

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

Decision No: [2013] NZIACDT 53

Reference No: IACDT 034/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Mohamed Muneez

Complainant

AND

Ran Deng

Adviser

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Complainant: In person.

Adviser: Mr P McPherson, Hesketh Henry, Lawyers, Auckland.

Date Issued: 20 August 2013

DECISION

INTRODUCTION

- [1] This complaint was upheld in a decision issued on 27 May 2013.
- [2] The key elements of the findings were:
- [2.1] Ms Deng failed to respond to correspondence from Immigration New Zealand regarding concerns relating to Mr Muneez's application for residence; and
- [2.2] Due to failing to clear her mail regularly she was slow in giving Mr Muneez notice his application had been declined.

THE PARTIES' POSITIONS ON SANCTIONS

- [3] Mr Muneez originally sought compensation of \$10,000 and a refund of fees paid. After the decision he sought compensation for accommodation, living expenses, and travel expenses of \$27,000, and compensation of \$2,000 for stress and emotional pain.
- [4] In its decision, the Tribunal noted it appeared, potentially, nothing Ms Deng could have done would alter the immigration outcome for Mr Muneez. Ms Deng failed to meet professional standards in relation to responding to correspondence. However, nothing she could have said or done would have changed the outcome. If so, there would be no adverse effect from the professional shortcomings.
- [5] In response, Mr Muneez said Ms Deng had told him getting a job would have been useful, but it was not essential. This caused him to be in a position where he could not make the best decisions, and it resulted in expense.
- [6] Ms Deng through her counsel submitted there was no causative link between the adverse findings, and any losses suffered by Mr Muneez. In terms of penalty, he submitted censure was appropriate. He noted Ms Deng was no longer licensed as an immigration adviser, and not involved with the immigration sector.

DISCUSSION

- [7] There is no causative link between the findings against Ms Deng, and losses Mr Muneez suffered. Mr Muneez claimed there were short-comings in the advice he received regarding the importance of a job offer. However, the Tribunal found:
- “[Ms Deng] has pointed to documentation that does establish Mr Muneez was aware of the importance of a job offer; I am satisfied she did discharge her professional responsibilities in that regard.”
- [8] Accordingly, under each head where compensation is sought, the results have followed from the adverse immigration outcome Mr Muneez suffered, and there was nothing Ms Deng could have done to change that. There were some deficiencies in service delivery; however, they were not of a kind that deprived Mr Muneez of the value of the services. Accordingly, there will be no award of compensation, or order for the refund of fees.
- [9] I take account of the fact Ms Deng is no longer a licensed immigration adviser, and not involved in providing services to migrants or potential migrants. It follows the only orders that are potentially appropriate are censure and a financial penalty.
- [10] While I accept in the circumstances a minimum penalty is appropriate, it would not be proportionate to impose no financial penalty.
- [11] Failure to reply to correspondence from Immigration New Zealand affecting a client is a serious matter, and the failure to have systems in place to manage correspondence is an elementary and essential requirement of professional practice.

DECISION

[12] I am satisfied censure and a penalty of \$1,500 is sufficient in the circumstances to achieve the objectives discussed in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], given the fact Ms Deng is no longer licensed.

[13] No other orders are appropriate.

ORDER

[14] The Tribunal orders that Ms Deng:

[14.1] Is censured.

[14.2] Will pay a penalty of \$1,500 pursuant to section 51(1)(f) of the Act.

DATED at WELLINGTON this 20th day of August 2013

G D Pearson
Chairperson