IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 61

Reference No: IACDT 037/17

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar
BETWEEN	**IMMIGRATION NEW ZEALAND (JOCK GILRAY)** Complainant
AND	**HARINDER (HARRY) SINGH** Adviser

DECISION
(Sanctions)
Dated 3 September 2019

REPRESENTATION:

Registrar:	J Perrott, counsel
Complainant:	Self-represented
Adviser:	P Moses, counsel

INTRODUCTION

[1] The Tribunal upheld this complaint against Mr Singh, the adviser, in a decision issued on 29 July 2019 in *Immigration New Zealand (Gilray) v Singh*.[1] It found that Mr Singh had engaged in a practice known as "rubber stamping". He had delegated client engagement to an unlicensed person contrary to the Immigration Advisers Licensing Act 2007 (the Act) and in breach of the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[2] It is now for the Tribunal to determine the appropriate sanctions, if any.

BACKGROUND

[3] The narrative leading to the complaint is set out in the decision of the Tribunal upholding the complaint and will only be briefly summarised here.

[4] Mr Harinder (Harry) Singh is a licensed immigration adviser. He is an employee of Eagle Migration Services Ltd (Eagle Migration).

[5] An Auckland automotive company (the employer) approached Eagle Migration for assistance in organising visas for automotive technicians to be recruited from the Philippines. Between March and April 2016, three clients signed a contract with Eagle Migration for work visa applications. Mr Singh was identified as the licensed immigration adviser who would assist them. He lodged the applications with Immigration New Zealand in May 2016. However, none of the clients had ever met or spoken to Mr Singh. They had all dealt with a person in a recruiting company in the Philippines.

[6] When the lack of contact with his clients was raised by Immigration New Zealand with him in May 2017, Mr Singh readily admitted that he had not spoken to them, but asserted he had met his professional obligations. He considered the employer to be his main client.

[7] The Immigration Advisers Authority (the Authority) formally advised Mr Singh of the complaint in August 2017. His counsel, Mr Moses, responded on 4 October 2017. Counsel acknowledged on behalf of Mr Singh that the failure to engage with his clients was a breach of the professional obligations. It was contended that the breach was inadvertent as he had not exercised due care. There was no deliberate violation of the professional standards. Mr Singh had made a genuine mistake in failing to comprehend

[1] *Immigration New Zealand (Gilray) v Singh* [2019] NZIACDT 53.

all aspects of a somewhat complex tripartite arrangement. He had treated the fee-paying employer as his main client.

Decision of the Tribunal

[8] In its decision, the Tribunal found that Mr Singh had no direct engagement with any of his clients at all. He had allowed an unlicensed person in the Philippines to provide "immigration advice", as defined in the Act.[2] This work was exclusively reserved under the Act to licensed advisers. His lack of contact also meant that he failed to explain to the clients all significant matters in the client agreements. Nor had he advised them when the applications were lodged or updated them as to the progress of their applications. His conduct was therefore contrary to the Act. Mr Singh was found to be in breach of cls 1, 2(e), 3(c) and 26(b) of the Code.

[9] It was accepted by the Tribunal that Mr Singh's conduct was properly classed as a lack of due care, rather than dishonest or misleading. Mr Singh did not consciously flout his professional obligations but had made an error of judgement. The critical mistake was that he thought the employer was his main client. He overlooked that his clients for the purpose of his professional obligations were the visa applicants.

SUBMISSIONS

[10] Counsel for the Registrar of Immigration Advisers (the Registrar), Mr Perrott, in his submissions of 19 August 2019 contends that Mr Singh should be censured and ordered to pay a penalty in the vicinity of $4,000.

[11] In his submissions of 19 August 2019, Mr Moses records that Mr Singh is cognisant of the Tribunal's assessment and understands the seriousness of rubber stamping. It has been a very significant learning experience for him.

[12] Mr Moses points to a number of mitigating factors.

[13] This was the first time Mr Singh had dealt with the complexities of a tripartite matter (the employer, the clients, the adviser). He had been directed to the Philippines' agent by the employer, with whom Eagle Migration had a long-standing business relationship. Mr Singh had not recognised that dealing with the agent would lead to a breach of his professional obligations. He was a relatively young professional with moderate experience of less than three years when dealing with these clients. His own employer was on leave at the time, so he was missing that source of advice.

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[2] Immigration Advisers Licensing Act 2007, s 7(1) "immigration advice".

[14] Mr Singh's breaches had resulted from one key composite error of judgement, being the failure to recognise a problem in dealing with an intermediary in the Philippines. There was no deliberate or dishonest conduct. Mr Singh had acknowledged his errors and confirmed that he had changed his practice.

[15] Mr Moses notes that the clients themselves were not charged fees in relation to the services provided since Eagle Migration's fees were paid by the employer. There was no specific prejudice to the clients. They were successful in terms of the immigration outcomes sought.

[16] It was further noted by counsel that the Tribunal's decision had been published in New Zealand's largest daily newspaper. The upholding of the complaint had therefore already had a very significant punitive effect, which would inevitably affect the business of both Mr Singh and Eagle Migration. Any additional punishment should be at the very low end of the possible range.

[17] Furthermore, Mr Singh has already had to bear the inevitable costs of legal representation.

[18] Mr Moses observes that in *Suresh v Elizabeth* [2019] NZIACDT 45, where the circumstances were not dissimilar, the fine was $3,500. In *Immigration New Zealand (Foley) v Niland* [2019] NZIACDT 16, the fine was $4,000 in relation to two complaints.

[19] Counsel accepts that a censure is appropriate and submits that a fine in the vicinity of $2,000 would also be appropriate in all the circumstances.

JURISDICTION

[20] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following action:[3]

> **50 Determination of complaint by Tribunal**
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> After hearing a complaint, the Tribunal may—
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> (a) determine to dismiss the complaint:
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> (b) uphold the complaint but determine to take no further action:
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> (c) uphold the complaint and impose on the licensed immigration adviser or former licensed immigration adviser any 1 or more of the sanctions set out in section 51.

[3] Immigration Advisers Licensing Act 2007.

[21] The sanctions that may be imposed are set out at s 51(1) of the Act:

> **51 Disciplinary sanctions**
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> (1) The sanctions that the Tribunal may impose are—
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> (a) caution or censure:
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> (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
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> (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
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> (d) cancellation of licence:
>
> (e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:
>
> (f) an order for the payment of a penalty not exceeding $ 10,000:
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> (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
>
> (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
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> (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[22] In determining the appropriate sanction, it is relevant to note the purpose of the Act:

> **3 Purpose and scheme of Act**
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> The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.

[23] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:[4]

> …It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because 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.

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[4] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

> …
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> The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.
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> …
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> Lord Diplock pointed out in *Ziderman v General Dental Council* that the purpose of disciplinary proceedings is to protect the public who may come to a practitioner and to maintain the high standards and good reputation of an honourable profession.

[24] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the profession itself.[5]

[25] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.[6]

[26] The most appropriate penalty is that which:[7]

(a) most appropriately protects the public and deters others;

(b) facilitates the Tribunal's important role in setting professional standards;

(c) punishes the practitioner;

(d) allows for the rehabilitation of the practitioner;

(e) promotes consistency with penalties in similar cases;

(f) reflects the seriousness of the misconduct;

(g) is the least restrictive penalty appropriate in the circumstances; and

(h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

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[5] *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee,* above n 4, at [151].

[6] *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

[7] *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51] and *Katamat v Professional Conduct Committee* [2012] NZHC 1633, [2013] NZAR 320 at [49].

DISCUSSION

[27] The starting point is that the conduct of Mr Singh, in delegating work exclusively reserved under the Act to immigration advisers, is serious. Both Mr Singh and the unlicensed staff member of the recruiting company in the Philippines may have committed statutory offences. It is not my role to assess whether the conduct is criminal, but the possibility shows the seriousness of the professional violations.

[28] An aggravating feature of Mr Singh's conduct is that it related to three clients. However, in a sense it was an isolated incident, since it arose from only one set of instructions from the employer and one critical mistake by Mr Singh.

[29] In upholding the complaint, I accepted the submission of Mr Moses that the breaches of the Code were the result of one underlying mistake and that there was overlap between them. I record that there will be no double counting of violations in determining the sanctions.

[30] I also acknowledged in the decision that Mr Moses had identified strong mitigation in his earlier submissions to the Tribunal. They are emphasized in his submissions on sanctions. In particular, Mr Singh accepted early in the formal complaint process his misconduct and the need to engage directly with the visa applicant as his client. Furthermore, the misconduct was not deliberate or dishonest, rather it was inadvertent. He misunderstood who his real clients were.

[31] I note that Mr Singh has already suffered embarrassment and damage to his reputation from media attention. He has also had to bear the cost of Mr Moses' fees. They are relevant factors, but I do not consider either to significantly affect what is appropriate by way of sanctions. They are the ordinary consequences of professionals being subject to a public disciplinary process.

Censure

[32] It is appropriate to censure Mr Singh. He accepts this. A caution would not reflect the seriousness of his conduct.

Training

[33] I do not consider that Mr Singh requires any further formal training. It is apparent from the submissions of Mr Moses that he now understands his obligation to engage directly with the visa applicant as his client.

Financial penalty

[34] The real issue here is as to the level of the financial penalty.

[35] More recent decisions concerning the unlawful delegation of immigration work include *Immigration New Zealand (Carley) v De'Ath* [2019] NZIACDT 1, where Mr De'Ath was ordered to pay a penalty of $8,500 in respect of 11 clients. In *Immigration New Zealand (Foley) v Niland* [2019] NZIACDT 16, there was a penalty of $4,000 against Ms Niland in respect of four clients. In *Immigration New Zealand (Calder) v Ahmed* [2019] NZIACDT 35, there was a penalty of $4,000 in respect of four clients. Then in *Immigration New Zealand (Calder) v Cleland* [2019] NZIACDT 38, the financial penalty was $7,500 in respect of 12 clients. In *Suresh v Elizabeth* [2019] NZIACDT 45, the penalty was $3,500 in respect of one client. Finally, in *Immigration New Zealand (Calder) v Shearer* [2019] NZIACDT 52, the penalty was $6,500 in relation to 22 clients.

[36] I recognise that other factors were also relevant to the level of penalty in those decisions. The misconduct and the personal circumstances of each of those advisers were not identical to those of Mr Singh. The strong mitigation present in the case of Ms Shearer is noted.

[37] Balancing the serious misconduct against the mitigation identified by Mr Moses, the penalty will be set at $3,000.

OUTCOME

[38] Mr Singh is:

(1) censured; and

(2) ordered to immediately pay to the Registrar a penalty of $3,000.

D J Plunkett
Chair