

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

Decision No: [2016] NZIACDT 48

Reference No: IACDT 040/15

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Salesh Ram

Complainant

AND

Theresa Aasa

Adviser

DECISION
(SANCTIONS)

REPRESENTATION:

Registrar: Ms F Mohammed, Lawyer, MBIE, Auckland.

Complainant: In person.

Adviser: In person

Date Issued: 6 September 2016

DECISION

Introduction

- [1] The Tribunal upheld this complaint in a decision dated 4 February 2016, *Ram v Aasa* [2016] NZIACDT 9 (www.justice.govt.nz). The Tribunal found Ms Aasa breached her professional obligations.
- [2] The background was that:
- [2.1] Ms Aasa failed to respond to Immigration New Zealand on her client's behalf;
 - [2.2] She had instructions and taken substantial fees;
 - [2.3] She did not inform her client when his application for a work visa inevitably failed;
 - [2.4] She did not tell her client what had happened for the following 18 months, though he did make active inquiries, she also retained his and his family's passports.
- [3] Ms Aasa did not respond to the statement of complaint. The Tribunal found Ms Aasa did not meet her professional obligations, both by breaching the 2010 Code, and engaging in dishonest and misleading behaviour.
- [4] The Tribunal deferred imposing sanctions while another complaint was addressed. It related to how another licensed immigration adviser dealt with the consequences of Ms Aasa's behaviour. As that matter has been decided, it is not necessary to further defer this decision.

The Parties' Positions on Sanctions

The Registrar's position

- [5] The Registrar provided submissions that have considerably assisted the Tribunal; she also assisted by providing a report on Ms Aasa's compliance with previous orders of the Tribunal arising from other complaints.
- [6] The Registrar reported that Ms Aasa had defaulted on penalty orders of \$8,500, and paid only \$299. No information was available regarding compliance with other orders the Tribunal made in favour of complainants of a compensatory nature.
- [7] Ms Aasa was also subject to an order arising in another complaint that cancelled her licence and prohibited any further applications for the maximum statutory period.
- [8] The Registrar took the view that given Ms Aasa's apparent lack of capacity to meet existing financial orders, compensation should take priority, censure or caution orders were appropriate, and while cancellation of Ms Aasa's licence would be appropriate, the order had been made already.

The Complainant's position

- [9] The complainant sought a refund of fees when making the original complaint, which the Registrar has assessed as being at least \$1,850 (the figure has not been disputed).

The Adviser's position

- [10] Ms Aasa has not provided submissions on sanctions.

Discussion

Licence

- [11] As the Tribunal upheld the complaint, it may impose sanctions under section 51 of the Immigration Advisers Licensing Act 2007 (“the Act”). This complaint involved sustained dishonesty:
- [11.1] Ms Aasa dishonestly took money through a pretence she would provide services not intending to provide the services,
- [11.2] She then perpetuated the deception, having failed to provide the services she misrepresented what happened to her client, instead of telling him of the inevitable and serious consequences of her failure, and
- [11.3] She retained the passports she held for her client, again to prevent her client detecting her deception.
- [12] That conduct wholly disentitles Ms Aasa to the trust placed in a licensed immigration adviser. She has already had her licence cancelled, and her professional offending extends across three complaints with repeated features. If Ms Aasa ever applied for another licence the Registrar would decide whether Ms Aasa was fit to be issued with a licence.
- [13] The Registrar did not seek an order imposing a temporary ban on applying for a licence. As matters stand, it is sufficient to note that given Ms Aasa’s disciplinary history, in the absence of matters the Tribunal cannot foresee, she has been permanently removed from the profession. Accordingly, a temporary order is unnecessary, so there will be no further orders relating to licensing.

Refund of fees

- [14] Ms Aasa failed to provide the services the complainant paid for, and was dishonest throughout. The complainant is entitled to a refund of the fees he paid, there will be an order for payment of \$1,850.
- [15] In making that order I make no finding as to whether any other person is jointly or severally liable for the fees, simply that Ms Aasa with, or without, others is liable.

Other orders

- [16] Potentially the complainant would be entitled to compensation, and the Registrar to an order for costs, and I would order a financial penalty of \$7,500. However, there are no applications for compensation or costs, and it appears there is some futility in a financial penalty given that Ms Aasa has not paid the existing orders. I accept the Registrar’s approach that the order for the refund of fees is best given priority by not making further orders.

Censure

- [17] In this case I impose the order of censure to record that not only has Ms Aasa engaged in sustained dishonesty against her client, it involved taking money through pretence, then deceptively hiding her dishonesty, depriving her clients of their passports; and she has failed to take any responsibility for her dishonest behaviour. There is no mitigation of any kind evident to me.

Determination and Orders

[18] Ms Aasa is:

[18.1] Censured in the terms recorded.

[18.2] Ordered to pay the complainant \$1,850 as a refund of fees.

DATED at WELLINGTON this 6th day of September 2016.

G D Pearson
Chair