

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

Decision No: [2016] NZIACDT 57

Reference No: IACDT 022/15.

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Shivangani Ashika Chand**

Complainant

**AND**

**Maria Charina (Charie) Shearer**

Adviser

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**DECISION**  
(SANCTIONS)

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**REPRESENTATION:**

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

**Complainant:** No appearance.

**Adviser:** In person.

Date Issued: 21 September 2016

## DECISION

### Introduction

- [1] The Tribunal upheld this complaint in a decision dated 18 March 2016: *Chand v Shearer* [2016] NZIACDT 12 ([www.justice.govt.nz](http://www.justice.govt.nz)). The Tribunal found Ms Shearer breached her professional obligations.
- [2] The complaint was that Ms Shearer did not file a request for a visa for some three months after getting instructions to do so. She misled her client, and her client's employer, saying she had filed the request when that was not true. The complaint was that Ms Shearer was negligent in the delay in filing the request, and engaged in dishonest and misleading behaviour.
- [3] Ms Shearer accepted the grounds of complaint, and explained the circumstances leading to her actions.
- [4] The Tribunal upheld the complaint, and accepted Ms Shearer's explanation of the circumstances.

### The Parties' Positions on Sanctions

#### *The Registrar's position*

- [5] The Registrar took the view a restorative approach was open in this case given the circumstances and Ms Shearer's attitude.
- [6] The Registrar considered sanctions would need to extend only to:
- [6.1] Censure or caution;
  - [6.2] An order for the repayment of all or part of the fees and expenses; and
  - [6.3] Compensation.

#### *The Complainant's position*

- [7] The complainant sought a refund of fees, and compensation for loss of work amounting to \$9,075.

#### *The Adviser's reply*

- [8] Ms Shearer reiterated she accepted responsibility. She also reiterated that the breach of her obligation arose after the sudden death of a family member, and the resulting pressure. Ms Shearer failed to recognise her own fragility at the time.
- [9] Ms Shearer referred to the renewal process for her licence, and attention the Authority paid to her practice.

### Discussion

#### *Perspective*

- [10] The Tribunal gives considerable weight to the views of the Registrar in respect of the appropriate sanctions. That is particularly so in relation to issues that concern competence, judgement and character. The Registrar has the benefit of dealing with advisers in relation to licence renewals, and holds the power to inquire into the standards in an adviser's practice.
- [11] Looking at one or two complaints in isolation often tells little of the standards of a licensed immigration adviser's day-to-day practice, and can create a distorted impression.

- [12] The starting point is that the finding of dishonest and misleading behaviour would result in orders affecting Ms Shearer's licence. Indeed, without unqualified acceptance of the wrongdoing, suspension or exclusion from the profession would be inevitable. It has been a recurring experience for this Tribunal to have to exclude licensed immigration advisers from the profession, who when called to account for their unprofessional conduct, defend it and at best, grudgingly accept the inevitability of some consequences. In doing so, they make it evident that they lack understanding of and commitment to, the obligations the Immigration Advisers Licensing Act 2007 (the Act) and the Code of Conduct impose on them as trusted professionals. When there is a lack of insight, even after facing an adverse decision of the Tribunal in relation to a serious complaint, it would be naïve to think the practitioner will bring any greater insight to bear in the future when dealing with clients.
- [13] Ms Shearer's response has been very different. She has accepted responsibility for her actions, and there are mitigating circumstances. However, one of the responsibilities professional persons have, as their decisions affect the lives of others, is to be aware when they should step back from providing professional services due to their own circumstances. Ms Shearer must accept the consequences of failing to do that, and making some very poor decisions.
- [14] Rehabilitation of a practitioner is an important objective when appropriate (*B v B HC Auckland, HC4/92, 6 April 1993*). In *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [30]-[31], the Court stressed, when imposing sanctions in the disciplinary process applicable to that case, that it was necessary to consider the "alternatives available short of removal and explain why lesser options have not been adopted in the circumstances of the case".
- [15] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [97]:
- [T]he purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.
- [16] The statutory purpose is achieved by considering at least four factors that materially bear upon maintaining appropriate standards of conduct:
- [16.1] Protecting the public: section 3 of the Act states "[t]he purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ..."
- [16.2] Demanding minimum standards of conduct: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 725-726 and *Taylor v General Medical Council* [1990] 2 All ER 263 (PC), discuss this aspect.
- [16.3] Punishment: the authorities, including *Z v Dental Complaints Assessment Committee* (at [1], [65], [70] & [149]-[153]), emphasise that punishment is not the purpose of disciplinary sanctions. Regardless, there is an element of punishment that serves as a deterrent to discourage unacceptable conduct (*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28]).
- [16.4] Rehabilitation: it is an important object to have the practitioner continue as a member of the profession practising well, when practicable (*B v B HC Auckland HC4/92, 6 April 1993*).

#### *Ms Shearer's future in the profession*

- [17] There are a number of important factors arising in Ms Shearer's situation on the facts before the Tribunal. As observed, Ms Shearer is responsible for a serious breach of her professional obligations. However:
- [17.1] The Registrar, who is in a position to have a better picture than the Tribunal has from a single complaint, has treated this complaint as an isolated matter. She has taken the

exceptional approach that compensation for the complainant rather than a monetary penalty is appropriate in this case.

[17.2] Ms Shearer accepted her wrongdoing when the Registrar lodged the complaint with the Tribunal, and committed to never repeating the conduct.

[17.3] I also have regard to the personal circumstances that apparently led to Ms Shearer's lapse, and then poor decisions.

[18] I am satisfied that this is a case where a restorative approach is both open and appropriate, and her view that this is an exceptional case, where it is appropriate to use censure and compensation for the complainant as the only response. However, unless Ms Shearer does comply with the orders, suspension will result until she does so.

*Orders in favour of the complainant*

[19] It is necessary to ensure any compensation relates to the grounds of complaint the Tribunal upheld. The essence of the material elements of the complaint were:

[19.1] Ms Shearer should have lodged the complainant's request on 17 July 2014 and in fact, lodged it on 22 October 2014; she was negligent in that delay;

[19.2] Ms Shearer's professional service delivery was unacceptable as she provided false information to her client to cover up the delay.

[20] The complainant was out of work because she did not have a visa. Ms Shearer eventually lodged the request, and it failed. However, after consulting a lawyer, it appears there was a more successful outcome, and the complainant has returned to employment and remained in New Zealand. However, any deficiency in the request Ms Shearer lodged is not part of the complaint.

[21] The complainant produced wage slips for some of the period from July to September 2014. They show in a two-week period she earned approximately \$1,455 if she was working.

[22] The consequences of the delay were that the complainant could not work; that was foreseeable, indeed obvious. I accept there may be uncertainties on the material before me as to when the complainant could have resumed work if Ms Shearer promptly lodged an appropriate request. However, on the balance of probabilities:

[22.1] Ms Shearer negligently prolonged the complainant being out of work for 97 days. Whatever else happened, there was no progress during that time, and there should have been;

[22.2] The complainant's wage records show her daily income if she was working (spreading her income across 7 days) was \$103.93;

[22.3] The total is \$10,081.

[23] The complainant has claimed 236 hours of annual leave and 314 hours in lieu at \$16.50/hr as her loss. That was, apparently, the support she received from her employer; that is to say, the employer applied annual leave and then paid her on the basis she had to make up the time. Accordingly, while this gave cashflow, it was all at the complainant's cost.

[24] In my view, the best measure of the complainant's loss was her not being able to earn during the 97 days between 17 July 2014 when Ms Shearer should have lodged the application and 22 October 2014 when she did lodge it. If working, the complainant's income would have been approximately \$10,081 during that period. Accordingly, on the balance of probabilities the complainant is entitled to compensation of \$10,081 for loss of wages.

[25] The complainant paid \$1,006.25 to Ms Shearer for professional services. Ms Shearer should refund those fees entirely, as it is unconscionable for her to be paid for services that involved a significant component of dishonesty in her professional service delivery.

- [26] Accordingly, the complainant is entitled to orders for payment of: [26.1] Compensation for lost wages of \$10,081; and
- [26.2] The refund of fees of \$1,006.25.

- [27] Given the concession of not imposing other sanctions, it is important to ensure Ms Shearer complies with the orders. Ms Shearer's licence will be suspended three months after the orders are made; until she complies with the orders. However, the Tribunal expects Ms Shearer to comply promptly; then the suspension will not take effect.

#### *Costs*

- [28] Neither the complainant nor the Registrar filed a schedule and claimed costs; accordingly, there will be no award.

#### *Training*

- [29] The Registrar has not sought orders for training, so there will be no order. I accept the Registrar's evaluation, which is understandable given the grounds of complaint appear not to be competence issues.

#### *Monetary Penalty*

- [30] The final component of the sanctions is a monetary penalty. If it were not for the Registrar's view that in this case compensation for the complainant should be the focus of the Tribunal's order, a substantial monetary penalty would apply to denounce Ms Shearer's deception of her client.
- [31] The starting point for sanctions would have been a monetary penalty of \$7,500, and suspension or loss of a full licence with the opportunity to apply for a provisional licence to allow supervised practise.

#### *Caution*

- [32] The Tribunal will caution Ms Shearer that this decision is significantly more favourable than it would be without her commitment never to repeat the conduct in issue, and the personal circumstances that gave rise to it. The Tribunal warns her that any failure to honour that commitment may well have severe consequences.

#### **Orders**

- [33] The Tribunal:
- [33.1] Cautions Ms Shearer in the terms set out above.
- [33.2] Orders that:
- [33.2.1] Ms Shearer pay the complainant \$10,081; and
- [33.2.2] That she refund fees of \$1,006.25 to the complainant.
- [34] The Tribunal also suspends Ms Shearer's licence with effect 3 months after the date of this decision, until she has paid the complainant in full in accordance with these orders.
- [35] If Ms Shearer has paid the Complainant earlier than 3 months after this decision, the suspension will not take effect.
- [36] The orders for payment all take immediate effect.

**DATED** at Wellington 22 November 2017

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**G D Pearson**  
Chair