

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

Decision No: [2016] NZIACDT 43

Reference No: IACDT 067/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

K Q L

Complainant

AND

Trevor John Conquer

Adviser

**The name of the Complainant and any information identifying him or his wife is not to be
published.**

DECISION
(SANCTIONS)

REPRESENTATION:

Registrar: Mr M Denyer, Lawyer, MBIE, Auckland.

Complainant: In person

Adviser: Mr S Laurent, Laurent Law, Auckland.

Date Issued: 30 August 2016

DECISION

Complaint admitted

- [1] This decision imposes sanctions following a decision upholding a complaint against Mr Conquer (refer decision *L v Conquer* [2015] NZIACDT 49; www.justice.govt.nz).
- [2] Unfortunately, there has been a delay in issuing this decision, as the Tribunal's database did not record the proceeding as a live matter after the rehearing.
- [3] Mr Conquer admitted the grounds of complaint upheld. In essence, they were:
- [3.1] After a change in instructions he failed to gain a written agreement; and
- [3.2] The fees for the new instructions were not set out in writing.

The Parties' Positions on Sanctions

- [4] The Registrar and the complainant did not provide submissions on sanctions.
- [5] For Mr Conquer his counsel said in relation to the potential sanctions:
- [5.1] The two grounds of complaint are closely related, as the fees would have been recorded in the agreement if Mr Conquer prepared it.
- [5.2] Mr Conquer did attempt to put an agreement in place; his lapse was an isolated one.
- [5.3] Mr Conquer did provide services for the fees, and they were reasonable. Any refund of fees should be no more than \$1,750.

Discussion

The principles to apply

- [6] 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] When imposing sanctions those statutory purposes require consideration of at least four factors which may materially bear upon maintaining appropriate standards of conduct:
- [7.1] *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 ..."
- [7.2] *Demanding minimum standards of conduct*: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) and *Taylor v General Medical Council* [1990] 2 AC 539; [1990] 2 All ER 263 (PC) discuss this aspect.
- [7.3] *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 therefore a proper element of disciplinary sanctions (*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007).
- [7.4] *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).

This case

- [8] This proceeding has a most unusual history. Ultimately, two relatively low level grounds of complaint were established. I take account of the lack of compliance arose in the context of changed instructions, which is not necessarily as obvious to a practitioner as a complete failure to use the client engagement processes. Furthermore, Mr Conquer attempted, ineffectively, to comply, and this was an isolated issue.
- [9] Prior to the rehearing, the complaint upheld against Mr Conquer was very serious. The Tribunal found that when responding to the complaint Mr Conquer provided information that suggested he had lodged a misleading and dishonest application with Immigration New Zealand. It appeared that he had knowingly used a bigamous marriage of convenience as the basis for his client's visa application, and told Immigration New Zealand the marriage was genuine.
- [10] In the rehearing, the Tribunal found Mr Conquer was a victim of another licensed immigration adviser, who worked in his practice and without Mr Conquer's knowledge provided false information to the Tribunal, and withheld information from Mr Conquer.
- [11] Mr Conquer was put to the expense of the rehearing to prove he did not provide the false information, and on the balance of probabilities, he was the victim of the other adviser who:
- [11.1] Drafted a statement denigrating the complainant and his wife, and submitted it to the Tribunal without Mr Conquer's knowledge; and
- [11.2] Either she fabricated the information in the statement, or she was a party to a false representation to Immigration New Zealand.
- [12] Given the exceptional circumstances, which include:
- [12.1] The wrongful denigration of the complainant and his wife (Mr Conquer was not a party to it); and
- [12.2] That Mr Conquer became the victim of dishonesty occurring in his practice in the course of the complaint;
- I will not impose any monetary penalty.
- [13] In the circumstances, it is appropriate to refund half of the costs, as the complainant paid them without the protections offered by the Act and the Code of Conduct, due to Mr Conquer's defective client engagement process. The result will be a modest imposition on Mr Conquer, and some recompense to the complainant and his wife.

Determination and Orders

- [14] Mr Conquer is ordered to pay the complainant the sum of \$1,750.00 being a refund of fees.

DATED at WELLINGTON this 30th day of August 2016.

G D Pearson
Chair