

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

Decision No: [2016] NZIACDT 30

Reference No: IACDT 010/15

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Alexandre Matheis

Complainant

AND

Hong Ling

Adviser

DECISION
IMPOSING SANCTIONS

REPRESENTATION:

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

Complainant: In person.

Adviser: Mr G C Jenkin, barrister, instructed by Mr N Faigan, Solicitor, Auckland.

Date Issued: 13 June 2016

DECISION

This complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Ms Ling (*Matheis v Ling* [2015] NZIACDT 91 (www.justice.govt.nz))
- [2] . The grounds of complaint were that:
- [2.1] The complainant came to the practice, and had a meeting with a licensed immigration adviser.
- [2.2] That licensed immigration adviser referred the client to Ms Ling, who could not see him at the time. He returned, and met with Mr Li.
- [2.3] Ms Ling had either no contact or limited contact with the complainant. Mr Li gathered information, and undertook the client engagement process.
- [2.4] Ms Ling used the information Mr Li gathered from the complainant to progress his immigration request.
- [2.5] When the Registrar received this complaint, she requested that Ms Ling provide a copy of her client file. Ms Ling provided only part of it and then provided file notes pertinent to the complaint after the Registrar disclosed the grounds of complaint.
- [3] The Tribunal has determined Ms Ling failed to meet her obligation to ensure only a licensed immigration adviser provide professional services, and she failed to comply with the Registrar's requirement that she provide her client file. Accordingly, the Tribunal upheld the complaint on those grounds. The particulars are set out in the decision upholding the complaint.

The Parties' Positions on Sanctions

The Authority

- [4] The Registrar did not provide submissions, but did indicate after reviewing the material filed by Ms Ling's counsel she accepted:
- [4.1] Ms Ling was licensed under the regime prior to a requirement for formal training; and
- [4.2] The Registrar would expect Ms Ling to complete a refresher course when renewing her licence, if the Tribunal did not impose other training requirements.

The Complainant

- [5] The complainant did not provide submissions.

Mr Ms Ling

- [6] Ms Ling's counsel provided submissions, and supporting material that are critical to the outcome of this decision. The most significant elements of that material are:
- [6.1] Ms Ling acknowledges the correctness of the Tribunal's findings, expresses her regret, and explains she did not properly understand the true limits of the prohibition on unlicensed persons engaging in the delivery of immigration services.
- [6.2] She has no other disciplinary history, and provided evidence that what occurred in respect of this complaint was an isolated matter.
- [6.3] There were some extenuating circumstances relating to how the complainant's instructions developed, and at the time, Ms Ling did have some health difficulties.

- [7] It is not necessary to describe the material further, other than to say the evidential material provided supports the contentions and I accept them.

Discussion

The principles to apply

- [8] 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.”
- [9] When imposing sanctions those statutory purposes require consideration of at least four factors which may materially bear upon maintaining appropriate standards of conduct:
- [9.1] *Protecting the public*: Section 3 of the Act states “The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ...”
- [9.2] *Demanding minimum standards of conduct*: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) and *Taylor v General Medical Council* [1990] 2 All ER 263 (PC), discuss this aspect.
- [9.3] *Punishment*: The authorities, including *Z v Dental Complaints Assessment Committee*, emphasise that punishment is not the purpose of disciplinary sanctions. Regardless, punishment is a deterrent, and a proper element of disciplinary sanctions (*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007).
- [9.4] *Rehabilitation*: It is important, when practicable, to have the practitioner continue as a member of the profession practising well (*B v B* [1993] BCL 1093; HC Auckland HC4/92, 6 April 1993).

The gravity of the offending

- [10] The two grounds of complaint are inevitably serious, as criminal sanctions underpin the prohibition on unlicensed staff, and providing material to the Registrar.
- [11] The consequences of a professional person allowing serious criminal offending to occur in their practice are obvious. The starting point for sanctions where a licensed immigration adviser has used unlicensed persons to provide immigration services is:
- [11.1] Cancellation of their licence;
- [11.2] 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);
- [11.3] A financial penalty of \$7,500;
- [11.4] A refund of fees paid for the services provided unlawfully;
- [11.5] Compensation for any consequent loss; and
- [11.6] Costs.
- [12] However, the Tribunal has been conscious that notwithstanding the Immigration Advisers Authority’s efforts to ensure awareness of the gravity of breaching the Act, there has been a level of ignorance in the profession. The ignorance has related to the boundaries, and the gravity of breaching them. Against this background, the Tribunal has taken a flexible approach to sanctions. It has given considerable weight to a licensed immigration adviser’s apparent determination to comply with the Act in the future, and an element of contrition regarding the lack of care or understanding that led to offending. However, when the adviser’s reaction has

been to trivialise the offending, or they have continued with their non-compliance that has left little room for confidence that rehabilitation is realistic. The Tribunal cannot disregard the fact the Act treats non-compliance as serious criminal offending; it is not a regulatory offence punishable by a small fine.

- [13] The ground advanced in the submissions made by Ms Ling's counsel are accordingly pivotal.

Mr Ms Ling's licence

- [14] The authorities indicate it is a "last resort" to deprive a person of the ability to work as a member of their profession. However, regard must be had to the public interest when considering whether a person should be excluded from a profession due to a professional disciplinary offence: *Complaints Committee of Waikato Bay of Plenty District Law Society v Osmond* [2003] NZAR 162 (HC) at 171-173.
- [15] Rehabilitation of a practitioner is an important factor when appropriate (*B v B* HC Auckland HC4/92, 6 April 1993). In *Patel v Complaints Assessment Committee* (HC Auckland CIV-2007-404-1818, 13 August 2007) at [30]-[31], the Court stressed, when imposing sanctions in the disciplinary process applicable to that case, that it was necessary to consider the "alternatives available short of removal and explain why lesser options have not been adopted in the circumstances of the case".
- [16] Given the circumstances outlined in the submissions provided for Ms Ling, I am satisfied this is a case where it is proper, notwithstanding the gravity of the two grounds of complaint, to decide the Tribunal will not make any order affecting Ms Ling's licence.

This complaint in context and the penalties

- [17] Given Ms Ling's lack of care regarding two important issues of practice, a penalty is inevitably part of the sanctions. In that regard I necessarily give weight to the finding that Ms Ling failed to comply with the Registrar's request to provide her full file. When the Registrar makes a formal request under a statutory power, full, and meticulous compliance is obviously necessary, and a failure to do so will inevitably have serious consequences.
- [18] None-the-less, contrition, a good record, apparently high standards of practice, and some health difficulties at the time are substantial mitigating factors. I also accept Ms Ling's commitment to ensure she meets her professional obligations in the future.
- [19] In these circumstances, the financial penalty will be \$4,000.

Ancillary orders

- [20] Neither the Registrar nor the complainant sought orders for the refund of fees, compensation, or costs. I will make no further orders in this case.

Further training

- [21] Ms Ling will be required to enrol in and complete the New Zealand Immigration Adviser Refresher Course provided by Waiariki Bay of Plenty Polytechnic.
- [22] In ordinary circumstances, I would require Ms Ling to complete the Graduate Diploma in New Zealand Immigration Advice (Level 7). I am satisfied that the shorter course is appropriate, as the two grounds for complaint fall outside of professional service delivery *per se*. I do recognise that maintaining boundaries for unqualified staff is an elementary and essential aspect of service delivery; however, it is a discrete legal issue. Accordingly, I take account of Ms Ling's good record, her collegial working environment, and the evidence that she does provide service at a high level.

Censure

- [23] In accordance with the usual practice of disciplinary tribunals, censure will be an express sanction.

Orders

[24] Ms Ling is censured.

[25] The Tribunal orders, that Ms Ling pay a penalty of \$4,000.

[26] Ms Ling is required to enrol in the next available New Zealand Immigration Adviser Refresher Course provided by Waiariki Bay of Plenty Polytechnic. She is to meet all requirements for the successful completion of that course. The Tribunal reserves leave for Ms Ling or the Registrar to apply to vary the orders relating to enrolment and completion of the course.

DATED at WELLINGTON this 13th day of June 2016

G D Pearson
Chair