

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2020] NZIACDT 20

Reference No: IACDT 034/18

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **QM**
Complainant

AND **SANDRA SIEW HOON NG**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 14 May 2020

REPRESENTATION:

Registrar: Self-represented
Complainant: No appearance
Adviser: D James, counsel

PRELIMINARY

[1] Ms Sandra Siew Hoon Ng, the adviser, acted for QM, the complainant, on a number of immigration applications. She breached various professional obligations relating to having a client agreement and file documentation. Moreover, she advised the complainant a residence application had been filed when she had not done so. These breaches arose because she handed over the completed residence application to an unlicensed person, Mr Gregory Smith, to file, but he did not do so.

[2] The complainant made a complaint to the Immigration Advisers Authority (the Authority). The Registrar of Immigration Advisers (the Registrar), the head of the Authority, referred the complaint to the Tribunal, alleging that Ms Ng's conduct amounted to negligence, a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act), and also breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] Ms Ng largely admits her professional failings.

BACKGROUND

[4] Ms Ng was at the material time a licensed immigration adviser. She was the sole director of Hope Immigration Service Limited (Hope Immigration). Her licence expired on 15 December 2017.

[5] On 12 November 2015, Ms Ng signed an agreement with Mr Gregory Smith of Impact Migration Services Limited (Impact Migration), whereby she became a contractor to that company (the copy agreement sent to the Tribunal was not signed by Impact Migration). She agreed to provide immigration advice and processing services to clients of Impact Migration, in return for 15 per cent of its fee.

[6] In June 2016, Mr Smith introduced the complainant's partner to Ms Ng. The complainant is a national of Uganda.

[7] In August and November 2016, Ms Ng filed visitor and work visa applications respectively for the complainant. She did not enter into any client agreement with him. She used the letterhead of Impact Migration in her correspondence with Immigration New Zealand.

[8] In June 2017, Impact Migration was removed from the Companies Register.

[9] On 16 August 2017, the complainant signed Hope Immigration's "Migration Representation Agreement" (the copy agreement sent to the Tribunal was not signed by Ms Ng or Hope Immigration). Ms Ng agreed to prepare and file a residence visa application for the complainant, based on his partnership with a New Zealand citizen. Her services included all communication with Immigration New Zealand. The fee was expressed to be \$2,300 (though the constituent items of the fee add up to \$2,200). The complainant paid \$2,200 to Ms Ng.

[10] On 10 October 2017, Ms Ng and Mr Smith had a meeting with the complainant and his partner.

[11] The residence application was duly prepared by Ms Ng. She gave it to Mr Smith. He verbally told her on 8 November 2017 that he had filed it with Immigration New Zealand.

[12] Ms Ng sent an email to the complainant's partner that day informing her that the application had been handed to Immigration New Zealand.

[13] On 15 November 2017, Ms Ng told Mr Smith that she would not renew her adviser's licence, which was due to expire on 15 December 2017. He told her that he would advise the various clients of Impact Migration, as they were his clients. She asked him by text on a number of occasions whether he had done so, but he replied that he had not. On 5 December, he told her that he would inform the complainant's partner that evening.

[14] Ms Ng accepts that the complainant and his partner were not informed at the time.

[15] The complainant was told in January 2018 by Mr Smith that the residence application was not lodged because Ms Ng did not renew her licence.¹ The complainant says Mr Smith insisted that he would lodge the application because the complainant had already paid. Whenever he asked Mr Smith about progress, the latter gave different explanations about what was happening and eventually claimed to be sick.

[16] On 10 May 2018, Immigration New Zealand told the complainant that the residence application was never filed.

[17] The complainant's current immigration status in New Zealand is not known.

¹ Complaint (13 May 2018), Registrar's documents at 8.

COMPLAINT

[18] On about 13 May 2018, the complainant made a complaint against both Ms Ng and Mr Smith to the Authority (as Mr Smith has never been licensed, a complaint against him cannot be referred to the Tribunal).

[19] The complainant said that both Ms Ng and Mr Smith told him that his residence application had been lodged with Immigration New Zealand. When he asked the agency, he was told he needed to provide a client number, but Mr Smith continually refused to give him the number. This went on for months, with Mr Smith claiming to be sick. Then on 10 May 2018, Immigration New Zealand informed him that no application had been lodged.

[20] According to the complainant, he had paid a total of \$3,600, which he wanted back.

[21] On 29 May 2018, the Authority requested Ms Ng's file concerning the complainant. She replied on 5 June 2018 sending certain documents, but stating that she could not access Impact Migration's folder containing other documents relating to the visitor and work visas.

[22] Ms Ng refunded \$2,200 to the complainant on 1 June 2018.

[23] On 11 September 2018, the Authority formally wrote to Ms Ng advising her of the details of the complaint. Her explanation was invited.

Explanation from Ms Ng

[24] Mr James, counsel for Ms Ng, replied on 19 October 2018. Counsel advised that Ms Ng admitted:

- (1) failing to file the complainant's residence application, in breach of cl 1 of the Code;
- (2) failing to directly inform the complainant of the discontinuance of her practice and then ensuring that he was assisted by another licensed adviser or a lawyer, in breach of cls 1, 2(e), 3(c), 26(b) and 28(c);
- (3) failing to enter client agreements for the visitor and work visa applications, in breach of cl 18(a); and

- (4) failing to maintain a complete copy of the client files, in breach of cls 3(c), 26(a)(ii) and (iii), and 26(e).

[25] Counsel stated that Ms Ng disputed acting dishonestly or misleading the complainant when she informed him that she had lodged his residence application. She had provided the application to Mr Smith who told her that it had been filed. She was not aware that it had not been filed until the Authority notified her of the complaint. Ms Ng then sought to rectify the situation as best she could by refunding the fees paid for the residence application.

[26] According to counsel, this was the first time Ms Ng had faced a formal complaint. She had always endeavoured to be professional and honest in her conduct towards clients. She had learned a lot from the process and was very remorseful about her mistakes and lapses of judgement. Ms Ng had decided not to renew her licence and had returned to her country of origin to look after her father.

[27] In support of the submissions, Ms Ng swore an affidavit (17 October 2018). She started practising as an immigration adviser after obtaining the Graduate Certificate in New Zealand Immigration Advice from the Bay of Plenty Polytechnic in 2014. She set up a part-time practice once she got her licence in December 2014, while still working fulltime in banking. She worked as a contractor to Mr Smith's company from November 2015 to November 2017. Ms Ng explained how she came to meet Mr Smith and to naively believe a story about his misfortunes and why he needed Ms Ng to help him with immigration clients.

[28] Ms Ng said she regarded the complainant and the others introduced by Mr Smith as the clients of Impact Migration. She viewed her role as merely that of a contractor servicing his clients. After Mr Smith filed for bankruptcy, she started to use her company, Hope Immigration. However, Ms Ng continued to regard the complainant and others introduced by Mr Smith as his clients. It was not until she received the complaint and sought legal advice that she realised her understanding of the Code was misguided.

[29] It was on 8 November 2017 that Mr Smith told her that he had dropped off the complainant's residence application to Immigration New Zealand. She admitted that it was her responsibility to file the application herself. She did not intentionally mislead him by telling him it had been filed, as she honestly believed Mr Smith had done so. When she found out it had not been filed, she personally refunded to him the fees he had paid.

[30] As for the decision not to renew her licence, Ms Ng said in her affidavit that she informed Mr Smith of this on 15 November 2017. He told her that he would let the clients know as they were his clients. She asked him about this a number of times. On

5 December, Mr Smith told her he would tell the complainant's partner that night as he was due to meet her. She accepted his word. Ms Ng now realises that it was a mistake not to contact the complainant directly and ensure he could be supported by a new adviser or lawyer.

[31] In her affidavit, Ms Ng admitted that she did not enter into client agreements for the visitor or work visa applications. She further admitted breaching the Code by failing to maintain a complete copy of the complainant's file.

Complaint referred to Tribunal

[32] The Registrar referred the complaint to the Tribunal on 26 November 2018, alleging that the following conduct of Ms Ng amounted to negligence under the Act and/or breached the Code:

- (1) failing to file the residence application herself or to take reasonable steps to ensure that the application was filed, thereby being negligent;
- (2) failing to file the residence application herself or to take reasonable steps to ensure that the application was filed, in breach of cl 1;
- (3) allowing an unlicensed person to take control of the residence application, services for which she was engaged, in breach of cls 2(e) and 3(c);
- (4) failing to keep the complainant informed about his immigration affairs, in breach of cl 26(b);
- (5) failing to inform the complainant about her intention not to renew her licence and ensure that he was informed about who would then assist him, in breach of cl 28(c);
- (6) failing to enter into written agreements with the complainant for the visitor and work visa applications, in breach of cl 18(a); and
- (7) failing to maintain and produce to the Authority a full copy of the complainant's file, in breach of cls 3(c) and 26(e).

JURISDICTION AND PROCEDURE

[33] The grounds for a complaint to the Registrar made against an immigration adviser or former immigration adviser are set out in s 44(2) of the Act:

- (a) negligence;
- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour; and
- (e) a breach of the code of conduct.

[34] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.²

[35] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.³ It has been established to deal relatively summarily with complaints referred to it.⁴

[36] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.⁵

[37] The sanctions that may be imposed by the Tribunal are set out in the Act.⁶ The focus of professional disciplinary proceedings is not punishment but the protection of the public.⁷

[38] It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.⁸

[39] The Tribunal has received from the Registrar a statement of complaint (26 November 2018), together with paginated supporting documents.

[40] There are no submissions from the complainant.

[41] Counsel for Ms Ng has filed a statement of reply (18 December 2018) agreeing with the facts presented in the statement of complaint. In a covering letter (19 December 2018), counsel advises that Ms Ng relies on the submissions made to the Authority.

² Immigration Advisers Licensing Act 2007, s 45(2) & (3).

³ Section 49(3) & (4).

⁴ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

⁵ Section 50.

⁶ Section 51(1).

⁷ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).

⁸ *Z v Dental Complaints Assessment Committee*, above n 7, at [97], [101]–[102] & [112].

[42] No party has sought an oral hearing.

ASSESSMENT

[43] The Registrar relies on the following provisions of the Code:

General

1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

Client Care

2. A licensed immigration adviser must:

...

- e. obtain and carry out the informed lawful instructions of the client, and

...

Legislative requirements

3. A licensed immigration adviser must:

...

- c. whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.

Written agreements

18. A licensed immigration adviser must ensure that:

- a. when they and the client decide to proceed, they provide the client with a written agreement

File management

26. A licensed immigration adviser must:

...

- b. confirm in writing to the client when applications have been lodged, and make on-going timely updates

...

- e. maintain each client file for a period of no less than 7 years from closing the file, and make those records available for inspection on request by the Immigration Advisers Authority,

...

Termination of services

28. A licensed immigration adviser must ensure that:

...

- c. if, for any reason, the adviser cannot continue to act for the client, the adviser fully updates the client on the status of their immigration matter and advises them of where they could get assistance.

[44] Prior to considering each head of complaint, I make the observation that it is not clear what the complainant was told or understood about the obligations of Ms Ng as a licensed adviser and the relationship between her and Mr Smith.

[45] According to Ms Ng's affidavit, at client consultations she always introduced herself as the immigration adviser and Mr Smith would introduce himself as the office manager.⁹ This was misleading. He was not employed by her. Her written agreement with him for the residence application identified her as the licensed adviser and made no mention of Mr Smith or his company, yet the complainant appears to have dealt with Mr Smith after 8 November 2017. There is no evidence the complainant tried to contact her, yet he does not seem to have known that she was no longer licensed (and that his application had not been filed) until January 2018.

[46] I suspect that Ms Ng never properly explained to the complainant her role or that she was responsible for the application or that only she was bound by professional obligations. The complainant appears to have been led to believe either of them could have dealt with his application. Indeed, when he initially made a complaint to the Authority, it seems to have been against Mr Smith.¹⁰ Any confusion the complainant had in this regard was Ms Ng's fault. It was her responsibility to explain clearly her role and professional obligations, contrasting those with the limited role of the unlicensed Mr Smith.

[47] Given the particulars of the complaint formulated by the Registrar and Ms Ng's admissions, I do not intend to explore what the complainant understood about her role and obligations, as compared to Mr Smith. That will not affect the outcome of the complaint.

(1) *Failing to file the residence application herself or to take reasonable steps to ensure that the application was filed, thereby being negligent*

⁹ Affidavit Ms Ng (17 October 2018) at [14].

¹⁰ Registrar's supporting documents at 7.

(2) *Failing to file the residence application herself or to take reasonable steps to ensure that the application was filed, in breach of cl 1*

[48] As Ms Ng has admitted a breach of cl 1 of the Code, in failing to personally file the residence application, I will deal with the second head of complaint first.

[49] Preparing and filing a residence application was part of Ms Ng's contracted services. It is clear that she had a contractual obligation to file it herself, as the agreement with the complainant did not allow her to delegate that critical task to Mr Smith or anyone else.¹¹ In failing to file the application herself, Ms Ng breached not just the agreement, but her Code obligation to be professional, diligent and to conduct herself with due care. I uphold the second head.

[50] The first head of complaint, that the same conduct amounts to negligence, is essentially an alternative charge and need not be assessed.

(3) *Allowing an unlicensed person to take control of the residence application, services for which she was engaged, in breach of cls 2(e) and 3(c)*

[51] Ms Ng gave the residence application to Mr Smith to file, presumably because she had decided not to renew her licence which was due to expire just over a month later. In effect, she abandoned the complainant and his application at that point, despite having apparently accepted a full fee to see the application through to the decision by Immigration New Zealand. That was what she was contracted to do. Whether she gave any part of the fee to Mr Smith is not known.

[52] Ms Ng handed the application to Mr Smith, not only to lodge, but to manage from then on. Mr Smith was unlicensed and was not even employed by her.

[53] The issue to consider is whether Ms Ng's conduct is a form of what is known in the immigration advisory industry as "rubber stamping". This involves delegating the adviser's exclusive work to unlicensed persons who typically find the client, take charge of the client relationship and undertake some or much of the work. Any filing of the application by Mr Smith and hence subsequent representation of the complainant in communications with Immigration New Zealand, which is what Ms Ng intended, could not be described as "clerical work" (as defined in s 5 of the Act), which an adviser is permitted to delegate to an unlicensed person. It is plainly "immigration advice" (as defined in s 7) and therefore statutorily reserved to the licensed adviser.

¹¹ It will be assumed Ms Ng intended to be bound by an agreement she may not have signed.

[54] Such conduct potentially contravenes ss 6 and 64(1) of the Act and, if so, would be contrary to cl 3(c) of the Code. It can also amount to a criminal offence and could only be regarded as serious misconduct.

[55] The difficulty with this scenario, as advanced by the Registrar, is that Mr Smith did nothing. He did not file the application and did not take control of the complainant's residence application. Irrespective of the propriety of his behaviour, he did not breach the Act by undertaking "immigration advice" services.

[56] Certainly, Ms Ng *intended* that Mr Smith take control and therefore conduct himself unlawfully. I accept, though, that her intention was unwitting. She misunderstood the tripartite relationship between herself, the complainant and Mr Smith. So far as her statutory and professional obligations were concerned, her client was the complainant, not Mr Smith or his company. Both Mr Smith and Impact Migration may also have been her clients in a commercial sense in that she had contractual obligations to them, but that was irrelevant to her statutory and professional obligations to the complainant.

[57] Ms Ng's wrongful plan, absent any unlawful immigration work by Mr Smith, is not a breach of cl 3(c) of the Code. I appreciate that Ms Ng, through counsel, has admitted breaching cl 3(c), but I find she did not. Mr Smith's inaction meant that the unlawful plan she had in mind never came to fruition.

[58] Turning now to cl 2(e) of the Code, Ms Ng has appropriately admitted the breach. By abandoning the complainant and his application to an unlicensed person not employed by her, which the complainant did not even know had happened and which was contrary to her agreement with him, she failed to obtain and carry out the complainant's instructions. At the very least, Ms Ng failed to obtain the complainant's instruction to hand over the application to another person, and failed to carry out his instruction to file it herself.

[59] I uphold the third head of complaint in respect of cl 2(e) of the Code.

(4) *Failing to keep the complainant informed about his immigration affairs, in breach of cl 26(b)*

(5) *Failing to inform the complainant about her intention not to renew her licence and ensure that he was informed about who would then assist him, in breach of cl 28(c)*

[60] Ms Ng failed to personally inform the complainant of:

(1) her intention not to renew her licence;

- (2) that she had given the completed application to Mr Smith to file; and
- (3) the name of a qualified person who could assist him with the application.

[61] These breaches of cls 26(b) and 28(c) of the Code are admitted by Ms Ng. I uphold the fourth and fifth heads.

- (6) *Failing to enter into written agreements with the complainant for the visitor and work visa applications, in breach of cl 18(a)*

[62] Ms Ng accepts that she had no written agreement with the complainant for the visitor and work visa applications, in breach of cl 18(a) of the Code. The sixth head is upheld.

- (7) *Failing to maintain and produce to the Authority a full copy of the complainant's file, in breach of cls 3(c) and 26(e)*

[63] Ms Ng accepts that her failure to maintain and produce to the Authority on request a complete copy of the complainant's immigration file, breached cls 3(c) and 26(e) of the Code. A key document missing from the file was the residence application sent to Mr Smith. It was a breach of cl 3(c) because she did not comply with the demand for documents made on 29 May 2018, pursuant to s 57(1) of the Act. The seventh head is upheld.

OUTCOME

[64] The complaint is upheld, with the exception of the first head which is dismissed. Ms Ng has breached cls 1, 2(e), 3(c), 18(a), 26(b) and (e), and 28(c) of the Code.

SUBMISSIONS ON SANCTIONS

[65] As the complaint has been upheld, the Tribunal may impose sanctions pursuant to s 51 of the Act.

[66] A timetable is set out below. Any request for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim.

Timetable

[67] The timetable for submissions will be as follows:

- (1) The Registrar, the complainant and Ms Ng are to make submissions by **8 June 2020**.
- (2) The Registrar, the complainant and Ms Ng may reply to submissions of any other party by **22 June 2020**.

ORDER FOR SUPPRESSION

[68] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹²

[69] There is no public interest in knowing the name of Ms Ng's client.

[70] The Tribunal orders that no information identifying the complainant is to be published other than to Immigration New Zealand.

D J Plunkett
Chair

¹² Immigration Advisers Licensing Act 2007, s 50A.