

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 24

Reference No: IACDT 007/22

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **DA**
Complainant

AND **YAN RYAN JI**
Adviser

Hearing at Auckland on 24 August 2022

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 20 September 2022

REPRESENTATION:

Registrar: B Ropati, counsel

Complainant: Self-represented

Adviser: Self-represented

PRELIMINARY

[1] The complainant, DA, alleges he paid RMB 100,000 (about \$22,000) to the employer as a refundable “deposit” to secure a job as a chef in New Zealand and ensure he did not prematurely leave it. This was done, he says, at the request of Yan Ryan Ji, the adviser. It was Mr Ji’s immigration consultancy which processed the required work visa. At the time, Mr Ji was also a director of the company owning the restaurant.

[2] A complaint by the complainant against Mr Ji to the Immigration Advisers Authority (the Authority) has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It is alleged the deposit was unlawful and that Mr Ji was dishonest or misleading, a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act), and that he also breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

BACKGROUND

[3] Mr Ji was a licensed immigration adviser. The Tribunal suspended his licence on 2 December 2020 and cancelled it on 12 April 2021 as a result of unrelated complaints. He was, and is understood to remain as, a director and shareholder of Ryan & Samuel Ltd, trading as NZ Immigration Consulting.

[4] At the relevant time, Mr Ji was also a director and shareholder of a company which owned a restaurant (the restaurant). He ceased to be a director on 29 August 2019, but remained as a shareholder. There was another director. The restaurant was managed by the other director’s wife, Yanan Nancy Liu.

[5] The complainant, a national of China, was residing overseas when he first communicated with Mr Ji and Ms Liu. He started engaging with them in June or July 2017. It is Ms Liu’s evidence that she had been contacted by an agent in China who had proposed the complainant as a chef for the restaurant. Ms Liu interviewed him by phone, offering a job. She told the complainant that Mr Ji would be his immigration adviser.

[6] It is the complainant’s case that he had no agent in China. He says that, while he was still in China, Mr Ji initially and later Ms Liu asked him to pay RMB 100,000 as a deposit to ensure he did not abruptly leave the restaurant. According to the evidence of Mr Ji and Ms Liu, the money was to pay a debt to the complainant’s agent in China. That agent had found him the job in New Zealand and an immigration adviser to look after his visa. They say the agent was pestering Ms Liu to ensure the complainant, who had ceased contact with the agent, contacted the agent to pay the debt.

[7] On 15 August 2017, the complainant sent a text to Ms Liu stating that he had contacted Mr Ji and agreed “RMB 100,000” for the residence visa, but had not agreed on the “deposit”.¹ He asked if he could use the first three months of his salary as the deposit.

[8] The complainant communicated with Ms Liu on 24 August 2017. The telephone discussions on that day are set out in a record given by the complainant to the Authority.² He told Ms Liu that he had contacted Mr Ji who was to prepare a contract. The complainant said he would arrange for “Ms [G]” (understood to be the complainant’s first immigration adviser in New Zealand) to transfer to Mr Ji all his documents and the \$10,000 already paid to Ms G. After his visa was done and before his arrival in New Zealand, he would transfer \$20,000 to the restaurant as a “deposit”.

[9] On 28 August 2017, the complainant and Ryan & Samuel Ltd entered into an immigration services agreement. The named advisers were Mr Ji and Samuel Mills, the latter a provisional adviser supervised by Mr Ji.³ They would prepare a work visa application for the position of Chinese chef. The fee was \$10,000, due after the initial consultation and the contract had been agreed.

[10] There were further voice and text communications between the complainant and Mr Ji. The latter told the complainant on 29 August 2017 that he had the documents and would check them, and that the money (\$10,000) could be transferred. Mr Ji gave him the bank account number of a named person. On 31 August, the complainant informed Mr Ji the payment would be issued. There is a bank deposit printout showing \$5,200 and \$4,800 were paid to the specified account on 31 August 2017.⁴ This was the fee of Mr Ji’s immigration consultancy for the work visa. Mr Ji sent a text to the complainant on 1 September to confirm receipt of the money and advise that he would prepare a plan for his application.

[11] On 17 October 2017, Mr Ji gave the complainant the bank account number for the New Zealand Consulate in Shanghai, presumably for the application fee of Immigration New Zealand (Immigration NZ).

[12] On 26 October 2017, Immigration NZ received the complainant’s work visa application. It had been prepared by Mr Mills.

¹ Registrar’s bundle of documents at 173, 207.

² Registrar’s bundle at 209.

³ Mr Mills was a director of NZ Immigration Consultancy from 9 February 2017 until 16 May 2018.

⁴ Registrar’s bundle at 045.

[13] Then on 31 October 2017, Mr Ji told the complainant his application had been assigned to an immigration officer.

[14] On the same day, Immigration NZ sought further information from Mr Mills. He replied on 7 November 2017. The application was successful and a three-year visa to work at the restaurant was issued to the complainant on 8 November 2017.⁵

[15] According to Mr Ji, the complainant told him on about 23 November 2017 he was required to pay a returnable bond to the restaurant.⁶ Mr Ji said to the complainant that he had understood the money was for the agent's fees in China. The complainant asked Mr Ji to prepare a receipt for the deposit of RMB 100,000. It is the complainant's evidence that Mr Ji said he could not provide it because the payment was illegal. Mr Ji says he told the complainant he could not, because he knew nothing about a bond and the money was not for him.

[16] Mr Ji provided to the complainant on that day the bank account details of the person to whom the bond or deposit, as the complainant calls it, was to be paid. Mr Ji says he had been given those details by Ms Liu.

[17] On an unknown date, the complainant and Ms Liu discussed the deposit payment.⁷ He gave her the account number Mr Ji had given him. Ms Liu confirmed it was correct. The complainant said he would pay RMB 50,000 and another RMB 50,000 before his departure in January. He asked whether RMB 40,000 would be refunded if he worked for one year and RMB 60,000 refunded if he worked for two years. Ms Liu did not answer his question in the partial record provided to the Tribunal.

[18] Texts between the complainant and Ms Liu regarding the payment of RMB 50,000 continued on 15 December 2017.⁸ Ms Liu again confirmed the bank account number.

[19] On 16 December 2017, the complainant made a payment of "50,000" to the bank account of the named person specified by both Mr Ji and Ms Liu.⁹ It was described in the bank record as "First payment of security deposit for New Zealand working time". Another bank transfer of RMB 50,000 was made to a different account of the same person on 10 January 2018.

⁵ Registrar's bundle at 071.

⁶ Registrar's bundle at 023, 089, 168–169, 213.

⁷ Registrar's bundle at 219–221.

⁸ Registrar's bundle at 223.

⁹ Registrar's bundle at 025–026.

[20] The complainant arrived in New Zealand on 20 January 2018 and commenced employment at the restaurant two days later.

[21] On 21 May 2018, the complainant left the restaurant and made a claim in the Employment Relations Authority (ERA) for underpayment of his wages.

Decision of Employment Relations Authority

[22] On [date], the ERA issued a determination directing the restaurant company to pay the complainant [amount] for [number of] unpaid hours.¹⁰ Ms Liu and her husband gave evidence for the restaurant. The complainant told the ERA he had paid a deposit (in the nature of a premium for employment). The ERA recorded in its determination being unable to determine the nature of the payment and directed that its decision be provided to the Labour Inspectorate.

COMPLAINT

[23] On 16 December 2019, the complainant made a complaint against Mr Ji to the Authority. He stated that he was asked by the employer to pay a security deposit of RMB 100,000 (\$22,000) guaranteeing that he work in the restaurant for two years. His immigration adviser, Mr Ji, was a director of the company owning that restaurant.

[24] The complainant informed the Authority on 26 October 2021 that the deposit of “10,000 RMB” required him to work in the café for two years, with 50 per cent of the deposit to be refunded after one year.

[25] On 28 October 2021, the complainant said to the Authority that he did not know of Mr Mills. He did not talk to him. All of his visa matters, including the RMB 100,000 deposit, were handled by Mr Ji.

[26] Then on 3 December 2021, the complainant informed the Authority that he asked Mr Ji for a receipt for the deposit, but Mr Ji would not give him one because he said it was illegal. When the complaint was made, Mr Ji went to his workplace trying to “cash buy” him to stop the complaint.

Explanation from Mr Ji

[27] The Authority sent a letter to Mr Ji on 14 January 2020 requiring production of his file concerning the complainant. He supplied his file on 31 January 2020, together with a brief response to the complaint. Mr Ji denied exploiting the complainant. He did not

¹⁰ The complainant said in his closing submissions to the Tribunal (6 September 2022) that the full amount had been paid to him by the time of the Tribunal’s hearing.

ask him for a security deposit and did not receive the RMB 100,000. The unpaid hours had nothing to do with him as an immigration adviser. The restaurant complied with the decision of the ERA. He was no longer a director of the restaurant and had not been involved with its day to day operation.

[28] There were further communications between the Authority and Mr Ji in June and July 2021, as the Authority had noted that his file had no records of email or phone communications with the complainant.

[29] Mr Ji sent an email to the Authority on 3 November 2021 to say that he did not know the purpose of the RMB 100,000. The restaurant manager said it was to pay the fees of the complainant's agent in China, though the complainant said it was a work security deposit.

[30] On 14 December 2021, the Authority wrote to Mr Ji summarising the complaint and inviting his explanation.

[31] Mr Ji provided a detailed response to the complaint on 17 January 2022, together with further documents from his file. He confirmed that the complainant worked at the restaurant between January and June 2018. Mr Ji said he was a director and a minority shareholder at the time. He was not involved in the management. He resigned in August 2019, as he did not want to be involved in any potential risks. It was the manager at the time, Ms Liu, who had hired the complainant.

[32] Once the ERA issued its decision, Mr Ji said he discussed the arrears with the other director and agreed to lend the company \$8,500 to pay them. The restaurant paid the complainant in instalments but stopped due to financial difficulty. Ms Liu had since resumed payment.

[33] According to Mr Ji, he did not receive any of the three premium payments of RMB 50,000. The first payment of RMB 50,000 was made to a named person on 10 May 2017, before Mr Ji's engagement with the complainant on 1 August 2017.¹¹ He does not know about that payment. The second and third payments were made to another named person on 10 December 2017 and 10 January 2018 respectively. Ms Liu had told him they were needed to pay the complainant's agent in China. He does not know either of the named recipients.

[34] Mr Ji acknowledged that he had sent the bank account details of the second recipient to the complainant on 23 November 2017. Ms Liu had given him that information and told him it was the service fee for the complainant's agent in China. The

¹¹ The complainant told the Tribunal this was a payment to his first immigration adviser in New Zealand and has nothing to do with the complaint against Mr Ji.

complainant had asked Mr Ji for a receipt for the bond of RMB 100,000, which confused Mr Ji as he thought the complainant owed the money to his agent. This was the first time he had become aware of the fee of RMB 100,000.

[35] The complainant's accusation, that Mr Ji would not give a receipt for the deposit because it was illegal, was false. This related to a text exchange on 23 November 2017. The complainant had said that his agent in China needed to pay a bond of RMB 100,000 to the restaurant, but Mr Ji said he told him it was the fee of his agent in China. Mr Ji also said to the complainant that he did not know about a bond and the money was not for him, so he could not give a receipt.

[36] Mr Ji told the Authority that he visited the complainant in January 2019 to settle the claim made to the ERA. The visit was about the wage arrears, not the premium. The complainant refused Mr Ji's offer and the ERA then ruled in [date].

[37] In his explanation to the Authority, Mr Ji said no conflict of interest was signalled until 23 November 2017 when he became aware of the RMB 100,000, though by then the complainant's visa had been approved (8 November 2017) and the client relationship ceased.

[38] In reply to the Registrar's contention that he had not maintained a file with written and oral communications with the complainant, Mr Ji sent the Registrar some text and email communications with his letter of 17 January 2022.

[39] On 24 February 2022, Mr Ji advised the Authority he had received only \$10,000 on 31 August 2017 from the complainant for his work visa application.

Information from Mr Mills

[40] The Authority's investigator telephoned Mr Mills, the provisional adviser who had filed the work visa application for the complainant. He told the investigator on 28 October 2021 that he had no knowledge of the deposit or premium.

Complaint filed in the Tribunal

[41] On 6 April 2022, the Registrar filed a complaint against Mr Ji in the Tribunal alleging dishonest or misleading conduct, a ground of complaint under the Act, as well as breaches of the Code:

Dishonest or misleading conduct, or alternatively breach of the specified provision of the Code

- (1) Being aware of and facilitating a payment of RMB 100,000 as a potential premium for the complainant's employment, in breach of cl 3(a).

Breaches of the specified provisions of the Code

- (2) Failing to disclose in writing to the complainant or obtain his written consent to what appears to be a conflict of interest, in breach of cls 5 and 6.
- (3) Failing to maintain a client file with copies of all written and oral communications with the complainant, in breach of cl 26(a)(iii) and (e).
- (4) Failing to make the file available to the Authority on request, in breach of cl 26(e).

JURISDICTION AND PROCEDURE

[42] 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.

[43] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.¹²

[44] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.¹³ It has been established to deal relatively summarily with complaints referred to it.¹⁴

¹² Immigration Advisers Licensing Act 2007, s 45(2) & (3).

¹³ Section 49(3) & (4).

¹⁴ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

[45] 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.¹⁵

[46] The sanctions that may be imposed by the Tribunal are set out in the Act.¹⁶ The focus of professional disciplinary proceedings is not punishment but the protection of the public.¹⁷

[47] 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.¹⁸

[48] The Tribunal has received from the Registrar the statement of complaint (6 April 2022) and a file of paginated supporting documents.

[49] The complainant filed a statement of reply (12 April 2022). He confirmed that the facts are correctly presented in the statement of complaint.

[50] No statement of reply was filed by Mr Ji.

[51] The Tribunal directed on 13 July 2022 (Minute 1) that the complaint be set down for a hearing.

[52] On 22 August 2022, Mr Ji filed a statement (undated) signed by Ms Liu.

[53] At the hearing on 24 August 2022, the Tribunal heard evidence from the complainant, Mr Ji and Ms Liu.

[54] There were closing submissions from the Registrar (7 September 2022) and the complainant (6 September 2022).

ASSESSMENT

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

Legislative requirements

3. A licensed immigration adviser must:
 - a. if operating in New Zealand, act in accordance with New Zealand law
 - ...

¹⁵ Section 50.

¹⁶ Section 51(1).

¹⁷ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

¹⁸ *Z*, above n 17, at [97], [101]–[102] & [112].

Conflicts of interest

5. Where a licensed immigration adviser is aware that there is a potential or actual conflict of interest relating to the client, including the existence of any financial or non-financial benefit the adviser will receive as a result of the relationship with the client, the adviser must disclose the potential or actual conflict to the client in writing.
6. Where a licensed immigration adviser is aware that there is a potential or actual conflict of interest relating to the client, the adviser may only represent or continue to represent the client where the client gives written consent.

File management

26. A licensed immigration adviser must:
 - a. maintain a hard copy and/or electronic file for each client, which must include:
 - ...
 - iii. copies of all written communications (including any file notes recording material oral communications and any electronic communications) between the adviser, the client and any other person or organisation
 - ...
 - 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, and
 - ...

Dishonest or misleading conduct, or alternatively breach of the specified provision of the Code

- (1) *Being aware of and facilitating a payment of RMB 100,000 as a potential premium for the complainant's employment, in breach of cl 3(a)*

[56] The complainant contends that he was asked by Mr Ji to pay a deposit of RMB 100,000 (\$22,000) to guarantee he would work for two years. He told the Tribunal he was asked to pay before the visa application was made, but later said it was after the visa was granted and just before he came to New Zealand. It was refundable, though his evidence as to the details of the refund instalments was mobile. He settled on 40 per cent being refunded if he worked for one year and the balance of 60 per cent if he worked for the full two years. While it was Mr Ji who had asked him to pay the deposit, it was Ms Liu with whom he discussed the refund plan.

[57] The complainant says that Mr Ji gave him the bank account details on 23 November 2017 for payment of the deposit. The complainant duly made the two payments of RMB 50,000 on 16 December 2017 and 10 January 2018 respectively.

[58] The complainant says he asked Mr Ji for a receipt but Mr Ji said he could not give him one because the payment was illegal.

[59] Mr Ji accepts that he discussed the payment of RMB 100,000 with the complainant and gave him the bank account details. He had been given this information by Ms Liu, who was being harassed by the agent in China who could not contact the complainant. The agent claimed he was owed RMB 100,000 by the complainant who had not paid his fee. Mr Ji further accepts he was asked for a receipt, but says he could not provide one because the money was not paid to him. He denies saying he could not provide a receipt because the transaction was illegal.

[60] There is clear evidence of the payment by the complainant of the sum of RMB 100,000 in two tranches.¹⁹ The first payment shows it was described by the complainant as a “security deposit for New Zealand working time”. Mr Ji facilitated that payment. He requested the complainant to pay it and provided him with the bank account details.

[61] A payment made to an employer as described by the complainant would be contrary to s 12A(1) of the Wages Protection Act 1983, as it would amount to a premium in respect of that person’s employment. If that is the nature of the payment, facilitated as it was by Mr Ji, then Mr Ji’s conduct was contrary to s 12A(1) and unlawful (and hence a breach of cl 3(a) of the Code).

[62] However, if the payment was made to the agent in China for the purpose described by Mr Ji (the agent’s service in finding the complainant a job and an immigration adviser) then it would not be contrary to s 12A(1) and indeed, it would be common and lawful under New Zealand law.

[63] There is a conflict in the evidence. The complainant’s understanding of the nature of the payments has been consistent, given the description he gave the first payment at the time of that payment (“security deposit for New Zealand working time”). On the other hand, Mr Ji’s explanation of the nature of the payment is plausible. Ms Liu’s evidence was consistent with that of Mr Ji as to the purpose of the payment of RMB 100,000. An allegation of unlawful conduct requires particularly cogent evidence.²⁰ That standard is not met.

¹⁹ See above n 9.

²⁰ See above n 18.

[64] The first head of complaint is unproven.

Breaches of the specified provisions of the Code

(2) *Failing to disclose in writing to the complainant or obtain his written consent to what appears to be a conflict of interest, in breach of cls 5 and 6*

[65] At the relevant time, Mr Ji was a director and shareholder of the immigration consultancy engaged by the complainant. He was also a director and shareholder of the employer company.

[66] The Registrar notes that, while it was Mr Mills who filed the visa application, the complainant says he did not know of Mr Mills. It was Mr Ji who was handling all of his immigration matters, so far as he was aware. The complainant provided records of communications with Mr Ji but not Mr Mills. Mr Ji has provided no record of communications between the complainant and Mr Mills. The client agreement had named both of them.

[67] The Registrar contends that Mr Ji has a conflict of interest, as he stood to benefit financially from the complainant's visa application and also from his employment. Yet, Mr Ji did not disclose the conflict in writing to the complainant and did not obtain his written consent to represent him.

[68] There is plainly a potential conflict of interest in the dual roles of immigration adviser and employer. Mr Ji would benefit financially from both roles. He may have disclosed his interest in the restaurant to the complainant, but he did not notify him in writing of the conflict or obtain the complainant's written consent to Mr Ji's representation notwithstanding the conflict.

[69] Mr Ji accepted in his evidence to the Tribunal that there was a conflict which he missed. He had thought there was no conflict because Ms Liu was solely responsible for the restaurant, not him. He had overlooked his formal role as a director and also his shareholding. The Tribunal finds he has breached cls 5 and 6 of the Code.

(3) *Failing to maintain a client file with copies of all written and oral communications with the complainant, in breach of cl 26(a)(iii) and (e)*

(4) *Failing to make the file available to the Authority on request, in breach of cl 26(e)*

[70] The Authority issued Mr Ji with a statutory demand for the client file of NZ Immigration Consulting concerning the complainant on 14 January 2020. Mr Ji provided

the file on 31 January 2020. There followed correspondence between the Authority and Mr Ji as to the existence of other documents. On 16 June 2021, the Authority noted in an email that his file did not contain any record of email or phone communications with the complainant. On 17 January 2022, in response to the Authority's invitation to explain his conduct, Mr Ji produced some text and email communications with the complainant.

[71] The Registrar contends that Mr Ji has never supplied full copies of voice and text communications between him and either the complainant or Ms Liu, or the file notes of any voice communications with them.

[72] There is a paucity of communications in the documents supplied by Mr Ji. There are limited communication records with the complainant and none with Ms Liu or her husband. In his capacity of an immigration adviser, Mr Ji plainly communicated with Ms Liu, the manager of the restaurant.²¹ For example, Mr Ji says he obtained the deposit information from her.

[73] It is also apparent from the more extensive records of communications (voice and text) supplied by the complainant that Mr Ji did not retain copies of all of such communications. Mr Ji accepted in his evidence to the Tribunal that he had failed to make a complete copy of the file available to the Authority. He said this was because the complainant had already sent them to the Authority and also because Mr Mills was the adviser dealing with the complainant's visa. Neither is an adequate reason and while Mr Mills processed the visa application, it was Mr Ji who was communicating with the complainant and Ms Liu.

[74] The Tribunal finds that Mr Ji failed to maintain a proper file, notably a file with all communications with the complainant and Ms Liu (both written communications, whether electronic or otherwise, and written records of material oral communications). He admits the full file was not made available to the Authority. It is therefore further found that he did not make the full records available to the Authority. Mr Ji has breached cl 26(a)(iii) and (e) of the Code.

OUTCOME

[75] The complaint is partially upheld. Mr Ji has breached cls 5, 6, 26(a)(iii) and (e) of the Code.

²¹ Due to their different first languages, it is not likely Mr Mills communicated with Ms Liu.

SUBMISSIONS ON SANCTIONS

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

[77] 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. Mr Ji's previous disciplinary record will be taken into account. The parties are asked to address whether Mr Ji should be prevented from holding any licence for an appropriate period.

Timetable

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

- (1) The Registrar, the complainant and Mr Ji are to make submissions by **12 October 2022**.
- (2) The Registrar, the complainant and Mr Ji may reply to submissions of any other party by **26 October 2022**.

ORDER FOR SUPPRESSION

[79] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.²²

[80] There is no public interest in knowing the name of Mr Ji's client, nor the details of the ERA's decision (such as the date, the amount awarded and the number of unpaid hours).

[81] The Tribunal orders that no information identifying the complainant or such details of the ERA's decision are to be published other than to Immigration NZ.

D J Plunkett
Chair

²² Immigration Advisers Licensing Act 2007, s 50A.