

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

Decision No: [2016] NZIACDT 34

Reference No: IACDT 037/15

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Zhenying Feng

Complainant

AND

Ming Fay Young

Advisers

DECISION

REPRESENTATION:

Registrar: Geraldine Kelly, lawyer, Legal Group, MBIE, Auckland.

Complainant: No appearance

Adviser: In person

Date Issued: 29 June 2016

DECISION

Complaint admitted

- [1] During the course of an oral hearing to determine the complaint, Mr Young accepted the grounds of complaint as set out in the Registrar's statement of complaint.
- [2] The grounds were in essence:
- [2.1] Mr Young engaged in dishonest and misleading behaviour, which is a ground for complaint pursuant to section 44(2) of the Immigration Advisers Licensing Act 2007 (the Act).
- [2.2] In particular:
- [2.2.1] Mr Young, with his business associate (who is also his wife) Ms Zhang, were licensed immigration advisers. They operated their practice through a company named Ancheng International Group Limited.
- [2.2.2] The complainant, who was in China, engaged Ms Zhang and Mr Young to obtain a job offer and a work visa for New Zealand.
- [2.2.3] Mr Young and Ms Zhang led the complainant to believe he had employment in New Zealand as a chef and that his annual income would be \$31,200. He paid approximately \$24,000 for their services; relying on the offer of employment and their assurances of his immigration prospects.
- [2.2.4] Ms Zhang obtained a work visa for the complainant.
- [2.2.5] When he arrived in New Zealand, Ms Zhang took the complainant to work in a restaurant, which was not the one on his work visa. He received approximately \$5 per hour for his work. The complainant objected, and Ms Zhang took him to a series of work places where the employers paid him less than the minimum wage.
- [2.2.6] On 27 November 2009, Ms Zhang submitted an application to vary the complainant's work visa conditions and in a cover letter said that he was still working for the employer named on the visa. In fact, he never worked there.
- [2.3] Accordingly, the complaint involved Mr Young and Ms Zhang together, misleading the complainant, providing false information to Immigration New Zealand, and charging fees that were more than fair or reasonable. Inevitably, the conduct also amounts to a systematic breach of several aspects of the Licensed Immigration Advisers Code of Conduct 2010.
- [3] Mr Young has been convicted of knowingly providing false or misleading information to an immigration officer (section 142(1)(c) of the Immigration Act 1987). When he sentenced Mr Young, Judge Mill observed:
- Essentially Mr Young gave false information to Immigration New Zealand so they would not know that [the complainant] was working illegally and this must be seen in the context or the wider context of this case. Mr Young and his wife were operating an immigration advisory business. They were doing that together. His wife has been found guilty and in fact pleaded guilty to a number of charges and obviously there was an important immigration scam here where people were being received into the country and then taken to places where they were not approved to work at on conditions which were not in terms of the consent that was given to them.
- Overall Mr Young's offending must be seen as a minor part of this, it is part of the overall scam of which he must have been aware given that he and his wife were operating this business together. He cannot be punished of course or found guilty of offences that she has pleaded guilty to, but it is not just a single isolated unrelated event.
- [4] Judge Mill sentenced him to 200 hours of community work.

- [5] Mr Young was knowingly a party to the dishonest enterprise in which both he and his wife engaged. As a licensed immigration adviser, Mr Young had positive duties not only to be honest himself, but to respond to any dishonesty in his practice. From a professional disciplinary point of view, he is liable as a party to the whole of the dishonest enterprise set out above, not only the specific dishonesty resulting in the criminal conviction for attempting to deceive Immigration New Zealand.

Decision

- [6] I uphold the complaint pursuant to section 50 of the Act, on the grounds Mr Young engaged in dishonest and misleading behaviour.

Sanctions

- [7] The grounds of complaint amount to a systematic dishonest enterprise by a person holding a licence, which Mr Young only received after satisfying the Registrar he understood his professional obligations. He chose to breach those obligations through the dishonest exploitation of his client, and Immigration New Zealand. He did so jointly with his wife, for their own financial gain.
- [8] The Tribunal has upheld the complaint and may impose sanctions pursuant to section 51 of the Act.
- [9] The Authority and the complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs and compensation. Whether they do so or not, Mr Young is entitled to make submissions and respond to any submissions from the other parties.
- [10] One of the issues Mr Young has signalled is that he is now in a difficult financial situation; his dishonesty has led to long-term unemployment. The Tribunal's approach to financial hardship has been that, for the reasons discussed in decisions such as *Prakash v Zhou* [2015] NZIACDT 86, its orders are different from orders under the Sentencing Act 2002. The Tribunal's orders are provable in bankruptcy, unlike orders under the Sentencing Act. Accordingly, the Tribunal's orders are like other civil debts and do not endure through a bankruptcy.
- [11] The Tribunal has regarded its orders as matters where it has some discretion, and does consider the adviser's financial circumstances. However, in relation to claims for compensation that are recoverable in the Disputes Tribunal or District Court, the Tribunal will usually make orders that would be available in those jurisdictions if parties seek them. Similarly, costs, are a civil liability that will turn on the conduct of the proceedings, rather than the adviser's means, except perhaps in exceptional cases.
- [12] I am conscious that Mr Young and Ms Zhang have already been through the process of sentencing by the District Court in relation to this matter. However, the professional dimension of Mr Young's dishonesty has distinct aspects arising from the breach of trust in a privileged position. It is routine in professional disciplinary matters to impose additional penalties where criminal offending occurs in the course of professional misconduct. Nonetheless, it is usually appropriate to have regard to criminal sanctions.
- [13] Accordingly, I request that the complainant and the Registrar provide any submissions regarding the orders that the Tribunal should make under section 51. If the orders are to include the refund of fees, compensation, and costs, the Tribunal requests they provide sufficient particulars to allow Mr Young to respond.
- [14] I request that Mr Young provide a statement of assets and liabilities, and full details of his income and regular outgoings, if he wishes to have the Tribunal take account of his financial circumstances.

Timetable

- [15] The timetable for submissions will be as follows:

- [15.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.
- [15.2] The adviser is to make any further submissions (whether or not the Authority or the complainant makes submissions) within 15 working days of the issue of this decision.
- [15.3] 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 29th day of June 2016.

G D Pearson
Chair