

Complainant: In person.

Adviser: Counsel, Mr A Holmes, barrister, Auckland, instructed by Mr V Carmine, barrister and solicitor, Auckland.

Date Issued: 25 May 2016

DECISION

Agreement

- [1] This matter was set down for an oral hearing. The parties entered into discussions, in which the respective counsel for the Registrar and Mr Mizoguchi, and Mr Yu participated.
- [2] Mr Yu and Mr Mizoguchi on an interparty basis agreed that the orders that follow are a full and final settlement of any claim between them in relation to all matters arising out of or in connection with this proceeding.
- [3] The Registrar considered and accepted the agreed factual basis and the consequential orders are a proper outcome, having regard to the public interest factors.
- [4] The Tribunal considered the papers prior to the hearing, and considers the agreed facts and orders following from them a fair and appropriate resolution.
- [5] In terms of liability, the parties agreed:
 - [5.1] Mr Mizoguchi failed to correctly follow the process under the Licensed Immigration Advisers Code of Conduct 2014 (the 2014 Code) relating to entering into a signed agreement for the provision of immigration services; and
 - [5.2] He acted with insufficient care in respect of his professional responsibilities in dealing with Mr Yu and obtaining his instructions, including his management of the translator's role.
- [6] Accordingly Mr Mizoguchi breached clauses 18(a) and (c) of the 2014 Code, and further breached it in relation to lack of care, and management.

Orders

- [7] The Tribunal upholds the complaint pursuant to section 50 of the Immigration Advisers Licensing Act 2007.
- [8] The Tribunal orders, by consent, that:
 - [8.1] Mr Mizoguchi is to refund Mr Yu the sum of \$1,660 in fees; and
 - [8.2] Mr Mizoguchi is to pay compensation of \$3,000 to Mr Yu.
- [9] The payments are payable forthwith.
- [10] Mr Mizoguchi is to enrol in the Graduate Diploma in New Zealand Immigration Advice (Level 7):
 - [10.1] He is to enrol in the course to commence in July this year or February 2017;
 - [10.2] He is to complete the requirements for the issue of the Graduate Diploma before the end of 2017.
- [11] The Tribunal reserves leave for Mr Mizoguchi or the Registrar to apply to vary the orders relating to Mr Mizoguchi's enrolment in, and completion of, the Graduate Diploma.

Observations

- [12] The Tribunal is satisfied that the factual basis for upholding the complaint and the consequential orders are consistent with the information before the Tribunal, and proportionate.
- [13] The Tribunal observes the determination of the complaint is in accordance with restorative practice. The Tribunal has particular regard to Mr Mizoguchi's agreement to complete the Graduate Diploma in New Zealand Immigration Advice (Level 7), and to compensate Mr Yu.

Given the restorative foundation for the resolution of the complaint, and the significance of the orders having a restorative effect, the punitive orders that would otherwise apply may not be required.

- [14] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55at [97]:

[T]he 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.

- [15] Given the facts were disputed and agreement reached at the hearing to determine the facts; Mr Mizoguchi accepted the Tribunal should uphold the complaint at the earliest opportunity. In addition, he undertook to ensure that in future he does meet the requirements of the 2014 Code in all respects. The gravity of the findings on the agreed facts are not high end professional offending. Accordingly, I am satisfied this is a case where punitive orders are not required.

DATED at WELLINGTON this 25th day of May 2016.

G D Pearson
Chair