

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

Decision No: [2016] NZIACDT 52

Reference No: IACDT 048/15

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Liekina Vailea

Complainant

AND

Hakaoro Hakaoro

Adviser

**DECISION
(SANTIONS)**

REPRESENTATION:

Registrar: Ms A Skadiang, Ministry of Business Innovation and Employment, Auckland.

Complainant: In person.

Adviser: In person.

Date Issued: 13 September 2016

DECISION

This Complaint

- [1] This decision imposes sanctions, following an earlier decision upholding a complaint against Mr Hakaoro (*Vailea v Hakaoro* [2016] NZIACDT 8; see www.justice.govt.nz).
- [2] Mr Hakaoro accepted instructions to assist the complainant with a request for a visa; her family's visas were to expire relatively soon after that point:
 - [2.1] Mr Hakaoro negligently failed to take steps to advise and assist his clients until many months after they were in New Zealand unlawfully;
 - [2.2] He did not set out his fees in writing with particulars of amounts, terms and conditions;
 - [2.3] He did not have a written agreement;
 - [2.4] He stopped providing services after initially taking instructions, and again after doing some work, but did not inform his clients;
 - [2.5] He did not keep client records.
- [3] The full circumstances are set out in the substantive decision.

The Parties' Positions on Sanctions

- [4] The Registrar provided submissions on sanctions; she also reported on Mr Hakaoro's history of professional offending and his non-compliance with sanctions imposed for earlier complaints. This report shows Mr Hakaoro has been subject to sanctions orders arising in thirteen previous complaints, resulting in monetary orders amounting to \$144,270. The payments became due under orders, the earlier being with effect on 26 June 2013. The Registrar reports that Mr Hakaoro has "been entirely unresponsive to sanctions previously imposed on him". The Registrar did not report any enforcement action aside from sending invoices "to him requesting payment"; but observed there was potential to engage a debt collector or take legal action.
- [5] The Registrar's counsel took the position that as Mr Hakaoro has been unwilling to pay the orders the Tribunal has made, it should only make orders for refunding fees or compensation. Her counsel said:

"As .. already noted, the Tribunal has previously acknowledged Mr Hakaoro appears unwilling to pay any financial sanction. The Authority respectfully submits that on that basis, preference should be given to orders refunding or compensating the complainant, rather than imposing penalty orders which would prejudice the complainant's ability to enforce any financial orders made in their favour."
- [6] Mr Hakaoro has not been bankrupted, he has taken no steps at all to meet the orders made against him, and faced no enforcement action. The Registrar has said in previous complaints she considers Mr Hakaoro has no ability to pay.
- [7] The complainant and Mr Hakaoro did not make any submissions.

Discussion

Prior licence cancellation and sanctions

- [8] The Tribunal cancelled Mr Hakaoro's licence and since then multiple complaints would have justified cancelling Mr Hakaoro's licence.
- [9] The Tribunal also made orders for Mr Hakaoro to refund fees, costs, and pay financial sanctions. Mr Hakaoro has neither made payments nor been subject to enforcement action. The Registrar's submission that the sanctions should turn on Mr Hakaoro's willingness to pay

is misplaced. The only matter of relevance is whether Mr Hakaoro can pay, and then only in relation to matters where the ability to pay is relevant.

- [10] Previously the Registrar has reported Mr Hakaoro has no ability to pay any financial sanctions. At that time he had recently been released from prison after serving a sentence in respect of offending against the Immigration Advisers Licensing Act 2007 (the Act).
- [11] While the Registrar makes the decision, given Mr Hakaoro's history of professional and criminal offending against the Act, there can be little doubt Mr Hakaoro will never successfully apply for a licence under the Act.
- [12] In short, unless Mr Hakaoro's circumstances are different from what the Registrar understands they are, or they change, the Tribunal cannot make an order that is likely to have any effect at all.

The options available to the Tribunal

- [13] The only available sanctions the Tribunal can only impose on Mr Hakaoro are financial, and a prohibition on applying for a licence unless he discharges all of the orders the Tribunal has made.
- [14] Those sanctions will simply mark the gravity of Mr Hakaoro's offending, and a denunciation of it. Of course, if Mr Hakaoro were to have the means to pay in the future, the financial orders would take effect.
- [15] The Tribunal must none-the-less impose sanctions on a principled basis, reflecting the gravity of the professional offending, and the overall circumstances.

The relevance of Mr Hakaoro's inability to pay

- [16] For reasons discussed in previous sanctions decisions concerning Mr Hakaoro, the Tribunal does not consider lack of means should result in an order lower than what would otherwise apply¹. However, the Tribunal is willing to make orders that will favour payment of compensation and the refund of fees to complainants. However, given that Mr Hakaoro has made no effort to discharge any of his liabilities, it would be an undeserved concession that would have no consequence.

The financial penalty on this complaint

- [17] Given Mr Hakaoro's delinquent failure to comply with the Code of Conduct, and disgraceful failure to inform and carryout instructions from his client, the financial penalty will be \$5,000.
- [18] A penalty of \$5,000 is a mid-range penalty, the scale of financial penalties being up to \$10,000.

Compensation and the refund of fees

- [19] The complainant is entitled to a refund of \$2,500 in fees.
- [20] The complainant did not seek compensation; accordingly, there will be no order.

Costs

- [21] There is no application for costs, so there will be no order.

Prohibition on applying for a licence

- [22] Mr Hakaoro has failed to pay any disciplinary penalties, has a history of criminal offending against clients, a disciplinary history of: attempting to exploit clients sexually, systematic dishonesty against clients, and repeated failure to comply with the Code of Conduct. It appears there can be no prospect of Mr Hakaoro successfully applying for a licence under the Act, ever.

¹ *TU v Hakaoro* [2014] NZIACDT 1

[23] However, the Tribunal will order that Mr Hakaoro is prohibited from applying for a licence until he has paid all of the monetary penalties, costs, compensation and refunded all fees in accordance with orders made by this Tribunal. While the order will not prevent Mr Hakaoro doing anything realistically open to him; the order does mark that Mr Hakaoro's failure to discharge orders of the Tribunal will permanently affect his legal position under the Act.

Censure

[24] The Tribunal censures Mr Hakaoro for his conduct.

Decision

[25] Mr Hakaoro is:

[25.1] Censured.

[25.2] Prevented from applying for a licence of any kind under the Act until he has paid all of the monetary penalties, costs, compensation and refunded all fees in accordance with orders made by this Tribunal.

[25.3] Ordered to pay the complainant \$2,500 as a refund of fees.

[25.4] Ordered to pay a penalty of \$5,000.

DATED at WELLINGTON this 13th day of September 2016

G D Pearson
Chair