

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

Decision No: [2017] NZIACDT 24

Reference No: IACDT 049/15

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

**BY** **the Registrar of  
Immigration Advisers**  
Registrar

**Between** **Li Wang**  
Complainant

**AND** **Yingda (Lawrence) Fu**  
Adviser

**REPRESENTATION:**

**Registrar:** In person

**Complainant:** Mr AcClymont, McClymont and Associates, lawyers, Auckland

**Adviser:** Mr D J Ryken, Ryken and Associates, lawyers, Auckland.

Date Issued: 28 November 2017

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**DECISION**  
(IMPOSING SANCTIONS)

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**Introduction**

[1] The Tribunal upheld this complaint in the decision *Wang v Fu*<sup>1</sup>, dated 8 August 2016. The Tribunal found Mr Fu breached his professional obligations.

[2] The facts relating to the complaint, as found by the Tribunal, are outlined as follows:

[2.1] Mr Fu assisted the complainant to apply for a work visa. The application failed.

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<sup>1</sup> *Wang v Fu* [2016] NZIACDT 38.

- [2.2] Mr Fu agreed to apply for a reconsideration of the decision to decline the application.
- [2.3] Mr Fu failed to apply for reconsideration in time, and withdrew an application for visitor visas dishonestly; telling Immigration New Zealand that he had instructions to do so.
- [2.4] When responding to the complaint, Mr Fu dishonestly told the Authority that he had lodged the request for reconsideration in time, and had instructions to withdraw the visitor visa applications. The Registrar's statement of complaint alleges that neither claim was true.
- [2.5] Mr Fu took lodgement fees for the reconsideration and later requests for discretionary relief and failed to either pay the money to Immigration New Zealand, or refund the money.
- [3] Mr Fu disputed the factual allegations when the complaint arose and contended that he complied with his professional obligations. The Tribunal gave Mr Fu the opportunity of presenting his case at an oral hearing. The complainant filed an affidavit supporting her evidence, in anticipation of giving evidence at an oral hearing. However, the Tribunal abandoned the oral hearing, as Mr Fu did not comply with the timetable for the hearing.
- [4] The Tribunal has upheld the complaint on the basis Mr Fu was negligent and dishonest and failed to comply with his professional obligations relating to refunding fees.

#### **The Registrar's position regarding sanctions**

- [5] The Registrar reviewed the findings and took the view that:
- [5.1] there should be an order directing that Mr Fu refund all the fees and expenses paid to him by the complainant;
- [5.2] Mr Fu should receive a monetary penalty of something less than \$10,000; and
- [5.3] there should be an order suspending or cancelling Mr Fu's licence until he has completed the Professional Practice 7015 course of the Graduate Diploma in New Zealand Immigration Advice.

#### **The complainant's position regarding sanctions**

- [6] The complainant sought to have the advisor's licence cancelled and an order made directing him to refund all fees and expenses paid by the complainant.

- [7] The complainant also sought reasonable compensation for the stress and difficulty faced by her.

### **The advisor's position regarding sanctions**

- [8] In his submissions regarding sanctions, and contrary to his initial response to the complaint, Mr Fu accepted the Tribunal properly made adverse findings, and expressed deep regret.
- [9] The advisor, through his counsel, reasonably raised some issues concerning the facts. He did so while acknowledging Mr Fu's unsatisfactory response to the complaint resulted in the time for challenging the facts passing. The key points being:
- [9.1] he withdrew the visitor visa application with instructions from his client;
- [9.2] the Registrar was misled, but through a mistaken understanding on Mr Fu's part; and
- [9.3] he has a 16-year history of successful immigration practice.
- [10] Mr Fu acknowledges fault on his part, and explained that if he was suspended from practising, then his practice would have to close as he has no senior licensed adviser who could take control of the practice. He suggested that a CPD six-week module would be appropriate for retraining. He said he has already fully refunded all money received to pay disbursements, and provided evidence of that.
- [11] Mr Fu also accepted that mentoring would be appropriate.
- [12] Mr Fu provided considerable material supporting his position, including an affidavit from an employee who is a licensed immigration adviser, who could support some of the factual elements.
- [13] In substance, Mr Fu sought reconsideration of the finding of dishonesty, despite the advanced state of the process for determining the complaint.

### **Discussion**

#### *Overview*

- [14] Dealing with sanctions in the present case is particularly difficult. I am satisfied that the Tribunal may well have reached a different conclusion regarding the most serious aspects of the complaint had Mr Fu responded as he ought to have. The circumstances do not readily lend themselves to a rehearing because the Tribunal repeatedly endeavoured to have Mr Fu respond to the complaint and he failed to do that. It appears that after Mr Fu read the Tribunal's decision for the

first time and took the legal advice that he ought to have taken at the outset, he apparently only then appreciated the impact of the circumstances that faced him.

- [15] When dealing with circumstances of this kind, it is essential never to lose sight of the overarching duty that this Tribunal must ensure it makes just decisions, within the limits of the information it has before it. I must give weight to the fact that neither the Registrar nor the Complainant sought to cross-examine Mr Fu regarding his explanation, including his view of the facts.
- [16] If it were not for Mr Fu's further explanation, his contrition, the evidence from colleagues that his usual standards of practice are high, and the evidence that loss of his licence would have grave effects for other people in his practice, there can be little doubt that the outcome of this complaint would be that Mr Fu would have been removed from the profession. In *Shahadat v Westland District Law Society* the High Court commented that "dishonesty inevitably, although not always, may lead to striking off".<sup>2</sup> In the exceptional circumstances of this case, I conclude that it would be unjust to deal with Mr Fu on the basis that when providing information that was misleading, he did so dishonestly. In these circumstances, it would be unjust to cancel Mr Fu's licence and exclude him from the profession temporarily or permanently based on the information before the Authority.

#### **Requirement for retraining**

- [17] Mr Fu has an impressive academic record. As far as the information extends, it appears that Mr Fu, through pressures in his professional life, failed to manage the instructions giving rise to this complaint in the manner that he should have. The potential to have confidence in Mr Fu's commitment to maintain professional standards appears to be reflected in the Registrar's position that he should remain a member of the profession. The Registrar rather than removal from the profession took the view he should be required to complete the Professional Practice 7015 course of the Graduate Diploma in New Zealand Immigration Advice. She did consider that he should be suspended or have his licence cancelled until he completed the course.
- [18] I am satisfied on the information now before me that Mr Fu has developed an appreciation of his professional obligations, and the consequences of breaching them. However, it is unavoidable that he was responsible for significant breaches, of his duties; and his response to the complaint relating to them was grossly deficient. I am willing to accept that direct supervision or the suspension or loss of licence is not necessary, given the belated but apparently genuine recognition of his professional responsibilities.

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<sup>2</sup> *Shahadat v Westland District Law Society* [2009] NZAR 661 at [29].

- [19] I have particular regard to the Registrar's view that it is sufficient for Mr Fu to complete the Professional Practice 7015 course, rather than the whole of the Graduate Diploma. The Registrar is in a better position than the Tribunal to evaluate what is necessary, given that she regularly evaluates Mr Fu when he renews his license, and has significant investigative powers. The Tribunal has the perspective on one apparently isolated matter when Mr Fu failed to maintain professional standards.
- [20] I consider that given the grounds of complaint, and Mr Fu's failure to address the issues despite the clearest of direction as to the significance of the allegations, the requirement to complete the course is appropriate and proportionate. However, that is based on the further explanation regarding the facts, particularly the absence of dishonesty; which neither the Registrar nor the complainant challenged. In the absence of dishonesty, the condition is an appropriate balance of Mr Fu's circumstances, and the interests of consumers of immigration services. Consumers are entitled to have this Tribunal ensure that persons responsible for serious professional errors demonstrate the ability, and commitment to meet the standards of professional service delivery mandated by the Act. I accept the Registrar's evaluation that completion of the course will serve that purpose.

### **Compensation**

- [21] The complainant sought an order for "reasonable compensation to the complainant for avoidable stress and practical difficulty [Mr Fu] caused". This Authority does in some cases make awards of compensation in the nature of general damages. It does so with caution, because it is important that such awards are not effectively a supplementary punishment in addition to any monetary penalty. In this present case, I take account of the stress and practical difficulty, the costs of instructing counsel to represent her, and the additional problems caused by Mr Fu failing to respond to the complaint in an appropriate and prompt manner.
- [22] Having regard to all of the factors identified, I am satisfied that there ought to be an order that Mr Fu refund all fees and expenses paid by the complainant, and pay compensation of \$4,000. This award is at the higher end, and considers the cost of dealing with the complaint. There is a view that section 51(1)(g) allows the costs of a hearing only for the Registrar. Accordingly, the order is made under section 51(i).

### **Monetary penalty**

- [23] Considering that there was no dishonesty, I am satisfied that the penalty should be mid-range. It is not discounted because Mr Fu put the parties and the Tribunal to considerable inconvenience and expense through his failure to address the complaint appropriately. Nonetheless, ultimately his response was a proper and

professional one and I do take that into account and discount the monetary penalty from \$5,000 to \$4,000. Accordingly, the penalty will be \$4,000.

### **Other matters**

[24] The Registrar has not sought costs so I do not award any in her favour. I am satisfied that it is not necessary to make any orders beyond those identified.

### **Decision**

[25] Mr Fu is:

[25.1] Censured.

[25.2] Ordered to pay a penalty of \$4,000.

[25.3] Ordered to pay the complainant \$4,000 in compensation to the complainant.

[25.4] Ordered to refund any costs and expenses paid to him in relation to the subject of the complaint which he has not already refunded.

[25.5] Mr Fu is to enrol in and complete the Professional Practice 7015 course of the Graduate Diploma in New Zealand Immigration Advice. He is to do so at the first available opportunity to enrol in a course, and to complete it within the minimum time provided for completion of the course.

[26] The Tribunal reserves leave for the Registrar or Mr Fu to apply to vary the order relating to completing part of the Graduate Diploma in New Zealand Immigration Advice in the event that the qualification changes, an alternative qualification becomes available, or for any other reason that requires the terms of the order to be varied.

[27] The Authority notifies Mr Fu that, pursuant to s 51(4), unless he demonstrates to the satisfaction of the Registrar compliance with the requirement imposed in relation to completing the course that is part of the graduate diploma, his licence will be deemed to be cancelled at the end of the period specified for completion.

**DATED** at Wellington, Tuesday, 28 November 2017

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**G D Pearson**  
Chair