

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

Decision No: [2016] NZIACDT 44

Reference No: IACDT 026/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**Between**

**Shirley Bisschoff**

Complainant

**AND**

**Sharon Gail Yerman**

Adviser

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**DECISION  
(SANCTIONS)**

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**REPRESENTATION:**

**Registrar:** Ms C J Pendleton, lawyer, MBIE, Auckland.

**Complainant:** In person.

**Adviser:** Mr H Thompson and Ms J Rutherford, McMahon Butterworth Thompson, lawyers,  
Auckland.

Date Issued: 30 August 2016

## DECISION

### The complaint

- [1] The Tribunal upheld this complaint in a decision dated 11 December 2015, *Bisschoff v Yerman* [2015] NZIACDT 101 ([www.justice.govt.nz](http://www.justice.govt.nz)). The Tribunal found:
- [1.1] Ms Yerman breached Clause 2.1(b) of the 2010 Code, as she failed to conduct her practice in accordance with the Act, by allowing an unlicensed person to provide immigration advice. She accordingly failed to comply with her obligation in Clause 3 of the 2010 Code to manage her staff, in particular providing training on an elementary restriction of the Act. However, this conduct was the result of Ms Yerman's own failure to understand the Act and the constraints it imposes; not wilful defiance of obligations she understood at the time.
- [1.2] Ms Yerman's lack of engagement in gaining informed instructions did amount to a breach of clause 1.1(a) of the 2010, as she failed to perform her services with due care, diligence and professionalism.
- [1.3] Ms Yerman breached clause 4(c) of the 2010 Code as she failed to deal with the fee she received from the Bisschoffs as client funds, and clause 3(d) as she failed to refund the fee as she was not entitled to it.
- [2] This decision imposes sanctions following the Tribunal upholding the complaint.

### The Registrar and Ms Bisschoff's position on sanctions

- [3] The Registrar recognised that this is not the first complaint the Tribunal has addressed in respect of Ms Yerman, she has complied with the previous sanctions. The Registrar considered that as a minimum Ms Yerman should complete Course 7015 *Professional Practice* which is part of the *Graduate Diploma in New Zealand Immigration Advice (Level 7)*.
- [4] Ms Bisschoff sought a refund of fees of \$6,372.95, plus costs of \$189.08, a total of \$6,562.03. The costs related to parking, and lost earnings for Mr Bisschoff to attend the hearing.

### Ms Yerman's response

- [5] Aside from Ms Yerman's response after the decision, I note that at the hearing of this complaint and when addressing sanctions in respect of another complaint, the Tribunal had the opportunity of assessing Ms Yerman's intentions. The Tribunal reached the point where it requested Ms Yerman to attend in person to address the complaints; so I had the benefit of hearing her in person.
- [6] It was clear Ms Yerman, with the assistance of her counsel, had undertaken a re-evaluation of how the Immigration Advisers Licensing Act 2007 and the Codes of Conduct changed her obligations, and required that she must operate her practice differently. She accepted she failed to engage adequately with the changed regulatory environment, and wished to ensure that in future she would practise successfully and in compliance with the Act and Code of Conduct.
- [7] In a statement provided in respect of sanctions in this matter, Ms Yerman explained how she re-evaluated her views. She confirmed that she had already engaged another licensed immigration adviser in her practice. That adviser has engaged in the development of the profession through the Registrar's steering committee. Ms Yerman and her colleague have implemented structural changes to Ms Yerman's practice.
- [8] Ms Yerman's counsel noted the matters already discussed under this heading, and contended there should be no financial penalty. This was largely due to the financial consequences Ms Yerman had already suffered, including her travel to New Zealand and legal expenses in excess of \$60,000 for dealing with the complaints before the Tribunal.

- [9] He also contended that it was not necessary to require that Ms Yerman undertake any specified training.
- [10] He said that a refund of 50% of the fees would be appropriate.

### **Ms Bisschoff's reply**

- [11] Ms Bisschoff responded with a submission that a full refund of fees was appropriate, and that Ms Yerman's costs were the result of her own choices.

### **Discussion**

- [12] This complaint involves mid to higher end grounds for complaint. I have accepted that the matters arose due to Ms Yerman's failure to understand significant obligations. However, they were obligations she had an obligation to understand.
- [13] The most significant factor in my view is that this comes after other complaints. Matters had reached a point where Ms Yerman's future in the profession was at a cross-roads. Plainly Ms Yerman has incurred substantial costs in the process; however, the costs are the result of her own choices. Given Ms Yerman's changed attitude, and the implementation of changes in her practice the focus of this decision will be constructive and aimed at assisting with Ms Yerman's change of direction.
- [14] I have regard to the previous penalties, and apply the totality principle. I recognise there have been financial penalties in earlier decisions. However, this decision will be focused on restoration rather than imposition of a penalty.
- [15] The starting point in relation to this complaint would be a financial penalty of \$7,500, and either loss of licence, or training with appropriate safeguards. In addition the Registrar and complainant's costs would be awarded, and compensation and a refund of fees if established.
- [16] The Registrar has not sought costs, and Ms Bisschoff has only sought a token amount for costs.
- [17] Having regard to all the circumstances, I am satisfied this is a case where it is appropriate not to impose any financial penalty; but I do so on the basis that it assists to ensure Ms Bisschoff receives a refund of fees.
- [18] I consider that a full refund of fees should be made, as:
- [18.1] The services were provided unlawfully in part using an unlicensed staff member;
- [18.2] Gaining informed instructions was the foundation for the complainant to make decisions regarding committing to fees;
- [18.3] There was further non-compliance regarding banking and accounting for the fees.
- [19] I consider that Ms Bisschoff is entitled to costs; she has only claimed a very modest amount based on part of the actual costs.
- [20] I also agree with the Registrar that Ms Yerman should enrol in and complete training in the part of the course. The particular component of the course the Registrar considers appropriate is described by the Bay of Plenty Polytechnic in this way:

#### **Course 7015 - Professional Practice**

In this course students will investigate and implement aspects of practice as an immigration adviser including business practices, professional skills and ethical considerations in relation to the Code of Conduct and the Competency Standards and the application of communication skills when providing immigration advice.

- [21] That course is directed to the issues that Ms Yerman has committed to address. Accordingly, Ms Yerman will be required to complete the course.

[22] Ms Yerman will be censured.

[23] This decision reflects a measured confidence that Ms Yerman will progress in her professional practice, committed to delivering professional services to the level the Act and Code of Conduct requires.

**Order**

[24] The Tribunal orders, that:

[24.1] Ms Yerman is censured;

[24.2] Ms Yerman is to pay Ms Bisschoff the sum of \$6,562.03 being a refund of fees, and costs.

The payments are due forthwith.

[24.3] Ms Yerman is to enrol in Course 7015 of the Graduate Diploma in New Zealand Immigration Advice (Level 7) with the Bay of Plenty Polytechnic:

[24.4] She is to enrol in the course as soon as a place is available to her; and successfully complete the course in the time provided by the Bay of Plenty Polytechnic.

[25] The Tribunal reserves leave for Ms Yerman or the Registrar to apply to vary the orders relating to Course 7015; and draws Ms Yerman's attention to section 51(4) of the Immigration Advisers Licensing Act 2007. That provision has the effect of cancelling Ms Yerman's licence if she does not demonstrate compliance to the Registrar's satisfaction.

**DATED** at WELLINGTON this 30<sup>th</sup> day of August 2016.

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**G D Pearson**  
Chair