

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

Decision No: [2016] NZIACDT 46

Reference No: IACDT 050/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Mohit Juneja

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 considers sanctions following a decision upholding a complaint against Mr Kumar (refer decision *Juneja v Kumar* [2016] NZIACDT 13; www.justice.govt.nz).
- [2] Mr Kumar admitted the ground of complaint, which the Tribunal upheld. In essence, the ground was that he could have provided better advice regarding a work visa application, and should have recorded the advice he gave more accurately.
- [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), incompetence and negligence.
- [4] At an oral hearing, the Registrar did not support the grounds of complaint beyond the issues relating to advice and record keeping and only to the extent of Mr Kumar's admissions. She did not file any evidence, did not cross-examine Mr Kumar; and indicated she accepted his explanation. The complainant took no part in the hearing.
- [5] It is not appropriate for the Tribunal to speculate regarding the information that led to the Registrar's decision not to support the original grounds of complaint. It is the Registrar's statutory duty to represent the public interest in the disciplinary process, and there are circumstances that properly remain confidential. There is no application for any disclosure.

The Parties' Positions on Sanctions

- [6] The Registrar and the complainant did not provide submissions on sanctions. However, the complainant did ask for unspecified compensation.
- [7] Counsel for Mr Kumar took the position that any sanctions should be at a low level. He pointed to the low level of the grounds of complaint upheld; that Mr Kumar had taken steps to remediate aspects of his practice, and that Mr Kumar had substantial expenses in defending the grounds of complaint to which he provided answers, which the other parties did not challenge.

Discussion

- [8] If the finding on this complaint stood alone, censure and a modest financial penalty would be appropriate. However, Mr Kumar faced very serious allegations that the Registrar and the complainant did not support when Mr Kumar provided an explanation that was irreconcilable with the allegations the complainant made against him.
- [9] In the course of the disciplinary process, Mr Kumar has faced stress, embarrassment and expense, which on the face of it, ought not to have occurred.
- [10] The complainant has not identified or quantified a loss arising from the deficiencies in Mr Kumar's advice. Furthermore, if the complainant brought a claim in the Disputes Tribunal or Courts, the complainant may well face a counterclaim given the grounds of the complaint the Tribunal dismissed, as they are unsupported. The Tribunal has no jurisdiction in relation to any counterclaim. Accordingly, I am not satisfied it is appropriate or reasonable to award any compensation. I therefore make no further finding regarding compensation, and leave the matter open in other jurisdictions.
- [11] I am satisfied that given that the Tribunal has dismissed all of the very serious allegations Mr Kumar faced, because they were unsupported; and Mr Kumar has committed to improving his practices, the proper outcome is to take no further action.

Determination and Orders

[12] 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