

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

Decision No: [2016] NZIACDT 35

Reference No: IACDT 038/15

**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**

**Jin Yan (Jenny) Zhang**

Advisers

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**DECISION**

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**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, Ms Zhang accepted the grounds of complaint as set out in the Registrar's statement of complaint.
- [2] The grounds were in essence:
- [2.1] Ms Zhang 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] Ms Zhang, with her business associate (who is also her husband) Mr Young, 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 her to obtain a job offer, and a work visa for New Zealand.
- [2.2.3] 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 Ms Zhang's services; relying on the offer of employment and Ms Zhang's 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 Ms Zhang 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] Ms Zhang has been convicted of a representative criminal charge as a party to breaching a condition of a work permit (Immigration Act 1987 section 142(1)(ea)), and knowingly providing false or misleading information to an immigration officer (section 142(1)(c) of that Act). Her sentence on those charges, and other immigration matters included \$30,000 reparation (\$5,000 for the complainant), 10 months home detention, and 300 hours community work. The starting point for the sentence was imprisonment for three years and three months; various mitigating factors resulted in the non-custodial sentence.

### Decision

- [4] I uphold the complaint pursuant to section 50 of the Act, on the grounds Ms Zhang engaged in dishonest and misleading behaviour.

### Sanctions

- [5] The grounds of complaint amount to a systematic dishonest enterprise by a person holding a licence, which Ms Zhang only received after satisfying the Registrar she understood her

professional obligations. She chose to breach those obligations through the dishonest exploitation of her client, and Immigration New Zealand for her own financial gain.

- [6] The Tribunal has upheld the complaint and may impose sanctions pursuant to section 51 of the Act.
- [7] 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, Ms Zhang is entitled to make submissions and respond to any submissions from the other parties.
- [8] One of the issues Ms Zhang has signalled is that she is now in a difficult financial situation; her 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.
- [9] 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.
- [10] I am conscious that Ms Zhang has already been through the process of sentencing by the District Court in relation to this matter. However, the professional dimension of her 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.
- [11] 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 Ms Zhang to respond.
- [12] I request that Ms Zhang provide a statement of assets and liabilities, and full details of her income and regular outgoings, if she wishes to have the Tribunal take account of her financial circumstances.

*Timetable*

- [13] The timetable for submissions will be as follows:
- [13.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.
- [13.2] 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.
- [13.3] 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 29<sup>th</sup> day of June 2016.

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**G D Pearson**  
Chair