

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

Decision No: [2016] NZIACDT 45

Reference No: IACDT 039/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Ikmeet Singh

Complainant

AND

Mayank Kumar

Adviser

DECISION
(SANCTIONS)

REPRESENTATION:

Registrar: Mr A Skadiang and Ms F Mohammed, lawyers, MBIE, Auckland.

Complainant: In person

Adviser: Mr P Moses, Barrister, Auckland.

Date Issued: 6 September 2016

DECISION

The complaint admitted

- [1] This decision imposes sanctions following a decision upholding a complaint against Mr Kumar (refer decision *Singh v Kumar* [2016] NZIACDT 18; www.justice.govt.nz).
- [2] Mr Kumar admitted the ground of complaint, which the Tribunal upheld. In essence, the ground was that he inadvertently had an incorrect date on a document, and failed to report to the Registrar accurately regarding the dates.
- [3] The Registrar filed a statement of complaint alleging very serious professional offending, including being party to an unlicensed person providing advice (an offence under section 63 of the Immigration Advisers Licensing Act 2007), negligence, and providing false information to the Registrar.
- [4] At an oral hearing, the Registrar did not support the grounds of complaint beyond the minor record keeping error, she did not file any evidence, and did not cross-examine Mr Kumar; and accepted his explanation. The complainant took no part in the hearing.
- [5] As observed in the substantive decision, it is not appropriate for the Tribunal to speculate regarding the information the Registrar holds, as it is her statutory duty to represent the public interest in the disciplinary process.

Application for rehearing

- [6] After the decision, the complainant applied for a rehearing. He provided no explanation for failing to participate in the hearing.
- [7] The Registrar took no position on the application for rehearing. Counsel for Mr Kumar opposed the application, as the complainant provided no grounds to justify his failure to participate in the Tribunal's processes.
- [8] The Tribunal can grant a rehearing only if there are reasons to do so; otherwise, there is no end to litigation. The Tribunal consistently provided for the Registrar and the complainant to participate in the hearing, of course the Tribunal appreciates the complainant would not be likely to take an active role personally, and would rely on the Registrar.
- [9] The Registrar had a clear position on the merits of the complaint, and the complainant was notified the Registrar did not file any evidence to support the complaint. The short point is the response to Mr Kumar's answer to the complaint was in the hands of the Registrar and the complainant, neither responded to Mr Kumar's answer. However, the Registrar through her counsel did accept Mr Kumar's explanation. The consequences of not filing evidence in response to Mr Kumar's evidence were obvious. There can be no justification for holding a second hearing after the parties chose not to take issue with Mr Kumar's evidence at the first hearing.

The Parties' Positions on Sanctions

- [10] The Registrar and the complainant did not provide submissions on sanctions. The complainant's submissions focused on supporting the complaint on the grounds the Tribunal dismissed.
- [11] Counsel for Mr Kumar took the position that given the low level of the complaint, if it stood on its own the proper response would be to take no further action. However, he accepted that censure may be appropriate. He emphasised that Mr Kumar faced very serious allegations set out in the Registrar's statement of complaint, which were not pursued. Mr Kumar accordingly had substantial expense in defending the grounds of complaint to which he provided answers that the other parties did not challenge.

Discussion

[12] I agree that given the minor nature of the error, and that Mr Kumar faced very serious allegations that the Registrar and the complainant did not pursue, it would be appropriate to take no further action. While it may be appropriate to view the three complaints as a whole, it is not necessary to do so in relation to this complaint. The Registrar accepted Mr Kumar made an inadvertent error, and faced grave allegations for which there is no support; the proper outcome is to take no further action.

Determination and Orders

[13] Having upheld the complaint in the limited respect identified, the Tribunal will take no further action pursuant to section 50(b) of the Immigration Advisers Licensing Act 2007.

DATED at WELLINGTON this 6th day of September 2016.

G D Pearson
Chair