

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2013] NZIACDT 32

Reference No: IACDT 008/12

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

Between

LG

Complainant

AND

Hakaoro Hakaoro

Adviser

THE COMPLAINANT'S NAME IS NOT TO BE PUBLISHED

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Complainant: Tuulata Titimanu, solicitor, Otago Community Law Centre, Otago.

Adviser: In person.

Date Issued: 27 May 2013

DECISION

Background

- [1] The complaint was upheld in a decision issued on 3 April 2013.
- [2] The key elements of the findings were:
- [2.1] Mr Hakaoro is an immigration adviser. The complainant was in New Zealand unlawfully; she consulted Mr Hakaoro regarding her status.
 - [2.2] Mr Hakaoro charged a fee of \$3,000, after he told her she could apply under discretionary powers exercised by Immigration New Zealand. Mr Hakaoro did not lodge an application, and the complainant was deported.
 - [2.3] When Mr Hakaoro did not progress matters, she sought legal assistance. The lawyers made inquiries with Mr Hakaoro. He was rude and abusive.
 - [2.4] Mr Hakaoro dishonestly procured fees for a hopeless case, did not intend to provide the services he promised, and that he misled his client.
 - [2.5] Having taken the fees dishonestly, he retained them as part of that enterprise, after a refund was demanded.
 - [2.6] He engaged in a series of unprofessional threats and misconduct. He also engaged in disparaging people due to their ethnicity.
- [3] The facts are fully set out in the decision upholding the complaint.

The Parties' Positions on Sanctions

- [4] In response to the decision Mr Hakaoro said he would appeal the decision, and criticised the Tribunal's process. He did not make any submission on the appropriate sanctions. He also sought an order directing that the decision not be published until he lodged an appeal.
- [5] Through her counsel the complainant sought the refund of \$3,000 in fees, and otherwise left the issue of sanctions to the Tribunal's discretion.
- [6] The Authority made no submissions on sanctions.

Decision

Background

- [7] The grounds on which the complaint has been upheld amount to a contemptuous disregard for the privileges of holding a licence under the Act.
- [8] The most serious aspect of the complaint is dishonesty in relation to the procurement of fees.
- [9] In *ZW v Immigration Advisers Authority* [2012] NZHC 1069, Priestley J observed at [41]:
- In passing the Act, Parliament has clearly intended to provide a system of competency, standards, and a Conduct Code to clean up an industry which hitherto had been subject to much justified criticism. The Registrar and Tribunal have a Parliamentary mandate to enforce standards.
- [10] Taking fees from vulnerable migrants through promises of what could not be achieved was one of the forms of exploitation the Act was intended to eradicate. It is intolerable for a person holding a licence as an immigration adviser to have the opportunity to continue

dishonest exploitation of that kind, and more egregious when they use the status of a statutory licence to engender the trust of victims.

- [11] Mr Hakaoro's failure to respond to the complaint with any acceptable sense of professional responsibility leaves me with the impression he is either uncomprehending of elementary professional obligations; or wilfully chooses not to comply with them. He has shown no contrition, or any indication of a willingness to change. Mr Hakaoro's response has been a consistent response that he is exempt from the most minimum of professional standards.
- [12] His disgraceful disparagement of people based on their ethnicity, satisfies me Mr Hakaoro is utterly unfit to be a licensed immigration adviser. Responsible professional people were met with this abuse when they made reasoned and sensible challenges to Mr Hakaoro's professional misconduct. It is behaviour that is wholly incompatible with holding a licence as a professional adviser.

Removal from the profession

- [13] The authorities indicate it is a "last resort" to deprive a person of the ability to work as a member of their profession. However, regard must be had to the public interest when considering whether a person should be excluded from a profession due to a professional disciplinary offence: *Complaints Committee of Waikato Bay of Plenty District Law Society v Osmond* [2003] NZAR 162 (HC).
- [14] Rehabilitation of a practitioner is an important factor when appropriate: *B v B* HC Auckland HC4/92, 6 April 1993. In *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007, the Court stressed at paragraph [30] that when imposing sanctions in the disciplinary process applicable to that case, it was necessary for the Court to "consider carefully the alternatives available to it short of removal and to explain why the lesser options have not been adopted in the circumstances of the case".
- [15] I am satisfied rehabilitation is not a realistic option.
- [16] I hold that view for three reasons.
- [17] First, the complaint that has been upheld involved a continuing course of dishonesty. Mr Hakaoro procured money dishonestly using misrepresentations, and then when it was clearly pointed out to him he had no right to the money, he did not refund it.
- [18] Dishonesty points to the need to remove a practitioner from a profession. In *Shahadat v Westland District Law Society* [2009] NZAR 661 the High Court commented:
- [29] A finding of dishonesty is not necessarily required for a practitioner to be struck off. Of course, dishonesty inevitably, although not always, may lead to striking off. But as said in *Bolton v Law Society* [[1994] 2 All ER 486; [1994] 1 WLR 512 (CA)] at pp 491–492:
- If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking-off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case.
- [30] As a Full Court observed in *McDonald v Canterbury District Law Society* (High Court, Wellington, M 215/87, 10 August 1989, Eichelbaum CJ, Heron and Ellis JJ) at p 12:
- Even in the absence of dishonesty, striking-off will be appropriate where there has been a serious breach of a solicitor's fundamental duties to his client.
- [31] It is important to bear in mind that "dishonesty" can have different connotations. (It may describe criminal acts. But it may comprise acting deceitfully towards a client or deceiving a client through acts or omissions.)

- [19] As observed by the Court in *Shahadat*, dishonest conduct “inevitably, although not always, may lead to striking off”. I consider the same principles apply to licensed immigration advisers. They are entrusted with money, and are required to deal with their clients honestly in the same way lawyers and other professional people must do.
- [20] Accordingly, the nature of the offending makes removal from the profession the likely or inevitable outcome.
- [21] However, I consider the matter is put beyond all doubt by two other factors that make rehabilitation unrealistic without the risk of exposing the public to likely further exploitation.
- [22] First, Mr Hakaoro has not indicated any insight into his conduct, or willingness to change. On the contrary, he has consistently said he was entitled to engage in the behaviour he did. I am satisfied that suspension, supervision, or other remediation would have no impact on Mr Hakaoro’s attitudes. Certainly, a finding by this Tribunal that he has engaged in dishonesty does not appear to have done so.
- [23] The second factor is that Mr Hakaoro’s disparagement and bullying, with a significant component of ethnic bigotry, evidences character or personality traits that simply have no place in a licensed professional in New Zealand. When pointed out to him, Mr Hakaoro’s response has been to try and justify his disgraceful conduct rather than to reflect on it and change.
- [24] These circumstances require the public to be protected from Mr Hakaoro presenting himself as a licensed professional in whom they can place confidence.
- [25] This Tribunal only has power to prevent the issue of a licence for a two-year period. However, the legislation does allow the Authority to decline a licence indefinitely after taking into account disciplinary proceedings. Accordingly, the long-term issues relating to licensing are appropriately addressed by the statute, but as a matter for the Authority rather than the Tribunal.
- [26] Accordingly, the Tribunal will direct that Mr Hakaoro’s licence is cancelled, and will order that he may not reapply for any licence under the Act for a period of two years.
- [27] The cancellation of Mr Hakaoro’s licence will have effect 7 days from the issue of this decision. The Tribunal is conscious that this may potentially cause difficulties for clients whose affairs are being addressed. However, the matters that require the loss of licence satisfy me Mr Hakaoro must be removed from the profession as quickly as possible.

Financial penalty

- [28] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]:
- “... 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.”
- [29] The statutory purpose is achieved by considering at least four factors which materially bear upon maintaining appropriate standards of conduct:
- [29.1] Protecting the public: Section 3 of the Act states “[t]he purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ...”;
- [29.2] Demanding minimum standards of conduct: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) and *Taylor v General Medical Council* [1990] 2 All ER 263 (PC), discuss this aspect;
- [29.3] Punishment: The authorities, including *Z v Dental Complaints Assessment Committee*, emphasise that punishment is not the purpose of disciplinary sanctions. Regardless, there is an element of punishment that serves as a

deterrent to discourage unacceptable conduct (*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007); and

[29.4] Rehabilitation: It is an important objective to have the practitioner continue as a member of the profession practising well, when practicable (*B v B* HC Auckland HC4/92, 6 April 1993).

[30] Having already considered rehabilitation and found it is not a realistic objective, I am satisfied that in addition to the prohibition on holding a licence, a financial penalty of \$8,000 is appropriate to achieve those objectives. The offending was at the highest end of the scale, it involved the egregious abuse of a vulnerable client, and the quantum is proportionate to the fee of \$3,000 dishonestly obtained.

[31] No mitigating factors have been identified. Given the sustained nature of the misconduct, and the disgraceful behaviour that followed the offending, no reduction from the starting point is justified.

Refund of fees

[32] The complainant is entitled to have the fees of \$3,000 she paid refunded; Mr Hakaoro provided no services that met the standards required of him. Accordingly, it is not appropriate for him to retain any of the fees.

Payment of costs and expenses

[33] The Authority has not sought the payment of costs and expenses, accordingly no order will be made in that regard.

Publication

[34] It is necessary and appropriate that this decision is published. It is important for the protection of the public.

[35] Mr Hakaoro has sought to defer publication until he has the opportunity to lodge an appeal. However, there are no rights of appeal against the decision upholding the complaint, only the penalty (*ZW v Immigration Advisers Authority* [2012] NZHC 1069).

[36] However to ensure Mr Hakaoro is not deprived of the opportunity to pursue any remedy he considers appropriate in relation to publication, the Tribunal will not publish the decision for 7 calendar days after it is issued, and the parties and their advisers are required not to publish the decision in that period.

[37] There will be a permanent prohibition on publication of the complainant's name.

Order

[38] The Tribunal orders that Mr Hakaoro:

[38.1] Is censured.

[38.2] Will have any licence he holds under the Immigration Advisers Licensing Act 2007 cancelled 7 calendar days after this decision is issued, and he is prevented from applying for, or holding, any licence under the Act for a period of two years from the date his licence is cancelled.

[38.3] Will pay a penalty of \$8,000 pursuant to section 51(1)(f) of the Act.

[38.4] Will refund fees of \$3,000 to the complainant, pursuant to section 51(1)(h) of the Act.

DATED at WELLINGTON this 27th day of May 2013

G D Pearson
Chairperson