

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

Decision No: [2017] NZIACDT 21

Reference No: IACDT 049/14

IN THE MATTER

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

BY

**The Registrar of
Immigration Advisers**

Registrar

BETWEEN

Parminder Gill

Complainant

AND

Daljit Singh

Adviser

DECISION
(SANCTIONS)

REPRESENTATION:

Registrar: Ms Shona Carr, lawyer MBIE, Auckland

Complainant: In person

Adviser: Mr S Laurent, Laurent Law, Lawyers, Auckland

Date Issued: 28 September 2017

DECISION

Introduction

[1] The Tribunal upheld this complaint. There are two decisions relating to the complaint. The first is *Gill v Singh*.¹ The second decision *Gill v Singh No.2*.² The reason for there being two decisions is that Mr Singh applied for a rehearing. The application was successful and, as a result of new evidence, one aspect of the first decision was overturned and replacement findings of fact substituted.

[2] The complainant did not participate in the rehearing or provide submissions in relation to sanctions after the new findings. The Registrar and Mr Singh (“the Advisor”) are in agreement as to the remaining adverse findings after the rehearing. They are that:

[2.1] Mr Singh did not have a complying written agreement relating to the provision of services. In particular, he did not have an agreement that contained a full description of the services to be provided and did not have a written agreement to vary the conditions when his instructions changed; and

[2.2] Mr Singh failed to keep a proper written record of his engagement with his client.

The Registrar’s Position

[3] The Registrar notes Mr Singh does not currently hold a licence. His previous licence expired on 19 November 2013. On 11 November 2013, he applied for a renewal of the licence, which the Registrar declined. Mr Singh applied to the District Court to overturn the Registrar’s decision to refuse the renewal that was dismissed on 25 March 2015.

[4] In the Registrar’s view, the appropriate sanctions would be an order preventing Mr Singh from reapplying for a licence until he has completed the full graduate diploma in New Zealand immigration advice. However, she notes that if he did complete that training it would not in itself be an indication that he would be granted a licence in the future. She would still have to be satisfied that he is a fit and appropriate person to hold a licence.

The Adviser’s Position

[5] In relation to relicensing, the adviser’s counsel said Mr Singh no longer holds a valid licence, and has not done so for more than three years. Accordingly, the potential orders relating to a licence are limited to applications for another licence. Counsel noted that whether or not the Tribunal imposes conditions, Mr Singh would have to undertake retraining by one of the refresher courses because he has not held a full

¹ [2016] NZIACDT 36.

² [2017] NZIACDT 5.

licence in the last 12 months. That is a requirement of the Immigration Adviser Competency Standards.

[6] In relation to the Registrar's contention that Mr Singh should complete the full graduate diploma before applying for a licence, he contended that that may not be necessary as:

[6.1] a refresher course may be sufficient if he were to apply for another licence;
and

[6.2] the breaches relate to the conduct of professional practice rather than competency in providing advice.

[7] Mr Singh also contended that the imposition of a retraining requirement cannot, by its nature, be a punitive measure. Any condition as to retraining should be directed to improving standards.

[8] Mr Singh accepted that it would be appropriate for the Tribunal to impose a prohibition on applying for a licence for up to two years and noted that the complainant was no longer participating in the proceedings. Mr Singh also noted that the Registrar had not sought monetary penalties or other orders.

Discussion

The options

[9] The Registrar has not fully articulated why she has chosen not to pursue a financial penalty, which is usual in a case such as the present one. However, I do accept that it is appropriate not to impose a monetary penalty in this case; further, the complainant has not made out a case for compensation and the Tribunal found no fees were paid. Accordingly, there will be no orders for compensation or the refund of fees.

[10] I am satisfied that it is not necessary to impose a monetary penalty in this case as the consequences for Mr Singh have in themselves been onerous both financially and in other respects. Mr Singh's initial response to the complaint resulted in serious adverse findings against him. Those findings were amply justified due to Mr Singh's unsatisfactory response to the complaint, and the deficient record of his professional engagement. The need to apply for a rehearing following the adverse findings has been protracted and costly. That, in itself, is sufficient to bring home to Mr Singh and others that the consequences of failing to maintain professional standards are grave.

[11] Accordingly, I am in the position where there are simply two alternatives either to require full retraining before Mr Singh applies for another licence or require only a refresher course (which is a standard requirement). Mr Singh has proposed a prohibition on applying for two years; however, that would effectively be a form of

punishment. For the reasons I have identified, I do not consider that that is necessary.

The appropriate orders

- [12] If Mr Singh is ever to hold a licence again, the matter of overwhelming importance is that he practices in a manner that is safe for him and for his clients. What happened in the present case is a powerful illustration of the consequences of inadequate procedures. For the reasons discussed in the substantive decisions, Mr Singh's conduct was not satisfactory; he appears not to have absorbed the obligations that go with professional practice. Mr Singh had entered the profession without the benefit of formal training, such training did not exist at the time he first received a licence. He was entitled to be issued with a licence on the basis of previous experience, and a demonstration of the essential skills required for practice. The question that I must determine is whether the circumstances relating to this complaint are sufficient to tip the balance in favour of requiring full training or whether it is appropriate to accept a refresher course as appropriate.
- [13] I am satisfied that the appropriate response is to require Mr Singh to complete the full training course. While lapses relating to written agreements and client communications are not necessarily at the highest end of the scale, the grounds upheld in this complaint do demonstrate a very lax attitude to compliance with professional responsibilities. They left Mr Singh exposed to very serious allegations. To a significant extent, compliance with the licensed immigrations Code of Conduct protects advisers. A full understanding of the standards of professional practice is imperative for any person providing services to the public as a licensed immigration adviser. They are issues that Mr Singh does need to address before re-entering practice.
- [14] The key submission on the part of Mr Singh's counsel is that Mr Singh may have been non-compliant with his obligations relating to the client relationship, but that did not establish he lacked skills relating to technical immigration issues. Therefore, he should not be required to undertake the full training. As is the case with most complaints, the evidence before the Tribunal does not amount to a review of a practitioner's standards in all aspects of practice. It is necessary for the Tribunal to make an evaluation based on what it has seen. The full graduate diploma is a thorough training in both professional practice and technical issues relating to immigration. In relation to the client engagement process, documentation of advice provided and client communications, Mr Singh's standards, as evidenced in this complaint, can only be described as woeful.
- [15] I am satisfied, given that Mr Singh has never completed the training required of all current entrants to the profession, that there is no reason to exempt him from achieving that standard before re-entering practice.

[16] Accordingly, the order will be that Mr Singh may not apply for a licence until he has completed the graduate diploma.

Decision

[17] Pursuant to s 51 of the Immigration Advisers Licensing Act, Mr Singh is:

[17.1] censured; and

[17.2] prevented from applying for any licence under the Act until he has enrolled in and fulfilled the requirements to be issued with a Graduate Diploma in New Zealand Immigration Advice (Level 7).

[18] The Tribunal reserves leave for the Registrar or Mr Singh to apply to vary the orders relating to the Graduate Diploma in New Zealand Immigration Advice (Level 7), in the event the qualification changes, or there are alternative qualifications available.

[19] This decision does not imply Mr Singh would now, or in the future, meet the fitness requirements to be issued a licence by the Registrar; that is not a decision for the Tribunal.

DATED at Wellington this 28th day of September 2017

G D Pearson
Chair