

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 25

Reference No: IACDT 020/21

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **CT**
Complainant

AND **RUPIKA NANDAN**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 3 October 2022**

REPRESENTATION:

Registrar: Self-represented

Complainant: Self-represented

Adviser: Self-represented

INTRODUCTION

[1] Rupika Nandan, a licensed immigration adviser, was engaged by CT, the complainant, to apply for a work visa. She did not make the application. He sought a refund, but none was given.

[2] A complaint against Ms Nandan 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 18 August 2022 in *CT v Nandan*.¹ Ms Nandan was found to have breached 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 earlier decision of the Tribunal and will only be briefly summarised here.

[5] Ms Nandan was a licensed immigration adviser and director of NZ OZ Immigration Ltd, of Hamilton, until [date]. She surrendered her immigration adviser's licence on that date, to practice law. Ms Nandan advises that she practises law in another country, presumably Fiji.

[6] The complainant, a national of India, had a work visa and was working in New Zealand. He consulted Ms Nandan in about June 2019, seeking a pathway for residence. She advised him on 11 October he would need to make an application for a work visa. The complainant signed a services contract with Ms Nandan on 23 October 2019. She agreed to compile an application for an essential skills work visa, the fee being \$2,200.

[7] On [date], Ms Nandan surrendered her immigration adviser's licence in order to practice law.

[8] Ms Nandan continued to represent the complainant. They communicated intermittently, but the application was never filed. She says this was because the relationship between the complainant and his employer broke down and the complainant resigned. He sought a refund, but she said the contract did not allow for refunds. Their communication ceased on about 7 January 2020, by which time the complainant had made a complaint against Ms Nandan to the Authority.

¹ *CT v Nandan* [2022] NZIACDT 21.

Decision of the Tribunal

[9] The Tribunal partially upheld the complaint and found Ms Nandan to be in breach of the Code as follows:

- (1) Failed to provide an invoice to the complainant for his payment of \$2,000, in breach of cl 22.
- (2) Failed to provide a refund to the complainant, in breach of cl 24(c).
- (3) Failed to advise the complainant of the termination of the services contract when she surrendered her licence, in breach of cl 28(a).

SUBMISSIONS*Submissions from the Registrar*

[10] In submissions (9 September 2022) from Ms Issar, on behalf of the Registrar, it is contended that appropriate sanctions would be:

- (1) An order for payment of a penalty to the Registrar in the vicinity of \$1,000.
- (2) An order for a refund of \$2,000 to the complainant.
- (3) An order for compensation of \$500 to the complainant.

[11] It is submitted that Ms Nandan's conduct shows a slip in maintaining professional standards, though it is accepted it is at the lower end of the scale in terms of seriousness.

Submissions from the complainant

[12] In an email to the Tribunal on 16 September 2022, the complainant says he wants his money back. In a further email on 19 September 2022, he disputes that Ms Nandan spent 3.5 hours on his matter. The complainant further says he paid her \$2,200, not \$2,000. He would accept a refund of \$1,700 and compensation of \$500.

Submissions from the adviser

[13] In her submissions (15 September 2022), Ms Nandan states that she does not agree with the Tribunal's entire decision but does consider the matter to have been a valuable learning experience. She now resides and works in a different country and was

unlikely to seek to be a licensed immigration adviser. She respected the Tribunal's decision and would honour the sanctions imposed.

[14] Ms Nandan considers that the appropriate sanctions would be:

- (1) Payment of a penalty of \$500 to the Registrar.
- (2) Refund to the complainant of \$1,500, plus payment of compensation of \$500.

[15] Ms Nandan notes that such an offer to conclude the matter had been made earlier to the complainant, but was declined. She had spent approximately 3.5 hours (at \$280 per hour) on his work, so retaining \$500 was fair for the work undertaken.

JURISDICTION

[16] 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.

[17] 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:

² Immigration Advisers Licensing Act 2007.

- (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.

[18] 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.

[19] 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.

...

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.

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

[20] 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

[21] 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

[22] 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

[23] There are three breaches of the Code by Ms Nandan:

- (1) Failed to provide an invoice, in breach of cl 22.
- (2) Failed to provide a refund, in breach of cl 24(c).

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].

- (3) Failed to advise the complainant of the termination of the services contract when she surrendered her licence, in breach of cl 28(a).

[24] I agree with the Registrar that the misconduct here is at the lower end of the scale. It is also noted that this is Ms Nandan's first complaint upheld by the Tribunal. She told the Authority she had previously offered a refund, but the complainant's new representative had advised that the matter should proceed through the Authority.

Caution or censure

[25] Ms Nandan will be cautioned. A censure is not warranted.

Financial penalty

[26] The Registrar submits that the penalty should be in the vicinity of \$1,000 and Ms Nandan submits that it should be \$500. In the circumstances here, I accept that \$500 would be appropriate. I take into account the refund and compensation offered.

Refund

[27] There is evidence that the complainant paid Ms Nandan \$2,000. I have not seen evidence that an additional \$200 was paid.

[28] The complainant seeks a full refund. Ms Nandan offers \$1,500, on the basis that she undertook 3.5 hours work, so she says retaining \$500 is fair. The complainant disputes the amount of work undertaken. The documents before the Tribunal do not enable me to assess how much work was reasonably undertaken. I accept that Ms Nandan undertook some work. It is not shown that it was her fault the application for a work visa was not filed, so some work on her part was justified and she is therefore entitled to retain some of the fee. The refund will be \$1,500 as offered by Ms Nandan.

Compensation

[29] Ms Nandan has offered \$500. There is no basis to award any higher amount.

OUTCOME

[30] Ms Nandan is:

- (1) Cautioned.
- (2) Ordered to immediately pay to the Registrar \$500.

(3) Ordered to immediately pay to the complainant \$2,000.

ORDER FOR SUPPRESSION

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

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

[33] 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.