

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 12

Reference No: IACDT 03/21

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **LS**
Complainant

AND **NIRMALA KRISHNA
MURTHY**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 27 May 2022**

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: Y Mortimer-Wang, X Zhang, counsel

INTRODUCTION

[1] Ms Nirmala Krishna Murthy acted for LS, the complainant, who sought a work visa. Ms Murthy failed to communicate adequately with him.

[2] A complaint against Ms Murthy 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 April 2022 in *LS v Murthy*.¹ Ms Murthy was found to have breached certain professional obligations, contrary to the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

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

BACKGROUND

[4] 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.

[5] Ms Murthy is a licensed immigration adviser and director of Immigration Consultancies Ltd (the consultancy), of Auckland.

[6] The complainant, a national of India, contacted Ms Murthy in May 2020. They had a number of meetings to discuss his entitlement to a work visa and residence under the skilled migrant category. A written service agreement was signed by the complainant and Ms Murthy on 25 May 2020.

[7] Ms Murthy filed an application with the New Zealand Qualifications Authority on 20 August 2020 to assess the complainant's qualifications. She did not disclose to the complainant that the application had been filed.

[8] By then the complainant was unhappy about Ms Murthy's service, as a result of what he believed to be delays by her in dealing with his immigration matters. He sent her a text on 20 August 2020 expressing unhappiness with her service and advising her that he did not want to proceed further. She did not reply or acknowledge his instruction to terminate her services.

[9] Later the same evening, before reading the complainant's text, Ms Murthy lodged online with Immigration New Zealand an expression of interest for him.

¹ *LS v Murthy* [2022] NZIACDT 5.

Decision of the Tribunal

[10] The following breaches of the Code by Ms Murthy were found by the Tribunal:

- (1) Failing to confirm in writing to the complainant when she lodged the assessment application, in breach of cl 26(b).
- (2) Failing to confirm in writing to the complainant when he terminated her services, in breach of cl 28(a).

SUBMISSIONS*Submissions from the Registrar*

[11] In his submissions of 28 April 2022, Mr Connor, the Registrar, submits that the appropriate sanctions would be:

- (1) Caution.
- (2) An order for payment to the Registrar of a penalty in the vicinity of \$300.

[12] It is noted by the Registrar that this is Ms Murthy's first appearance before the Tribunal. Furthermore, the conduct is at the lower end of the scale in terms of seriousness.

Submissions from the complainant

[13] The complainant did not attend the hearing and did not provide any submissions to the Tribunal prior to the issue of the liability decision. Following that decision, the complainant sent an email on 28 April 2022 stating that if Ms Murthy had guided him properly, he would now be a resident. This was affecting his career. In a further email on 19 May 2022, the complainant said he wanted a refund of the fees paid as he was struggling financially. He provided evidence of having paid her \$4,350.

Submissions from Ms Murthy

[14] Ms Mortimer-Wang is counsel for Ms Murthy. In her submissions of 12 May 2022, she noted that Ms Murthy had accepted early in the proceedings that she should have acted more diligently in providing written updates to the complainant. She had accepted responsibility for this aspect of the complaint after she had the opportunity of receiving legal advice. Counsel also notes Ms Murthy's health in about August 2020, which played

a part in the lapse of the standard of her client care. It is a mitigating feature to be assessed when considering Ms Murthy's culpability. She is genuinely remorseful. Counsel accepted the sanctions proposed by the Registrar.

[15] A "Letter of remorse" (10 May 2022) from Ms Murthy to the complainant was produced to the Tribunal. Ms Murthy apologised for the customer service mistakes made by herself and her business. She recognised that there was a delay in processing his assessment application and a period of poor communication. She understood that the delays and the lack of written contact had caused the complainant inconvenience and stress, which she sincerely regretted.

[16] While not trying to excuse her failures, Ms Murthy noted in her letter that personal health difficulties contributed in part to the mistakes. She had taken steps to ensure that the same type of mistakes would not reoccur. She had worked on additional preventative measures to improve the consultancy's services, including adopting a new content management system. They now had better management of documents, files and communications.

JURISDICTION

[17] The Tribunal's jurisdiction to impose sanctions is set out in the Immigration Advisers Licensing Act 2007 (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.

[18] 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:

² Immigration Advisers Licensing Act 2007.

- (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.

[19] 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.

[20] 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.

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

...

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.

[21] 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 collective reputation and public confidence in the profession itself.⁴

[22] 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

[23] 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

[24] While it is important to communicate professionally with clients, Ms Murthy's failings could not be regarded as serious. The Registrar rightly classifies her conduct at

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; *Z v Dental Complaints Assessment Committee*, above n 3, at [151].

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

⁶ *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].

the lower end of the scale. It is also Ms Murthy's first appearance before the Tribunal. She has acknowledged her mistakes, apologised to the complainant and set about improving her firm's business practices so that there is no reoccurrence.

[25] In the circumstances, the wrongdoing requires only a caution, rather than censure. A reoccurrence of professional wrongdoing in the future is unlikely to be treated as lightly. While the Registrar submits that a small financial penalty of \$300 would be appropriate, with which Ms Murthy agrees, I find that the circumstances do not justify a fine, even a small one.

[26] The complainant seeks a refund of the fees paid to her, but the breaches of the Code upheld by the Tribunal could not justify a refund. Her failings, while inconvenient and upsetting, would not have caused the complainant any loss. While it is not known what happened to the assessment application and expression filed by her, she appears to have performed the work required to at least lodge them.

OUTCOME

[27] Ms Murthy is cautioned.

ORDER FOR SUPPRESSION

[28] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.⁷

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

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

D J Plunkett
Chair

⁷ Immigration Advisers Licensing Act 2007, s 50A.