

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

Decision No: [2017] NZIACDT 22

Reference No: IACDT 031/14

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

BY **The Registrar of Immigration
Advisers**
Registrar

BETWEEN **Sajeev Unnikrishnan**
Complainant

AND **Amanda Tersia Goldsmith**
Adviser

**DECISION
(SANCTIONS)**

REPRESENTATION:

Registrar: Ms F Mohammed, lawyer MBIE Auckland

Complainant: In person

Adviser: In person

Date Issued: 29 September 2017

DECISION

Introduction

- [1] The Tribunal upheld this complaint in a decision dated 2 June 2016, in *Unnikrskhnan v Goldsmith*.¹ The Tribunal found Ms Goldsmith breached her professional obligations.
- [2] The grounds on which the complaint was upheld against Ms Goldsmith were:
- [2.1] Ms Goldsmith gave incorrect advice regarding what is required for a person to apply for a student visa to study in a New Zealand educational facility. Essentially, she said enrolment was necessary, whereas an offer of a place and a payment of fees is sufficient. Ms Goldsmith gave advice that it was effectively impossible to deal with the polytechnic because its staff did not understand the process. Accordingly, she advised her client to study at university, as its staff did understand. This ground of complaint was in effect that Ms Goldsmith did not understand the process, and consequently gave poor advice.
- [2.2] Ms Goldsmith also told the complainant that he did not need to declare a drink driving conviction to Immigration New Zealand, and then she submitted a work visa application saying he had no convictions. Accordingly, Ms Goldsmith gave wrong advice and then provided false and misleading information to New Zealand.
- [2.3] Ms Goldsmith failed to complete the process required for client engagement, including obtaining a complying written agreement, she also altered an immigration form after her client had signed it which is an offence under immigration legislation.
- [3] The result of upholding the multiple grounds of complaint was that various aspects of the Licensed Immigration Advisors Code of Conduct 2010 had been breached.
- [4] In the decision upholding the complaint the Tribunal left open the question as to whether Ms Goldsmith's conduct was wilful defiance of the law, or a failure on her part to comprehend elementary professional obligations. The Tribunal expressed the concern that the findings it had made were potentially at the highest level of gravity, given she provided false information to Immigration New Zealand. Further, Ms Goldsmith had apparently failed to address the grounds of complaint in a manner that showed insight or understanding. The approach she had taken was not merely a lack of insight; she had mounted an attack on the Registrar of the Authority and the complainant and contended that both of them were dishonest.

¹ [2016] NZIACDT 29.

The Registrar's Position

- [5] The Registrar drew attention to the gravity of Ms Goldsmith's professional misconduct. She provided advice that was wrong on a fundamental point of practice which she failed to understand. She also provided false information to Immigration New Zealand after advising her client to do so. She also altered a form her client had already signed. The Registrar regarded those matters as serious in the professional disciplinary context.
- [6] The Registrar also considered Ms Goldsmith's response to the complaint as a material factor to take into account. Her attacks on the Registrar of the Authority and the complainant, contending they were dishonest should be taken into account. Her lack of insight and understanding were also factors.
- [7] The Registrar took the view that:
- [7.1] if the Tribunal found that Ms Goldsmith's conduct was wilful defiance of the law, she should be prohibited from reapplying for a licence for a period not exceeding two years; or
- [7.2] in the event that the Tribunal found that Ms Goldsmith's conduct was a failure on her part to comprehend elementary professional obligations, she should be required to complete a graduate diploma in Immigration Advice (Level 7) prior to reapplying for a licence.
- [8] In relation to monetary penalties, the Registrar took the view that if Ms Goldsmith's ability to pay was an issue, then it would be appropriate to prefer compensation for the complainant.

The Complainant's Position

- [9] The complainant on behalf of himself and his partner (who was affected by Ms Goldsmith's conduct) sought compensation for loss of income, emotional distress, fees and expenses and the consequences of the poor advice Ms Goldsmith provided.
- [10] Pivotal to the compensation that the complainant and his partner sought was Ms Goldsmith's poor advice that the complainant's partner should not pursue a course of study at a polytechnic, and should instead study at a university. The fees at the university were higher, and the course of study was less relevant and useful for her career objectives.
- [11] The complainant also drew attention to the difficulties that he faced over Ms Goldsmith's conduct in providing false information to Immigration New Zealand. One of those consequences was not being able to work for a period of some two months.

Ms Goldsmith's Response

[12] Ms Goldsmith effectively rejected the Tribunal's findings and said that the complainant was the author of his own misfortune. She reiterated her assertions that the Tribunal's findings were inconsistent with what had in fact happened. As an alternative, she suggested that she did not remember things for medical reasons.

[13] Ms Goldsmith said that the Tribunal should extend sympathy due to her personal circumstances:

[13.1] a number of family members had died in the preceding three years;

[13.2] other family members had adverse medical conditions;

[13.3] she had responsibilities for caring for a family member with special needs;

[13.4] her own health was poor;

[13.5] she had ceased to work as a licensed immigration advisor and was not planning to do so again;

[13.6] she had "no income coming from a job", and little prospects of obtaining employment;

[13.7] she had a debt to Inland Revenue of \$101,913.91;

[13.8] she had no financial means to compensate anybody and considered that the extent of what she could offer was a "sincere apology if any harm was caused"; and

[13.9] she extended an apology to the complainant, his partner, the Authority and the Tribunal.

[14] Ms Goldsmith also contended that the complainant's partner had gone on to successfully complete her university course.

Further Enquiries by the Tribunal

[15] The Tribunal issued a Minute after receiving the responses described above. The Tribunal identified the principles on which it considers compensation orders, and the evidence required to make an order. The Tribunal said that the complainant should provide further evidence of his claims for compensation, and that Ms Goldsmith should provide more evidence of her financial position if she wished that to be taken into account.

[16] The complainant did not reply; only Ms Goldsmith replied.

Ms Goldsmith's Response to the Tribunal's Minute for Requesting Further Particulars

- [17] Ms Goldsmith provided some further information relating to the health of family members. She also addressed her financial circumstances.
- [18] The Tribunal's Minute had pointed out to Ms Goldsmith that it expected her to provide evidence of her financial position rather than simply assert it. It noted that she may have completed an Inland Revenue form providing particulars of her income, assets and liabilities and said that if she had not already done so, she should complete that form and an affidavit stating that its contents were true and correct.
- [19] Ms Goldsmith provided evidence that despite what she had previously said she had the resources to make a payment of more than \$67,000 to Inland Revenue, which it had accepted as full and final settlement of her tax liability. She did not provide either a completed statement of her assets and liabilities, including interest and trusts, or any sworn information regarding her financial circumstances.

Discussion*Overview*

- [20] Ms Goldsmith's conduct in relation to the complainant and Immigration New Zealand had been wholly unacceptable. She faced well founded allegations of serious professional misconduct. Her response has been to falsely accuse the Registrar of the Authority of dishonesty, and systematically denigrate the complainant and falsely accuses him too of dishonesty. She has not sensibly addressed the evidence regarding her conduct, reflected on it, and given a reasoned response.
- [21] Ms Goldsmith has maintained that, on the one hand, the events that occurred were the fault of other people and, on the other, that she may have a faulty memory. Ms Goldsmith has nonetheless been able to marshal her thoughts sufficiently to mount her disgraceful attack on the Registrar. She has also had no difficulty carefully explaining that she lacked resources to meet her professional responsibilities after the findings against her. However, when probed, she provided evidence that her claim that she lacked resources to compensate anybody were not correct. On the contrary, she was able to make a large lump sum payment to Inland Revenue. She chose not to provide information regarding her resources in the manner requested.
- [22] Having put Ms Goldsmith on notice that the Tribunal had to make a decision as to whether her conduct was wilful defiance of the law regulating licensed immigration advisors, or a failure on her part to comprehend elementary

professional obligations, the point has been reached where I must reach a conclusion on that matter.

[23] Ms Goldsmith has provided no basis on which it is reasonably open to conclude that she was merely incompetent. At the core of the allegation that Ms Goldsmith entirely abandoned any ethical standards is the finding that she advised a client not to disclose a conviction. She then filed papers with Immigration New Zealand that were dishonest, as they failed to disclose the conviction. Ms Goldsmith effectively denied she gave the advice, and had no responsibility for the false information. When confronted with evidence, she said the complainant had fabricated the evidence. Her responses give not believable foundation to conclude that she was inept or that there were miscommunications. She persisted with her claim that the events did not occur; the Tribunal found that was not true.

[24] In these circumstances, the sanctions must reflect professional offending at the highest level.

Ms Goldsmith's Financial Position

[25] The Tribunal has made it as clear as it could to Ms Goldsmith that if she wished to have the Tribunal take her financial circumstances into account she was obliged to provide a full statement of assets, liabilities and income. She failed to do that. She did provide evidence that she was able to pay Inland Revenue more than \$67,000, after she said that she had no such resources. As Ms Goldsmith has chosen not to disclose her sources of income or what her assets are, the Tribunal cannot make any assumptions regarding those matters. It cannot rely on her claims she is impecunious, as her earlier claims to that effect were either fabricated, or failed to disclose the real circumstances regarding her ability to make a lump sum payment of \$67,000.

Evidence Supporting Claim for Compensation

[26] The complainant, on behalf of both himself and his wife, has sought substantial compensation. Ms Goldsmith has questioned that. The general approach of this Authority when dealing with claims for compensation is to treat them as though they were a civil claim and apply the usual principles of requiring proof to the standard of the balance of probabilities to prove liability, causation and quantum using an appropriate measure of damages. The critical limit to the Authority's jurisdiction is, of course, that the compensation must arise out of the adverse consequences caused by professional disciplinary offending.

[27] In the present case, one of the findings is that the complainant's partner pursued a wrong course of study. Ms Goldsmith says that she completed the study successfully and brings into question whether the defective advice was causative of the adverse consequences claimed. The Tribunal has made a

finding regarding the advice being defective. However, I cannot be satisfied on the balance of probabilities on the evidence before the Tribunal, what the results of that advice were, or the amount of any loss flowing from it. The Tribunal has taken steps to give the complainant notice that he needs to provide the evidence if the Tribunal is to award compensation; but he has not done so.

[28] Similarly, there are potentially losses relating to the complainant not being able to work due to his immigration status after he followed Ms Goldsmith's advice not to disclose a conviction. It also appears the complainant had to obtain remedial professional input to address the effect of non-disclosure on his immigration status. However, there is simply not enough evidence before the Tribunal to make findings regarding causation and the amount of any losses.

[29] In these circumstances, the Authority will not make any orders for compensation relating to those issues. That is simply a finding that this Authority does not have enough evidence to deal with the issue. The complainant may well have grounds to pursue a claim in the Disputes Tribunal or the District Court. The Tribunal has made no findings inconsistent with the complainant or his partner pursuing such a claim.

[30] In cases where there is no proof of a pecuniary loss, the Tribunal may make awards that are in the nature of an award of general damages. The awards are intended to compensate for the distress and difficulties arising out of the professional disciplinary offending. In this case, the Tribunal will make an award of that nature. It is intended to provide compensation for the obvious and unsurprising consequences of following Ms Goldsmith's advice that the complainant did not need to declare a conviction. That had adverse consequences for his immigration status, and it was inevitable that when detected, the complainant would suffer very considerable anguish and distress due to the serious consequences that flowed from the advice. In addition, I have regard to the very poor advice regarding the unavailability of study at a polytechnic. The award will be \$4,000.

[31] The award of \$4,000 is towards the higher end of what is awarded as general damages in most cases in this Tribunal. The Tribunal takes a cautious approach to making such awards as it is important that they do not become a supplementary punishment. I am satisfied that the award of \$4,000 is amply justified by the very serious consequences that inevitably flow from providing false information to Immigration New Zealand. It is an utterly fundamental principle that doing so will cause grave and often irreparable harm to a migrants immigration prospects. Explanations will not be readily accepted by Immigration New Zealand; a person such as the complainant, faced with that predicament, will have a great deal of difficulty getting their affairs in order, if it is possible to do so.

- [32] Providing false information to Immigration New Zealand is likely to be disastrous for a migrant, Ms Goldsmith misled the appellant and provided false information on his behalf.

Monetary Penalty

- [33] Counselling a person to provide false information to Immigration New Zealand and being a party to the provision of that false information is at the highest end of professional disciplinary offending for a licensed immigration advisor. In this case, there is no mitigating the gravity of the offending; Ms Goldsmith's disgraceful response to the complaint, which alleged that the Registrar and the complainant are dishonest, aggravates it. Ms Goldsmith has put forward her personal circumstances; they are most unfortunate. However, they are not circumstances that in themselves justify a reduction in the monetary penalty for professional disciplinary offending.
- [34] In all the circumstances, the monetary penalty will be \$7,500. That is a standard penalty for serious dishonesty which is neither mitigated nor aggravated. The consequences that must follow from Ms Goldsmith's response to the complaint will be addressed in relation to the orders made concerning her licence.

The legal principles relating to exclusion from the profession

- [35] The authorities indicate that it is a last resort to deprive a person of the ability to work as a member of their profession. However, regard must be had to the public interest when considering whether a person should be excluded from a profession due to a professional disciplinary offence: *Complaints Committee of Waikato Bay of Plenty District Law Society v Osmond* [2003] NZAR 162 (HC) at paragraphs [13]-[14].
- [36] Rehabilitation of a practitioner is an important factor 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 carefully the alternatives available to it short of removal and to explain why the lesser options have not been adopted in the circumstances of the case."
- [37] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [97]:

the 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.

[38] The statutory purpose is achieved by considering at least four factors that materially bear upon maintaining appropriate standards of conduct:

[38.1] *Protecting clients*: section 3 of the Act states that “[t]he purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ...”

[38.2] *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.

[38.3] *Punishment*: the authorities, including *Z v Dental Complaints Assessment Committee* at [1], [65], [70] & [149]-[153], emphasise that punishment is not the primary 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]).

[38.4] *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).

Background to regulating this profession

[39] In *ZW v Immigration Advisers Authority* [2012] NZHC 1069, Priestley J observed at [41]:

In passing the Act, Parliament has clearly intended to provide a system of competency, standards, and a Conduct Code to clean up an industry which hitherto had been subject to much justified criticism. The Registrar and Tribunal have a Parliamentary mandate to enforce standards.

[40] The Act has established a regime in which, with limited exceptions, licensed advisers have an exclusive right to provide immigration advice. Criminal sanctions are used to enforce that exclusive right.

Alternatives short of cancellation of licence

[41] Section 51 provides for various sanctions. The key options short of cancellation or suspension of a licence are sanctions intended to effect deterrence. These are caution or censure, and a financial penalty not exceeding \$10,000 (s 51(a) & (f)).

[42] In relation to licences, there are two options:

[42.1] cancellation and/or a direction that the person may not apply for a licence for up to two years, or until meeting specified conditions (s 51(d) & (e)); or

[42.2] suspension (s 51(c)).

- [43] Other possibilities include training and directions to remedy a deficiency (s 51(b)). There are also powers relating to imposing costs and compensation (s 51(g)-(i)).
- [44] Suspension may ensure that a proportional consequence is imposed: *A v Professional Conduct Committee* HC Auckland CIV-2008-404-2927, 5 September 2008 at [81].
- [45] In making this decision, the Tribunal is required to weigh the public interest against Ms Goldsmith's interests (*A v Professional Conduct Committee* at [82]).
- [46] When dealing with integrity and behavioural issues, there is never any certainty that, short of exclusion from a profession, a person will not reoffend. This Tribunal must carefully weigh the circumstances. It is appropriate to place an element of considered trust in a practitioner who has shown the capacity and willingness to rehabilitate.

The Tribunal will remove Ms Goldsmith from the profession

- [47] Ms Goldsmith embarked on a course of behaviour that was, to say the least, inconsistent with a person who had any intention of retaining their standing as a licensed immigration adviser. Her attack on the Registrar and the Complainant has already been discussed, her choice to engage in that behaviour was not consistent with continued membership of the profession.
- [48] Ms Goldsmith held a licence that gave her privileges. They included being one of a narrow class of persons entitled to provide immigration advice; she had a status clients could rely on, knowing the Act and the Code of Conduct enforced professional standards. Immigration New Zealand too would treat her as a trusted professional, relying on her status under the Act.
- [49] To enjoy those privileges, licensed immigration advisers must accept the disciplines of complying with the Act and the Code; which require professional behaviour. Ms Goldsmith chose not to comply with those requirements; both in relation to the original professional offending, and her response to the complaint.
- [50] That Ms Goldsmith should hold a statutory license, with the consequent expectation that she is a professional person who consumers of immigration services can trust to act in accordance with the Act and the Code is no longer tenable.
- [51] While removal from the profession is a last resort, it is the only option in this case which can adequately ensure that consumers and the public are

protected. Given Ms Goldsmith's attitude, rehabilitation is not realistic. In my view, there is a significant need to protect potential clients, and the integrity of the immigration regime.

- [52] To provide effective immigration advice, it is necessary to understand the relevant legal and policy principles that apply in New Zealand's immigration regime. It is also necessary to understand the rules regulating professional practice. Ms Goldsmith's response to this complaint has, at least as far as the subject matter of the complaint goes, shown that she wholly lacks an ability to identify and respond to the real issues of concern. Repeatedly, she returns to attacking the Complainant, and saying the Tribunal has made wrong findings. Rehabilitation is not a realistic possibility now or in the foreseeable future.
- [53] In this case, Ms Goldsmith does not currently hold a licence. The Tribunal will impose conditions which she must fulfil before applying for a new licence. However, the Registrar deals with fitness requirements if a former licence-holder ever applies for a licence in the future; disciplinary history is potentially a relevant factor. These are issues for the Registrar; the Tribunal has no interest in them beyond their relevance to the orders it should make regarding applying for a licence.
- [54] Accordingly, the Tribunal will not permit Ms Goldsmith to apply for a licence until two years have passed, and she has completed the full training required to enter the profession, and complied with the other orders made in this decision.

Decision

- [55] Ms Goldsmith is:
- [55.1] censured;
 - [55.2] ordered to pay a penalty of \$7,500;
 - [55.3] ordered to pay the complainant \$4,000 in compensation;
 - [55.4] pursuant to section 51(1)(e) of the Act, prevented from applying for any category of licence under the Licensed Immigration Advisers Act 2007 (or any Act replacing it) until she has:
 - [55.4.1] complied with all orders made in respect of her by this Tribunal;
 - [55.4.2] enrolled in and been issued with a Graduate Diploma in New Zealand Immigration Advice (Level 7); and

[55.4.3] until at least two years have elapsed from the date of this decision.

[56] The orders to make payments all take immediate effect.

[57] The Tribunal reserves leave for the Registrar or Ms Goldsmith 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. For the reasons discussed, this decision does not imply Ms Goldsmith would meet the fitness requirements after two years, or at any time in the future. That is not a decision for the Tribunal.

DATED at Wellington, this 29th day of September 2017

G D Pearson
Chair