

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 7

Reference No: IACDT 005/16

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **P D**
Complainant

AND **S I**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Date: 14 February 2019

REPRESENTATION:

Registrar: A Dumbleton

Complainant: In person

Adviser: In person

PRELIMINARY

[1] Mr I, the adviser, has been the subject of many complaints which have been upheld by the Tribunal and his licence has been cancelled. As a result of his health, he has been found to lack capacity to practice as an adviser. The complaint here largely relates to Mr I's negligence in representing the complainant, including making futile applications and breaches of professional compliance obligations, such as obtaining written instructions and notifying fees.

[2] Given Mr I's medical condition, it is not possible for him to defend the complaint, so the only proper course of action is to uphold the complaint to the extent necessary to order a refund of the fees paid. As an interim decision has already been issued, the purpose of this decision is to finalise that interim decision.¹

BACKGROUND

[3] Mr I was a licensed immigration adviser.

[4] A series of complaints were brought before the Tribunal by the Registrar of Immigration Advisers (Registrar), the head of the Immigration Advisers Authority (Authority). A Notice of Suspension of Licence was issued against Mr I by the Tribunal on [date]. This was followed by 15 decisions (substantive and sanctions) issued by the Tribunal between 18 June and 24 September 2018 cancelling his licence and ordering the refund of fees paid by the individual clients.² In two cases, the Tribunal also ordered Mr I to pay compensation to those particular clients. A myriad of professional violations was found to have been committed by him between about August 2013 and September 2017, such as:

- failing to have written agreements with his clients;
- failing to make clear his fees;
- filing futile applications and appeals;
- writing unprofessional communications to clients; and
- failing to hold securely documents such as passports.

¹ [citation removed].

² [citation removed]. The 15 decisions include the interim decision issued in respect of the complaint.

[5] Mr I was found to have breached obligations in both the 2010 and 2014 Codes of Conduct (the Codes). This included cls 1.5 and 8(b) of the 2010 Code and cls 1, 9, 18(a), 19(f) and 29(b) of the 2014 Code. It was also found there was no blameworthiness on Mr I's part as the unprofessional conduct was caused by a medical condition.

[6] The statutory grounds of complaint upheld under s 44(2) of the Immigration Advisers Licensing Act 2007 (the Act) were negligence, incapacity and a breach of the Codes.

[7] The incapacity related to Mr I's medical condition. He had a stroke in February 2017 but was found by the Tribunal to have been suffering from mental impairment as far back as mid-2015. A series of acute events led to severe and permanent consequences, to the extent that he lost his mental capacity to deal with complaints.

COMPLAINT AND INTERIM DECISION

[8] An overview of the complaint made to the Authority by the complainant and the Registrar's specific grounds in his complaint to the Tribunal are set out in the interim decision of the Tribunal. In that interim decision, the Registrar's complaint was upheld and Mr I was found to be negligent and to have breached the Codes. In particular, the Tribunal found that Mr I:

- negligently failed to identify that a work visa application submitted could not succeed;
- undertook several instructions without a written agreement;
- did not provide written notification of his fees;
- did not have written agreements as to what services he would provide;
- wasted fees as none of his work succeeded;
- made a work visa application that was ill-founded and for which there were no written instructions;
- made an appeal to the Immigration and Protection Tribunal which had no hope of success and failed;
- did not comply with the professional obligations concerning futile obligations;
- failed to keep documents securely; and

- threatened the client with an unsuccessful outcome if his fees were not paid.

[9] The interim decision notified the sanctions that the Tribunal proposed to impose, which took into account prioritising Mr I's ability to refund fees and to pay compensation. Mr I had already refunded \$3,000. The Tribunal advised that it intended to order a refund of fees of \$3,800. The decision gave the parties the opportunity to contest its findings and make submissions on sanctions, otherwise it would become final.

SUBMISSIONS ON INTERIM DECISION

[10] The complainant responded on 24 September 2018 advising that he wanted Mr I to refund the large sum of money he had paid him, of which only \$3,000 had been repaid.

[11] In his submissions of 5 October 2018, Mr Dumbleton, on behalf of the Registrar, agrees that it is more appropriate for the sanctions to reimburse pecuniary loss and compensate for other harm suffered by the complainant, rather than to punish Mr I for his negligence and breaches of the Codes. It is submitted that orders should be made for the refund of the \$3,800 fees and expenses and to pay reasonable compensation to the complainant, having regard to any specific amount the complainant might seek.

[12] I note that the complainant does not seek any specific sum for compensation beyond a refund of the fees. Even if he did, I doubt it would be possible to hear and determine any claim for compensation given Mr I's incapacity.

OUTCOME

[13] The interim decision is hereby made final. There will be an order for the payment by Mr I to Mr D of \$3,800, in accordance with s 51(1)(h) of the Act.

ORDER FOR SUPPRESSION

[14] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.³

[15] Given the medical circumstances of Mr I, it is not appropriate to publish his name or identity. His licence has already been cancelled. Nor is there any public interest in knowing the name or identity of the complainant.

³ Immigration Advisers Licensing Act 2007, s 50A.

[16] The Tribunal orders that no identifying information relating to the adviser or complainant is to be published other than to the parties or Immigration New Zealand.

D J Plunkett
Chair