

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2022] NZIACDT 26

Reference No: IACDT 07/22

**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

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION  
(Sanctions)  
Dated 8 November 2022**

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**REPRESENTATION:**

Registrar: B Ropati, counsel

Complainant: Self-represented

Adviser: Self-represented

## INTRODUCTION

[1] The complainant, DA, engaged Yan Ryan Ji, a licensed immigration adviser, to obtain a work visa. Mr Ji was a director of the company employing the complainant, as well as his adviser. These dual roles are alleged to have created a conflict of interest.

[2] A complaint against Mr Ji 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 20 September 2022 in *DA v Ji*.<sup>1</sup> Mr Ji 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] Mr Ji is a director and shareholder of Ryan & Samuel Ltd, trading as NZ Immigration Consulting. He is no longer licensed, the Tribunal having suspended him on 2 December 2020 and then cancelled his licence on 12 April 2021, as a result of other complaints. At the relevant time, he was also a director and shareholder of the company owning the restaurant where the complainant was to be employed as a chef.

[6] On 28 August 2017, the complainant and Ryan & Samuel Ltd entered into an immigration services agreement. Mr Ji was named as one of the advisers. The advisers were to prepare a work visa application. The fee was \$10,000.

[7] The complainant paid the fee of \$10,000 on about 31 August 2017.

[8] On 16 December 2017 and 10 January 2018, the complainant made payments totalling RMB 100,000 to a person specified by Mr Ji. The Tribunal was unable to determine the nature of this payment.

[9] The complainant arrived in New Zealand on 20 January 2018 and commenced employment two days later. He left the restaurant on 21 May 2018. The complainant then made a claim in the Employment Relations Authority for underpayment of his wages. It issued a determination directing the restaurant company to pay him for unpaid hours.

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<sup>1</sup> *DA v Ji* [2022] NZIACDT 24.

*Decision of the Tribunal*

[10] The Tribunal partially upheld the complaint and found Mr Ji to be in breach of the Code as follows:

- (1) Failing to disclose a conflict of interest in writing to the complainant and obtaining his written consent to representation, in breach of cls 5 & 6.
- (2) 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).
- (3) Failing to make his file available to the Authority on request, in breach of cl 26(e).

**SUBMISSIONS***Submissions from the Registrar*

[11] In submissions (12 October 2022) from Mr Ropati, counsel for the Registrar, it is contended that the appropriate sanctions would be:

- (1) Censure.
- (2) Prevention from reapplying for a licence for a period in the vicinity of two years.
- (3) An order for payment to the Registrar of a penalty in the vicinity of \$2,000 or \$3,000 (both figures are given).

[12] It is submitted that Mr Ji's conduct is at the moderate end of misconduct. There are a number of aggravating factors:

- (1) The conduct occurred over a prolonged period, from August 2017 to December 2019.
- (2) Aspects of Mr Ji's conduct were due to a lack of care or diligence.
- (3) While Mr Ji accepted responsibility for the misconduct, he often deflected responsibility to others, such as the complainant, the restaurant manager or his fellow adviser. His level of remorse appeared to be superficial.

[13] Mr Ropati notes that Mr Ji had held a licence since 2011 and was experienced. Furthermore, this is his fourth (actually fifth) appearance before the Tribunal in the last

four years. His previous appearances are similar to the current complaint. He could not simply be ignorant of his obligations as an adviser. It is apparent from his history of misconduct that he has not learned from his previous appearances.

*Submissions from the complainant*

[14] The complainant seeks a refund and/or compensation as follows:

- |     |  |                         |
|-----|--|-------------------------|
| (1) | Visa service fee paid to Ryan & Samuel Ltd | \$10,000                |
| (2) | Work visa fee                              | \$440                   |
| (3) | NZ-China return air tickets                | \$858                   |
| (4) | Work deposit                               | RMB 20,000 (NZ\$ 4,400) |

[15] The complainant makes the following points concerning the items claimed:

- (1) As for the service fee, his visa was for only four months and he was exploited by being underpaid.
- (2) The visa for which a fee of \$440 was paid, presumably to Immigration NZ, was not used by him for any other purpose as he returned to China where he applied for a new visa.
- (3) The air tickets appear to the Tribunal to be for his return to China after leaving the restaurant while he applied for a new visa. Once he had another visa, he came back to New Zealand.
- (4) The “deposit” of RMB 100,000 which he paid at the request of Mr Ji in order, he says, to secure the restaurant job. He seeks 20 per cent from Mr Ji (and 80 per cent from the restaurant company).

*Submissions from Mr Ji*

[16] Mr Ji advised the Tribunal on 25 October 2022 that he agreed with the Tribunal’s decision. He acknowledged that his unprofessional behaviour had cost him the profession. He had started a new career in the construction industry and was studying for a relevant diploma at a tertiary institution. Mr Ji will accept any sanctions the Tribunal believes is proper, but asks it to take into account that he is a student so he does not bear too much financial burden.

## 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:<sup>2</sup>

### 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:
  - (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.

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<sup>2</sup> Immigration Advisers Licensing Act 2007.

[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:<sup>3</sup>

...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.

[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.<sup>4</sup>

[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.<sup>5</sup>

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

<sup>4</sup> *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].

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

[23] The most appropriate penalty is that which:<sup>6</sup>

- (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] The Tribunal upheld four breaches of the Code against Mr Ji. The most serious is the failure to disclose in writing a conflict of interest to the complainant (Mr Ji was both the immigration adviser and the employer) and obtain the complainant's written consent to his engagement notwithstanding the conflict. This is, however, mitigated by the verbal disclosure. The complainant was aware of Mr Ji's dual roles.

[25] There were also the two breaches concerning Mr Ji's file. These are not unimportant 'paper shuffling' obligations. It is an important protection for the client, the adviser and the public (through the investigation process of the Authority) that there is a record of the adviser's communications with a client or other persons and that the record is made available to the Authority when properly demanded pursuant to the Act.

[26] A significant aggravating feature of Mr Ji's misconduct is that he has a poor disciplinary record. This is the fifth complaint upheld by the Tribunal since July 2019. This history is set out in more detail in the sanctions decision for the fourth complaint upheld, *RH v Ji*.<sup>7</sup>

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<sup>6</sup> *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].

<sup>7</sup> *RH v Ji* [2021] NZIACDT 26 at [11], [55]–[62] & [88].

[27] The following breaches of the Code by Mr Ji were upheld in the previous complaints:

- (1) Permitted unlicensed people to provide services exclusively reserved under the Act to him as a licensed adviser, and had also failed to personally obtain instructions from his clients since he left that to the unlicensed staff. The complaint concerned six clients. He had breached cls 1, 2(e) and 3(c).
- (2) Operated in a business structure which was not professional or diligent and lacked due care. He had breached cls 1 and 31(a).
- (3) Permitted unlicensed staff to undertake work falling within the statutory definition of immigration advice. He had also failed to obtain instructions directly from his client. He had breached cls 1, 2(e) and 3(c).
- (4) Been dishonest in his communications with the client concerning the status of her visa application. His conduct was found to be deliberately deceptive. He had breached cl 1.
- (5) Failed to engage with the client and take her instructions, a breach of cl 2(e).
- (6) Failed to communicate with his client, in breach of cl 26(b).
- (7) Was neither professional nor diligent in failing to provide a draft of the letter of 20 October 2019 to the complainant before sending it, in breach of cl 1.
- (8) Was neither professional nor diligent in failing to send to the complainant a copy of the letter of 20 October 2019 that day or the following day, in breach of cl 1.
- (9) Did not exercise due care in relying on a certain letter in his letter to Immigration NZ, in breach of cl 1.
- (10) Did not provide to the client a copy of the summary of his professional responsibilities before she signed his services agreement, in breach of cl 17(a).
- (11) Did not explain to the client the summary of responsibilities or advise her how to access the Code before she signed the agreement, in breach of cl 17(b).



- (12) Did not advise the client of his internal complaints procedure or provide a copy of it before she entered into the agreement, in breach of cl 17(c).
- (13) Did not explain to the client all significant matters in the agreement before she signed it, in breach of cl 18(b).
- (14) Did not provide the client with an invoice, in breach of cl 22.
- (15) Deliberately misled Immigration NZ and the Authority, in breach of the obligation to be honest in cls 1 and 31(a), as to:
  - (i) The source of the unlicensed advice, blaming an unnamed adviser in China when it was Mr A in New Zealand.
  - (ii) The nature of the wrongful advice, stating that the question of marital status was erroneously answered as single (an unwitting error) when he knew that Mr A had advised the client to claim single status despite knowing of the partnership.
- (16) Did not disclose to the client a conflict of interest (that he had a business relationship with Mr A, the person who had advised the complainant to claim to be single), in breach of cl 5.
- (17) Continued to represent the client when he was aware of a conflict of interest which compromised his objectivity, in breach of cl 7(a).
- (18) Failed to record in the agreement the conflict of interest, in breach of cl 19(l).

[28] The sanctions imposed in those five complaints were censure (four times), financial penalties (\$7,000, \$3,000, \$4,000 and \$5,000), completion of a professional practice paper, suspension of Mr Ji's licence, cancellation of his licence (by consent), preventing Mr Ji from reapplying to renew his licence for two years, and compensation to a client of \$2,000.

[29] The Tribunal will now consider the sanctions appropriate for the current complaint.

*Caution or censure*

[30] The only appropriate sanction is censure.

*Prohibition against renewal*

[31] Mr Ji no longer holds a licence. It was cancelled on 12 April 2021. Then on 23 December 2021, the Tribunal ordered that he be prevented from reapplying for a licence for a period of two years from that date.

[32] Mr Ji has an appalling disciplinary record, with 22 breaches of the Code having been upheld in relation to 10 clients. His misconduct spans a long period, from about September 2014 until June 2020. Two earlier complaints involved dishonesty. This is the second complaint involving a conflict of interest.

[33] The Tribunal agrees with Mr Ropati that he appears to have learned little if anything from his earlier experiences, as the misconduct in some of the earlier complaints had occurred after he was aware other complaints had been made and even after the Tribunal had started issuing decisions against him.

[34] Mr Ji has a casual attitude to the obligations in the Code. This can even extend to the disciplinary process itself, as the Tribunal has previously remarked.<sup>8</sup> However, he engaged with the Tribunal in the hearing of this complaint.

[35] It is never too late to apologise and Mr Ji's late apology will be accepted as sincere.

[36] Preventing a professional person from earning an income in a field for which he or she is qualified is a sanction of last resort. Furthermore, the breaches in this complaint would not, of themselves, justify any prohibition. However, combined with Mr Ji's prior disciplinary record, a continuation of the extant prohibition is justified. The public need to be protected from him should he desire to return to the profession in the future. The Tribunal could not be confident he would practice in the future in a compliant way. He has not sought to instil any confidence that further professional development or supervision by another practitioner would give him the tools to practice in accordance with his professional obligations.

[37] Mr Ji will be prevented from reapplying for a licence for the maximum period of two years.

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<sup>8</sup> *KX v Ji* [2020] NZIACDT 43 at [52], *RH v Ji* [2021] NZIACDT 25 at [41], *RH v Ji* [2021] NZIACDT 26 at [71].

*Financial penalty*

[38] The breaches of the Code upheld in this complaint are not at the upper end of the spectrum in terms of their gravity. While the conflict of interest breaches could in some case be serious, they could not be described as such here, given that the complainant was aware of Mr Ji's dual roles at all times. The Tribunal has previously imposed fines of \$7,000, \$3,000, \$4,000 and \$5,000 for a variety of breaches, some serious.

[39] Mr Ropati submits that a penalty in the vicinity of \$2,000 or \$3,000 would be appropriate. Mr Ji asks that the Tribunal take into account that he is a student, though he provides no details of his financial circumstances. The Tribunal agrees with Mr Ropati. The penalty will be \$2,000.

*Refund and compensation*

[40] The Tribunal can order an adviser to pay a complainant reasonable compensation attributable to misconduct.<sup>9</sup> The loss or expense must be caused by or relate to or arise from the wrongdoing found by the Tribunal.

[41] The complainant is understandably unhappy with Mr Ji's service, but none of the costs for which he seeks a refund or compensation were caused by the breaches upheld by the Tribunal. The costs certainly did not arise from the file breaches. While Mr Ji's conflict might arguably have contributed to the complainant's unsatisfactory employment, it must be remembered that the complainant was aware of the conflict. The breach upheld involved failing to disclose it in writing and then getting written consent to act, not failing to disclose the conflict at all.

**OUTCOME**

[42] Mr Ji is:

- (1) Censured.
- (2) Prevented from reapplying for a licence for two years from today's date.
- (3) Ordered to immediately pay to the Registrar \$2,000.

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<sup>9</sup> *NLT v Coetzee* [2020] NZIACDT 7 at [47].

**ORDER FOR SUPPRESSION**

[43] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>10</sup>

[44] There is no public interest in knowing the name of Mr Ji's client, the complainant.

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

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D J Plunkett  
Chair

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<sup>10</sup> Immigration Advisers Licensing Act 2007, s 50A.