

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 10

Reference No: IACDT 010/17

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **HIREN MHATRE**
Complainant

AND **NEHA GOKHALE**
Adviser

DECISION
(Sanctions)
Date: 22 February 2019

REPRESENTATION:

Registrar: C J Pendleton, counsel
Complainant: In person
Adviser: In person

INTRODUCTION

[1] The Tribunal (Mr Pearson) upheld this complaint in a decision issued on 29 August 2017 in *Mhatre v Gokhale* [2017] NZIACDT 13. The Tribunal found that Ms Gokhale had breached her professional obligations under the Immigration Advisers Licensing Act 2007 (the Act) and the Code of Conduct 2014 (the Code).

[2] The Tribunal apologises for the inordinate delay in issuing this decision. The issue of sanctions was overlooked.

BACKGROUND

[3] The narrative is set out in the earlier decision of the Tribunal and will be briefly summarised here. That decision had followed an oral hearing.

[4] On 19 September 2016, Mr Mhatre engaged Ms Gokhale to lodge a partnership based temporary visa application. They had been introduced by mutual friends. A written agreement was entered into between them on 27 September 2016. Ms Gokhale only charged \$250, considerably less than her usual fee.

[5] The visa of Mr Mhatre was due to expire on 30 October 2016, so Ms Gokhale drafted an application for a visa on about Thursday, 27 October. She intended to file it the following day, Friday. Mr Mhatre apparently picked it up from her and took it away without signing it. Concerned about the imminent expiry, Ms Gokhale sent an email to Mr Mhatre's wife on 28 October seeking the signed application form and preferably also the signed supporting form.

[6] Mr Mhatre delivered to Ms Gokhale the signed application form on Sunday 30 October 2016, but not the form signed by his wife supporting his application. On the same day, Ms Gokhale lodged the application online, but she made a mistake and selected the wrong type of visa from the 'drop down' menu. She selected the post-study category.

[7] Ms Gokhale promptly realised the mistake so on 3 November 2016 she lodged a paper application for a partnership based temporary visa. It was returned by Immigration New Zealand on 5 November because the online post-study work visa was being processed. Furthermore, it was incomplete as it was missing the supporting form signed by Mr Mhatre's wife.

[8] On 10 November 2016, Ms Gokhale's licence as an immigration adviser expired.

[9] On 15 November 2016, Mr Mhatre made enquiries about his application and was informed by Immigration New Zealand that both post-study and partnership-based applications had been lodged, but that the latter had been returned on 5 November.

[10] Mr Mhatre made a complaint against Ms Gokhale to the Immigration Advisers Authority (the Authority) on 29 November 2016. Following an investigation, it was referred by the Registrar of Immigration Advisers (the Registrar), the head of the Authority, to the Tribunal.

[11] In its decision of 29 August 2017, the Tribunal found that Ms Gokhale had failed to confirm in writing to Mr Mhatre that the online application had been lodged and that it had been lodged in error. Furthermore, she did not provide written updates when it was returned and when the partnership application had been lodged. The failure to notify in writing was a breach of cl 26(b) of the Code. The breaches were mitigated by her oral report of both lodgements.

[12] It was also found by the Tribunal that Ms Gokhale had not kept copies of the two applications on her file, a breach of cl 26(a)(i) of the Code. This breach was found to be at the “low end”.¹

[13] The Tribunal found that the error in selecting the type of visa on a ‘drop down’ menu was a simple mistake and not an error of professional judgement. There was no negligence or breach of the Code.

[14] It also rejected Mr Mhatre’s allegation of dishonesty. He had alleged that Ms Gokhale had completed the applications without reference to him and had forged his signature on the partnership application. The Tribunal preferred the evidence of Ms Gokhale where it differed from that of Mr Mhatre.

SUBMISSIONS

[15] Counsel for the Registrar, Ms Pendleton, in her submissions of 11 September 2017 submits that the appropriate sanction should be a caution or censure.

[16] Mr Mhatre, in his email of 30 August 2017 to the Tribunal, seeks compensation for his loss in the sum of \$6,000. This amount is not broken down but is said to include the fees of the licensed adviser he subsequently appointed and various Immigration New Zealand fees that he says had to be paid because of Ms Gokhale’s error. Mr Mhatre states that the lost money had been intended for his wife’s student loan instalments, so to pay these he had to borrow money from his father-in-law, which attracted interest.

¹ *Mhatre v Gokhale* [2017] NZIACDT 13 at [38].

[17] In her email of 20 September 2017 to the Tribunal, Ms Gokhale advises her agreement with the Registrar's proposed sanction. Furthermore, if she renewed her licence, she would ensure that the error did not happen again.

JURISDICTION

[18] The Tribunal's jurisdiction is set out in the Act. Having heard a complaint, the Tribunal may take the following action:²

50 Determination of complaint by Tribunal

After hearing a complaint, the Tribunal may—

- (a) determine to dismiss the complaint:
- (b) uphold the complaint but determine to take no further action:
- (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.

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

51 Disciplinary sanctions

- (1) The sanctions that the Tribunal may impose are—
 - (a) caution or censure:
 - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
 - (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
 - (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:
 - (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:
 - (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

² Immigration Advisers Licensing Act 2007.

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

3 Purpose and scheme of Act

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.

[21] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:³

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.

...

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.

...

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.

[22] 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.⁴

[23] 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.⁵

³ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).

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

⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

[24] The most appropriate penalty is that which:⁶

- (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.

DISCUSSION

[25] It is plain that the Tribunal regarded Ms Gokhale's violation of professional standards as being at the lower end of the scale. In saying that, it is important to have a properly documented file and to provide written notification of important developments to the client. That is particularly so if the adviser makes a mistake. It is therefore appropriate to mark Ms Gokhale's conduct by way of caution, despite her no longer being a licensed adviser. It is conceivable she may seek to resume practice at some time in the future.

[26] Mr Mhatre seeks compensation in the sum of \$6,000. There is no breakdown of this amount and no supporting documentation. Moreover, any losses will not have arisen from the specific breaches of the professional obligations found by the Tribunal, which concerned failures to provide written notification to the client of the lodgement and status of applications and having an inadequate file. While Ms Gokhale made an error in selecting the wrong type of application and that may have contributed to its failure, the Tribunal did not find that error to amount to a violation of the professional standards.

⁶ *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], relying on *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 at [49].

[27] In respect of the claim for the fees charged by Immigration New Zealand, I do not know how much they were or for what. Furthermore, any wasted fees will not have been caused by the breaches of professional obligations upheld by the Tribunal.

OUTCOME

[28] Ms Gokhale is cautioned. This caution should be regarded by her as a warning to provide written notification to her clients and to maintain a proper written record, should she resume practice as an adviser.

D J Plunkett
Chair