IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2021] NZIACDT 07

Reference No: IACDT 003/20

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar
BETWEEN	**IMH** Complainant
AND	**SIMONA MARICA** Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
(Sanctions)
Dated 22 March 2021

REPRESENTATION:

Registrar:	Self-represented
Complainant:	T Alexander, licensed immigration adviser
Adviser:	P Moses, counsel

INTRODUCTION

[1] Ms Simona Marica, the adviser, acted for IMH, the complainant, who sought to renew a visitor visa. Due to a mistake in the immigration consultancy's file records as to the expiry date of the complainant's existing visa, Ms Marica was too late making the application as the existing visa had already expired.

[2] The application was not therefore accepted by Immigration New Zealand, but Ms Marica was late advising the complainant of this and even then, she did not disclose the true reason for the failed application (the mistake in the file record). However, a discretionary work visa application made by her was successful about five weeks later.

[3] A complaint to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It was upheld in a decision issued on 4 February 2021 in *IMH v Marica*.[1] Ms Marica was found to have been misleading, a ground for complaint under the Immigration Advisers Licensing Act 2007 (the Act), and also to have breached various obligations in the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[4] It is now for the Tribunal to determine the appropriate sanctions.

BACKGROUND

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

[6] Ms Marica, a licensed immigration adviser, is a director of Bespoke Immigration, of Auckland. She was previously employed as a licensed immigration adviser at North Shore Immigration Services (the immigration consultancy).

[7] On 29 April 2016, the complainant and his partner signed a written agreement with the immigration consultancy in regard to various visas for the family, being work visas for the complainant and his partner, visitor or student visas for their dependent children and later a residence visa in the skilled migrant category for the family. The signatories on behalf of the immigration consultancy were Mr Gimranov, who was then licensed, and an unknown person.

---

[1] *IMH v Marica* [2021] NZIACDT 2.

[8] Mr Gimranov filed a visitor visa application with Immigration New Zealand for the complainant on 1 June 2016. Two days later, on 3 June, it was approved, with an expiry date of 3 September 2016.

[9] Mr Gimranov sent an email to the complainant on 3 June 2016 confirming that the visitor visa had been approved, valid until 6 September 2016. The same erroneous expiry date was then entered in the immigration consultancy's client record.

[10] Immigration New Zealand sent an automated email to the complainant on 11 August 2016 reminding him that his visa would expire on 3 September 2016. He forwarded this to Ms Marica on 24 August 2016 seeking her assistance with an extension.

[11] On 4 September 2016, Ms Marica, who was then in South Africa, attempted to file the complainant's visa application online, but was unable to do so as his visa had expired the previous day. Accordingly, she sent an urgent email to Mr Gimranov and the office manager stating that it was imperative that a s 61 request be lodged.[2] However, no such application was prepared.

[12] Mr Gimranov's licence was then cancelled by the Authority on 15 September 2016 and Ms Marica returned to New Zealand on about 19 September.

[13] The complainant sent a number of emails to Ms Marica and Mr Gimranov enquiring as to progress on the visa application which he thought had been made, but he received no response beyond requests from the advisers for information or documents.

[14] It was not until 30 September 2016 that Ms Marica sent the s 61 request to Immigration New Zealand and about an hour later, she sent an email to the complainant notifying him that the visa application had not earlier been made, blaming that on difficulties accessing the online application. She also advised him that a s 61 request had been made.

[15] On 12 October 2016, Immigration New Zealand granted the complainant a work visa pursuant to s 61, valid until 12 April 2019. Ms Marica met with the complainant on the same day and explained that the visa had been approved by waiving the age requirement for him.

---

[2] A discretionary visa under s 61 of the Immigration Act 2009.

Decision of the Tribunal

[16] The Authority upheld the complaint of misleading behaviour. Ms Marica had deliberately concealed from the complainant the error in the immigration consultancy's record.

[17] It was also found that Ms Marica had failed to conduct herself with due care and in a timely manner, in failing to recognise that the visa expiry date on the record was incorrect and hence in not filing the renewal application on time. She should have checked the file record, as the complainant had sent her a standard email from Immigration New Zealand notifying him of the expiry of his then current visa on the correct date. This was a breach of cl 1 of the Code.

[18] Furthermore, Ms Marica had failed to advise the complainant that as a result of missing the deadline, his immigration status had become unlawful, nor had she told him of the consequences of such a status. The complainant's instruction to file the s 61 request was therefore not "informed". The failure to obtain such an instruction was a breach of cl 2(e) of the Code.

[19] Additionally, Ms Marica did not attend to the s 61 request in a timely manner. This was a breach of cl 1 of the Code.

SUBMISSIONS

Submissions from the Registrar

[20] The Registrar, in his submissions of 26 February 2021, notes the Tribunal's finding that the concealment of the error by Ms Marica was deliberate. There was an element of deception. He further notes the Tribunal's acknowledgement that the eventual outcome of Ms Marica's service was positive in the sense that the complainant had obtained a work visa for 30 months, rather than just another visitor visa.

[21] The Tribunal is advised that Ms Marica has held a full licence as an immigration adviser since February 2009. Her current licence will expire on 25 February 2022.

[22] It is submitted that it would be appropriate for Ms Marica to undertake additional training in business practices, professional skills and ethical considerations, in order to avoid similar missteps in the future.

[23] The Registrar contends that the appropriate sanctions would be:

(1) censure;

(2) an order that Ms Marica completes the post graduate professional practice module (LAWS 7015) offered by Toi-Ohomai Institute of Technology within one year of the date of the sanctions decision; and

(3) an order for payment of a penalty in the vicinity of $2,000.

Submissions from the complainant

[24] There are submissions from Ms Alexander, a licensed adviser, on behalf of the complainant (26 February 2021). Ms Marica's claim of suffering ill-health should be seen in the context of her international travel at the time and election to NZAMI as a board member. While the complainant sympathises with Ms Marica's situation, he was not made aware of it and was not given the opportunity to seek advice from elsewhere. Ms Marica did eventually make every effort to put right the matter, but she did not do so until after the complainant had followed up to see what had happened with his application.

[25] The adviser's circumstances as a result of the COVID-19 pandemic should not affect the decision, because it does not relate to the complainant's situation. There is no evidence as to the effect of border closures, so this could be a convenient avoidance of costs. According to the complainant, Ms Marica had other employment at Auckland airport before the border closure.

[26] The publication of an adviser's name has limited consequence and should not be considered in place of sanctions. Every adviser against whom a complaint is upheld will have their name published.

[27] The fine suggested by the Registrar at $2,000 is extremely modest and should not be reduced, nor considered against the cost of further training. Since this is not a first offence by Ms Marica, the further training recommended by the Registrar should be undertaken. If she is unfit to undertake further training, the complainant questions whether she is fit to continue practising.

Submissions from the adviser

[28] In his submissions of 26 February 2021, Mr Moses, counsel for Ms Marica, states that she accepts the breaches found by the Tribunal and acknowledges the seriousness

of the complainant's situation as his immigration status in New Zealand became unlawful. It is emphasised that Ms Marica made strenuous, albeit slow and procedurally flawed, efforts to regularise the complainant's unlawful situation. Her conduct was flawed, but she did not abandon her client and achieved a positive outcome for him in the end.

[29] The material events giving rise to the complaint had occurred at a time when Ms Marica was affected by ill health and laboured under significant personal pressures. She accepts that these matters do not affect or diminish her liability for the breaches, but submits they are relevant to the Tribunal's decision on sanctions. Further evidence concerning Ms Marica's medical condition is given in a letter from her general practitioner.

[30] Ms Marica states that her practice has suffered significantly from the disruption caused by the COVID-19 pandemic and the resulting border closure. Her ability to pay a fine is limited.

[31] In response to the Registrar's submission that Ms Marica ought to complete additional training, she advises that she had intended to undertake the full Graduate Diploma in New Zealand Immigration Advice but was unable to do so for personal and health reasons. However, Ms Marica does not oppose a direction that she undertake a further paper. It is noted that this will cost $720 which ought to be taken into account in setting the level of the fine.

[32] Ms Marica will have to contend with the Tribunal's decisions being published unredacted. The publication of her name on a readily searchable database has a strongly punitive effect and is likely to adversely affect her practice. This is a very significant sanction in its own right.

[33] Counsel contends that Ms Marica's poor health and the situation of her practice as a result of the pandemic ought to be weighed in relation to the magnitude of the financial penalty. It is submitted that her mature attitude and cooperation in the investigation of the complaint and the proceedings before the Tribunal ought to be considered as a factor in her favour.

[34] There is a letter from Ms Marica's general practitioner (dated 24 February 2021). The doctor records that Ms Marica's previous serious illness had left her with chronic (ongoing) symptoms which she had to cope with on a daily basis. She was also under stress both professionally and personally. Her situation at the relevant time, September 2016, is explained. Ms Marica was determined to try and cope with the adversity

surrounding her and is to be applauded for this and her wish to improve her health, while continuing to serve others in the industry she cares about.

[35] An email from Toi-Ohomai Institute of Technology (26 February 2021) produced by Mr Moses states that the fees for the paper proposed by the Registrar are $717.

JURISDICTION

[36] 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**
>
> 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.

[37] 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:

[3] Immigration Advisers Licensing Act 2007.

> (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.

[38] 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.

[39] 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.
>
> …
>
> 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.

[40] 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]

---

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

[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].

[41] 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]

[42] 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.

DISCUSSION

[43] The starting point is the seriousness of Ms Marica's deception of her client and consequently upholding a complaint of misleading behaviour. It is a fundamental mark of a professional that he or she will be honest in communicating with their client, as well as all other people.

[44] I appreciate that the underlying error, the mistaken file record, was not Ms Marica's fault. On the other hand, I found that she should have checked it, given its critical importance and the earlier notification by Immigration New Zealand of the correct date.

[45] On knowing that the complainant's immigration status had become unlawful and the visa application could not be made, Ms Marica responded immediately and correctly in advising Mr Gimranov and the office manager to attend to a s 61 application.

---

[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].

Unfortunately, they did not do so. She also expected them to tell the complainant what was happening, but regrettably, they did not do that either.

[46] However, as I found, once Ms Marica had returned to New Zealand, it would have been clear to her that the s 61 request had not been made and the complainant had not been informed of the true situation. Her deception of him then started.

[47] In addition, Ms Marica breached other professional obligations, including conducting herself in a timely manner and failing to inform the complainant at any time of his unlawful status. The latter was a serious omission as the immigration consequences of such a status can be severe. Plainly, the complainant should have been made aware of his status and its consequences.

[48] It is to Ms Marica's credit that she was, about five weeks later, able to successfully resolve the complainant's immigration situation.

[49] This is the second complaint against Ms Marica (nee Woodberg) upheld by the Tribunal. In the first complaint, Ms Marica used a $3,500 fee refunded by Immigration New Zealand to settle her own fees, without the client's authority.[8] It was found there was no dishonesty, only a failure to appreciate her obligations. Ms Marica was censured, but no other sanction was imposed.

Caution or censure

[50] The Registrar and the complainant contend that Ms Marica should be censured, and it is accepted by her that this is a likely consequence of her behaviour. I agree. Ms Marica is hereby censured.

Training

[51] In light of the multiple breaches of her professional obligations, together with the earlier complaint, I accept the sense of the Registrar's submission that Ms Marica undertake further training. She does not oppose this. It will be directed.

Financial penalty

[52] The Registrar contends that Ms Marica should be directed to pay a penalty in the vicinity of $2,000. The complainant says this should not be reduced.

---

[8] *Midlane v Marica (Woodberg)* [2013] NZIACDT 31 & 54.

[53] It is contended on behalf of Ms Marica that the penalty should be at the lower end, in the vicinity of about $1,000. This is on the basis that the complaints regime is not intended to be punitive, since the principal objective is protection of the public which has largely been achieved as she has acknowledged her wrongdoing.

[54] Given that a finding of misleading behaviour has been upheld, the starting point is not at the lower end of the spectrum. A starting point of $2,000 or even $2,500 would be appropriate. I must also take into account the other professional breaches upheld in this complaint. There is some aggravation, given that this is not the first complaint upheld against her, albeit it is the first complaint of a dishonest/misleading behaviour nature. The gravity of the first complaint has to be seen though in the context of the light sanction.

[55] On the other hand, Ms Marica has cooperated throughout the disciplinary process and has acknowledged her wrongdoing. She has learned from the mistakes. She advances strong mitigating circumstances given her health, not just now but at the material time. It is questioned by the complainant, but the medical evidence satisfies me that it is real.

[56] I accept that Ms Marica's health, together with the current border closure, will have had a material effect on her income. While she advances no evidence of the effect of the border closure on her income, it is somewhat self-evident that the pandemic will have depressed it. I will also take into account the almost $720 cost of further training, though doing so does not lead to a dollar-for-dollar subtraction from an otherwise appropriate penalty amount. I also accept that the publication of the Tribunal's decision is itself a sanction, but that consequence is necessary in the public interest. In setting the financial penalty, it is appropriate to take into account the totality of the sanctions and other consequences of the disciplinary process.

[57] Balancing all of these factors, I direct payment of a penalty of $1,500.

OUTCOME

[58] Ms Marica is:

(1) censured;

(2) directed to enrol and complete Toi-Ohomai's LAWS 7015 paper at its next available intake; and

(3) ordered to immediately pay to the Registrar the sum of $1,500.

ORDER FOR SUPPRESSION

[59] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.[9]

[60] There is no public interest in knowing the name of Ms Marica's client, the complainant.

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

_____

D J Plunkett
Chair

[9] Immigration Advisers Licensing Act 2007, s 50A.