

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

Decision No: [2018] NZIACDT 48

Reference No: IACDT 006/17

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

BY **The Registrar of
Immigration Advisers**

Registrar

Between **Shuo Wang**

Complainant

AND **Stephen Denekamp**

Adviser

**DECISION
(SANCTIONS)**

REPRESENTATION:

Registrar: In person

Complainant: In person, in respect of sanctions

Adviser: Mr S Laurent/Mr J Turner, lawyers, Laurent Law, Auckland

Date Issued: 23 November 2018

DECISION

The complaint

- [1] The Tribunal upheld this complaint in the decision *Wang v Denekamp*,¹ dated 31 August 2018. The Tribunal found in that decision that Mr Denekamp had breached professional obligations.
- [2] The facts relating to the complaint, as found by the Tribunal, are in outline:
- [2.1] Mr Denekamp received a completed application form for a student visa.
- [2.2] He had no personal contact with the complainant, accordingly:
- [2.2.1] He never interviewed the complainant to understand his immigration options.
- [2.2.2] He did not enter into a written agreement with the complainant, or take any other steps to ensure his role was properly defined.
- [2.2.3] While he could read the content of the form, he did not know whether the information was true.
- [2.2.4] He did not seek out an opportunity to advise the complainant of the importance of accurately and truthfully completing the form.
- [2.3] Regardless of the lack of contact with the complainant, he certified on the visa application form submitted to Immigration New Zealand:
- I certify that the applicant asked me to help them complete this form and any additional forms. I certify that the applicant agreed that the information provided was correct before signing the declaration.
- [2.4] He did not put in place processes to ensure that any follow up from Immigration New Zealand was managed properly.
- [2.5] He knew, or ought to have known, that the complainant would sign the form seeing that Mr Denekamp was engaged as a licensed immigration adviser.
- [3] This led to a complaint that Mr Denekamp engaged in a practice known as “rubber stamping”, where he lent his name to an immigration process without the necessary professional commitment. The substantive

¹ *Wang v Denekamp* [2018] NZIACDT 30.

decision provides more background regarding rubber stamping complaints generally and the facts and circumstances relating to this complaint.

- [4] The complaint was upheld because Mr Denekamp did engage in “rubber stamping”. He also failed to provide the services he was obliged to provide, though both rubber stamping and a failure to provide services are dimensions of the same basis for complaint. The duty is to only provide immigration services as a fully committed professional; that involves taking instructions, performing them properly, and accurately representing your role to the client and Immigration New Zealand. Rubber stamping is a failure to engage as a fully committed professional.
- [5] Mr Denekamp also failed to ensure he had a written agreement. That too is bound up with the essence of rubber stamping. When a licensed immigration adviser engages in the way required, she or he must have a written agreement describing the services they will provide, and, if filing an application, certify to Immigration New Zealand they have provided services. A person in Mr Denekamp’s situation inevitably failed to deal properly with the interconnected duties, including the client relationship. Accordingly, I do not consider that I should treat the components of the complaint as cumulative, rather they are all facets of one lapse from professional standards.

The Registrar’s position on sanctions

- [6] The Registrar reviewed the well-established principles relating to sanctions in a professional disciplinary setting, and said in this case the Tribunal should:
- [6.1] caution or censure Mr Denekamp;
- [6.2] require that he apply for another licence only after completing the full Graduate Diploma in New Zealand Immigration Advice (the current entry qualification to the profession);
- [6.3] order that he pay a monetary penalty; and
- [6.4] issue an order for the payment of compensation.

The complainant's position on sanctions

[7] The complainant did not address sanctions other than compensation. He sought:

[7.1] A refund of fees of \$300.

[7.2] An additional visa fee of \$88, and \$365.

[7.3] Language course costs of \$4,560.

[7.4] Consultancy fees of \$550, and legal fees of \$6,900 for remedial advice.

[7.5] Costs of pursuing the complaint of \$1,750.

[7.6] Living expenses of \$11,250.

[7.7] Mental loss of \$25,000.

The adviser's position on sanctions

[8] The submission for the adviser focused on the compensation claim. The submission said:

[8.1] Some of the claims related to the adviser's former employer.

[8.2] He accepted some of the fees for remedial work should be subject as compensation.

[8.3] The living costs did not have a nexus with deficiencies in the services provided.

[8.4] The mental losses were not within the scope of appropriate compensation.

[9] In relation to other sanctions, the adviser's position was that while the rubber stamping was serious, it was an isolated lapse. Accordingly, he said, it was to be favourably distinguished from cases where advisers appeared to have developed a business model involving the practice. He said he had surrendered his licence, and if he sought to renew it there were standard retraining requirements.

Discussion

Retraining and penalties

- [10] In my view, the Registrar's approach is appropriate. Censure is inevitable, as is a monetary penalty at some level. It is necessary to consider whether it is necessary to impose a requirement for completion of the full Graduate Diploma in New Zealand Immigration Advice, or only the standard refresher course.
- [11] I have already identified that rubber stamping is a serious lapse from professional standards, including in this case the absence of an agreement, and a declaration to Immigration New Zealand that disguised the situation. The absence of an agreement and the false declaration ought to have put Mr Denekamp on notice of the peril for him, and his client. I accept the situation was isolated, and arose after a position of employment ended. The adviser is entitled to the benefit of the doubt that the conduct was an isolated and unguarded action out of the usual routine of professional practice. However, an experienced professional person must recognise the obligations they carry in such circumstances.
- [12] In my view, given the warning signs, and lack of recognition of them, it is appropriate to require Mr Denekamp to complete the full Graduate Diploma before re-entering the profession and applying for a licence.
- [13] In a number of cases, there has been some discount in relation to the monetary penalty, having regard to compensation obligations. In this case, the starting point for a penalty would be \$7,500. That takes account of the inherent factors in rubber stamping. In my view:
- [13.1] There are no aggravating factors in this case.
- [13.2] For the reasons I discuss below, there may be some compensation obligations, but they will not be imposed by this Tribunal. I have some regard to those obligations, and the appellant having exhibited contrition by signalling a willingness to pay justified compensation.
- [13.3] I have regard to the apparently isolated nature of this lapse.
- [13.4] I cannot discount the penalty because of an early recognition of the disciplinary lapse, that was not the case, but have regard to Mr Denekamp's frank acceptance of the Tribunal's findings.
- [13.5] I also take account of the obligation to retrain before re-entering the profession.

[14] In all, the penalty will be reduced to \$4,500.

Compensation and the refund of fees

[15] When dealing with compensation this Authority is careful to ensure there is a direct nexus between a lapse in professional standards and a loss claimed by the complainant or other party. It is also conscious that the jurisdiction is concurrent with others where recovery may be pursued, generally the Disputes Tribunal and the Courts.

[16] There are cases where it is not appropriate for this Tribunal to make any order, as the scope of its jurisdiction is limited. A complainant may raise intertwined claims, only parts of which it has jurisdiction to determine. In such cases, it is appropriate to exercise the discretion, and decide not to award compensation. The alternative is an imbroglio, where parts of a claim may be res judicata, other elements still live, and this Tribunal leaves a partly determined claim for another jurisdiction to complete.

[17] In my view, this is a case where the Tribunal must decline any award of compensation, the complainant can pursue his claim with the Disputes Tribunal or the District Court. My specific reasons are:

[17.1] The compensation claim proceeds only in part from the grounds on which the complaint was upheld, some parts lack a nexus with it.

[17.2] The compensation claim involves not only the adviser, but his former employer and potentially personnel in that company. He would be entitled to join them as parties, and seek to have them share liability in an ordinary jurisdiction hearing civil claims. That cannot be done in this jurisdiction.

[17.3] There is inadequate proof of quantum, it is not obvious and it is contentious. Both nexus and remoteness could be valid defences to some of the damages sought. The Tribunal does not have the procedural tools to deal with evidence on those issues, such as discovery. Further, there would be little efficiency in embarking on such an inquiry. It would involve a further hearing dealing with a civil claim, extending beyond the obvious consequences of the professional disciplinary findings.

[18] I am satisfied a refund of the fee of \$300 paid for the services Mr Denekamp provided is a discrete matter, and accordingly there will be an order for the refund of fees. The fees were not paid in accordance with the required protections under the Licensed Immigration Advisers Code of Conduct 2014, and should be refunded in full.

Decision

[19] The Tribunal orders that:

[19.1] Mr Denekamp is censured.

[19.2] Mr Denekamp is prevented from reapplying for a licence under the Immigration Advisers Licensing Act 2007, until he has completed the requirements for the issue of the full Graduate Diploma in New Zealand Immigration Advice.

[19.3] Mr Denekamp is to pay a monetary penalty of \$4,500.

[19.4] The fee of \$300 is to be refunded in full to the complainant.

[20] The Tribunal records that it has expressly declined to exercise its jurisdiction under s 51(1)(i) of the Immigration Advisers Licensing Act 2007, and made no finding on entitlement under that provision.

[21] The Tribunal reserves leave for Mr Denekamp to apply to vary the order relating to reapplying for a licence, in case the Graduate Diploma changes, or there are other circumstances that may justify a variation.

DATED at WELLINGTON this 23rd day of November 2018

G D Pearson
Chair