

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

Decision No: [2013] NZIACDT 56

Reference No: IACDT 015/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Zi Chen

Complainant

AND

Sammi Li Shuang Gu-Chang

Adviser

DECISION
IMPOSITION OF DISCIPLINARY SANCTIONS

REPRESENTATION:

Complainant: Mr T Delamere, Licensed Immigration Adviser, Auckland.

Adviser: Mr S Laurent, Laurent Law, Auckland.

Date Issued: 30 August 2013

DECISION

Introduction

- [1] In a decision dated 19 March 2013 this complaint was upheld.
- [2] Ms Gu-Chang was found to have:
- [2.1] Dishonestly misrepresented that fees of \$29,600 had been earned, knowing that in fact the fees had been dishonestly solicited and without compliance with the Code. She thereby engaged in dishonest and misleading behaviour.
- [2.2] Failed to account for the fees of \$29,600 which she was required to treat as client funds. She thereby failed to account for client funds.
- [3] The Tribunal has found the allegation of gross overcharging made out, that it was done so dishonestly and the fees were not returned. However, this occurred before Ms Gu-Chang was licensed and so the Tribunal has no jurisdiction over her at that time.
- [4] Nonetheless, when Ms Gu-Chang became licensed she was obliged to deal with the funds in accordance with the Code. The decision considered her conduct from that point and found that she engaged in dishonest behaviour and failed to account for the fees that she was obliged to treat as client funds.
- [5] The same circumstances have resulted in a complaint against another licensed immigration adviser, Mr Loh. Both Ms Gu-Chang and Mr Loh were working in the same organisation and dealing with the same instructions from Mr Chen.

The parties' positions on sanctions

Mr Chen's position

- [6] Mr Chen sought compensation and the return of fees:
- [6.1] \$29,600 as a refund of fees;
- [6.2] Compensation for loss of time and the cost of living in Auckland from December 2009 to March 2011, discounted to 50% being \$15,000 in total; and
- [6.3] Compensation of \$5,000 for dishonesty, giving false hope, and emotional damage.

Ms Gu-Chang's position

- [7] Through her counsel, Ms Gu-Chang presented an extensive submission on sanctions.
- [8] First her counsel pointed to a number of years of experience as an immigration adviser and earlier occupational experience.
- [9] Testimonials were provided which referred favourably to Ms Gu-Chang's standards and character. They included clients who spoke of professional services delivered with excellent results and professionalism.
- [10] This, Mr Laurent said, established that it was:
- “... perhaps worth re-evaluating the extent of the Advisers' perceived offending and in particular the finding of dishonesty made against them.”
- [11] For Ms Gu-Chang the submission was made that the complaint was an isolated incident and not part of a body of complaints against Ms Gu-Chang. The submission emphasised the importance of suspension or cancellation of a licence and that those sanctions should be reserved for egregious cases. It was submitted that Ms Gu-Chang's case was not one which

warranted this type of sanction as she provided valuable assistance to many migrants in difficulty.

- [12] In addition, it was submitted that Ms Gu-Chang's clients needed her ongoing assistance and that the cancellation or suspension of her licence may prejudice their cases.
- [13] In relation to the circumstances of the complaint, it was submitted that Ms Gu-Chang and Mr Loh believed they could secure a successful outcome for Mr Chen and this was not a case of charging a high fee to extort money when there was little or no likelihood of success.
- [14] In support of this submission, a number of previous cases were provided as examples of where they had been able to assist in cases that appeared hopeless.
- [15] Ms Gu-Chang's position is that, at the time, she did not perceive that what Mr Chen was charged was so far beyond the norm as to be dishonest. In support of that proposition she produced a declaration from Ms Yang; it relates to immigration services she received from the adviser now representing Mr Chen. There was also similar material relating to services provided by an unrelated immigration adviser.
- [16] Ms Gu-Chang says she accepts the fees were too high, but submits that she was not "malicious" in the setting of the fees.
- [17] Ms Gu-Chang said:
- [17.1] She should not be subject to orders affecting her licence;
- [17.2] She should not be subject to a financial penalty; and
- [17.3] She should be allowed to retain \$8,280 of the total fee of \$29,600.
- [18] The rationale for retaining \$6,210 of the \$8,280 fee was that the Tribunal had estimated that approximately 18 hours work could be accounted for by Ms Gu-Chang and Mr Loh in relation to the section 35A application. This, they suggested, could be properly charged at \$300/hr plus GST rather than the approximately \$1,200 per hour in fact charged.
- [19] There was similar reasoning in relation to the work for getting a passport renewed. This, it was suggested, involved some 6 hours work and should have been charged at \$300/hr + GST; so a fee of \$2,070 (including GST), rather than the \$8,800 in fact charged was appropriate.
- [20] Ms Gu-Chang and Mr Loh had originally charged Mr Chen \$8,800 for the passport renewal. They now submit that an allowance of 6 hours of work is reasonable for the passport renewal matters. It follows, by implication from the submissions, that they now accept that they were charging Mr Chen in excess of \$1,450/hr (including GST) for that work.
- [21] Ms Gu-Chang's counsel submitted that some of the fee was justifiable, and should be retained by Ms Gu-Chang.
- [22] In relation to compensation, Ms Gu-Chang's position is that Mr Chen's claim for compensation for living expenses while remaining in Auckland is ill-founded. In short, he had lived in Auckland prior to his interactions with her and Mr Loh, and his objective was to remain living there.

Discussion

Preliminary

- [23] As the complaint has been upheld, section 51 of the Immigration Advisers Licensing Act 2007 ("the Act") allows the Tribunal to impose sanctions.
- [24] The critical decision is whether Ms Gu-Chang's licence should be suspended or cancelled, and if so, on what terms.

- [25] The Tribunal found Ms Gu-Chang acted dishonestly. There would be some strength in the arguments advanced by her counsel if that was not the case.
- [26] The Tribunal put Ms Gu-Chang on notice that she was at risk of a finding of being a party to dishonesty. This is not a case of simple overcharging.
- [27] I do not accept that there is any merit in the contention that the Tribunal should reconsider the finding of dishonesty because Ms Gu-Chang has presented testimonials and given evidence of an otherwise unblemished career. This Tribunal has dealt with a specific complaint and found there was dishonesty arising in relation to that complaint. It is seldom of great probative value to produce evidence that a person accused of dishonesty has on other occasions not been dishonest. Certainly, evidence of good character has some bearing; however, as in this case, it will seldom overcome evidence that establishes a person was dishonest on the occasion in question.
- [28] I will proceed on the basis Ms Gu-Chang has, otherwise, a professional history that does not include any previous improper conduct.
- [29] The first consideration is the gravity of the complaint that has been upheld.
- [30] The position taken by Ms Gu-Chang is not realistic. The Tribunal has found she was dishonest. The reasons for that are set out in the decision upholding the complaint. The submissions she has made in relation to sanctions do not present an analysis that improve her position.
- [31] Put simply, the Tribunal determined Mr Chen was a vulnerable migrant and that on the expectation that he might be able to remain in New Zealand he was asked to pay \$29,600; the Tribunal estimated this amounted to be approximately \$1,200 per hour. The charge was so excessive it amounted to unconscionable exploitation.
- [32] Ms Gu-Chang, through her counsel, has suggested that \$300/hr plus GST would have been reasonable. However, that figure has not been justified by Ms Gu-Chang or Mr Loh and it may well be grossly excessive. The work was not of high quality; the previous adviser had made similar points earlier and with a notably higher standard of presentation. However, it is not necessary to resolve the appropriate hourly rate as it was, on any view, only a fraction of what Ms Gu-Chang and Mr Loh took from their client.
- [33] Ms Gu-Chang's own analysis of the fee for renewal of a passport involves her estimate of the time required, namely 6 hours. She charged a fee of \$8,800 and that means she charged a rate in excess of \$1,450/hr including GST.
- [34] It is inescapable that Ms Gu-Chang was dishonest and that the dishonesty involved the financial exploitation of a client for her own benefit; that is fundamentally inconsistent with minimum professional standards.
- [35] It was therefore inevitable that the removal of Ms Gu-Chang from the profession is an outcome that must be considered by the Tribunal. The factors Ms Gu-Chang has put forward to resist the loss or suspension of her licence must be considered.
- [36] Ms Gu-Chang points to her good standing and provides examples of clients who are satisfied with her performance. They are important considerations; however, when a person commits a professional disciplinary offence involving dishonesty, it is of limited value to say they have dealt honestly with other clients. I accept there is only one matter before the Tribunal, but its gravity cannot be put aside on that basis.
- [37] There is also a claim that Ms Gu-Chang has provided effective service to clients in difficult positions and achieved good results. However, there are many members of the profession who both achieve good results in difficult circumstances and have consistently dealt with their clients fairly and honestly.
- [38] I accept too, that Ms Gu-Chang did not think the case was hopeless; however, the finding was not that she charged fees and retained fees for a case she knew to be hopeless. The

complaint that has been upheld is that she dishonestly grossly overcharged fees for a case that had little prospect of success and kept the fees when they should have been refunded.

- [39] I do not accept the claim that Ms Gu-Chang did not think the fee was so far beyond the norm as to be dishonest. The reasons for finding dishonesty are discussed in the decision upholding the complaint. Ms Gu-Chang's admission that she could only justify 6 hours work for the passport renewal work reinforces the Tribunal's conclusion.
- [40] I do not consider that the submission suggesting that other practitioners have charged similar amounts is relevant for two reasons. First, there is no basis for determining what work was done in other unrelated cases by other licensed immigration advisers. However, the information presented in reply to Ms Yang's claim indicates that that matter was quite unlike the work for Mr Chen. More importantly, if other licensed immigration advisers have dishonestly exploited their clients, that is a matter to report to the Authority, not a justification or excuse for Ms Gu-Chang doing so.
- [41] The Tribunal's finding of dishonesty is founded on an examination of what Ms Gu-Chang did for Mr Chen, not a theoretical review.

Principles for suspension or cancellation of licence

- [42] 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) at 13-14.
- [43] 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 at [30]-[31], the Court stressed, when imposing sanctions in the disciplinary process applicable to that case, that it was necessary to consider the "alternatives available short of removal and explain why lesser options have not been adopted in the circumstances of the case".
- [44] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [97]:
- [T]he 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.
- [45] The statutory purpose is achieved by considering at least four factors which materially bear upon maintaining appropriate standards of conduct:
- [45.1] 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 ..."
- [45.2] Demanding minimum standards of conduct: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 725-726 and *Taylor v General Medical Council* [1990] 2 All ER 263 (PC) discuss this aspect.
- [45.3] Punishment: the authorities, including *Z v Dental Complaints Assessment Committee* (at [1], [65], [70] & [149]-[153]), 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 at [28]).
- [45.4] Rehabilitation: it is an important object 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).

Background to regulating this profession

[46] 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.

[47] The Act has established a regime in which, with limited exceptions, licensed advisers have an exclusive right to provide immigration advice. That exclusive right is enforced by criminal sanctions.

[48] Until the profession was regulated, the great majority of advisers were professional people acting responsibly and providing skilled services. A small minority of unskilled and unscrupulous people provided immigration services. Immigrants are a vulnerable group and, in some instances, suffered serious harm from such people. Immigration advisers have an important professional role in assisting clients. Their honesty, professionalism, and competence are fundamental requirements.

[49] The Act records its purpose in section 3 as:

[T]o promote and protect the interests of the 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.

[50] When the Act came into force, many people had experience giving immigration advice. There were no professional qualifications specifically targeted at New Zealand immigration advisers; though, of course, there were various relevant qualifications that some advisers held.

[51] To establish the profession, a relatively low threshold was applied. It required a person to demonstrate competent handling of immigration applications in the past, knowledge and understanding of the new professional environment, and language and communication skills. A significant number of people who had relied on providing immigration advice for their livelihood could not meet those standards. They lost their livelihoods.

[52] The low threshold for entry into the profession, in that entry has not required a long period of academic training with mentored experience, has resulted in some people entering the profession with no real commitment to maintaining professional standards. It is important that this Tribunal exercises the power to remove people from the profession who are in this category.

[53] In a sense, the transitional entry has put a correlative obligation on entrants to the profession to ensure they attain professional standards, having been entrusted with the privilege of entry to the profession.

Alternatives short of cancellation of licence

[54] Section 51 provides for various sanctions. The key options short of cancellation or suspension of a licence are punishments intended to effect deterrence; namely censure, and financial penalties not exceeding \$10,000.

[55] In relation to licences there are three options:

[55.1] cancellation and a direction that the person may not apply for a licence for up to two years (s 51(d) & (e)); or

[55.2] suspension (s 51(c)); or

[55.3] cancellation of a full licence and the holder of the licence permitted to apply for a different class of licence. In this way a person may be prevented practising on their

own account and put in a situation where they are practising under supervision while they hold a provisional licence (s 51(b) & (d)).

- [56] Other possibilities include training and specified conditions (s 51(b)). There are also powers relating to imposing costs and compensation (s 51(g)-(i)).
- [57] In this decision I am satisfied the range of possibilities to weigh are:
- [57.1] cancellation of Ms Gu-Chang's licence and a prohibition on reapplying for a licence for a period of up to two years;
- [57.2] cancellation of Ms Gu-Chang's full licence and allowing an application for a provisional licence (with supervision conditions);
- [57.3] training requirements;
- [57.4] a financial penalty on its own or in combination with the preceding directions.
- [58] Suspension has a potential role in ensuring that a proportional consequence is imposed: *A v Professional Conduct Committee* HC Auckland CIV-2008-404-2927, 5 September 2008 at [81], and would potentially bring home to Ms Gu-Chang the nature of the professional obligations she carries.
- [59] However, restriction to a provisional licence would likely be more effective in rehabilitation than suspension as mentoring in professional standards would likely be of more benefit.
- [60] In making this decision the Tribunal is required to weigh the public interest against Ms Gu-Chang's interests (*A v Professional Conduct Committee* at [82]).
- [61] When dealing with integrity issues there is never any certainty that, short of exclusion from a profession, a person will not reoffend. This Tribunal must carefully weigh the circumstances. It is appropriate to place an element of considered trust in a practitioner who has shown the capacity and willingness to rehabilitate.
- [62] A significant factor in this case is that it involves dishonesty.
- [63] 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] 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.)
- [64] As observed by the Court in *Shahadat*, dishonest conduct "inevitably, although not always, may lead to striking off". It is important to look carefully at whether rehabilitation is realistic.

Weighing the alternatives

- [65] First Ms Gu-Chang's circumstances are no doubt such that loss of her licence and the consequent loss of the ability to continue to practise as a licensed immigration adviser are considerable.
- [66] However, the consequences of breaching professional standards are inevitably going to impact harshly. Ms Gu-Chang was required to understand the consequences of breaching professional standards when she chose to conduct herself in the manner she did. She had to demonstrate an understanding of professional obligations before she was licensed.
- [67] Ms Gu-Chang's conduct involves dishonestly putting her financial interests before her client's interests and abusing the trust she was accorded as a licensed professional; she cannot expect to be immune from the consequences.
- [68] The primary issues are whether:
- [68.1] The dishonest conduct was so serious there is no alternative to removal from the profession; and if not
- [68.2] Whether it can be reasonably considered that Ms Gu-Chang will in the future discharge her professional duties in a manner that does "promote and protect the interests of consumers receiving immigration advice", as section 3 of the Act contemplates.
- [69] I have had to conclude both that the findings require removal from the profession and that Ms Gu-Chang has exhibited none of the qualities that could lead to an expectation that she will commit to meeting professional standards in the future.

Ms Gu-Chang's attitude to the grounds of the complaint

- [70] Ms Gu-Chang has consistently attempted to minimise her conduct and now suggests the Tribunal should revisit the findings of dishonesty as she has produced favourable testimonials and claims to have an otherwise exemplary professional history.
- [71] Had Ms Gu-Chang admitted the complaint promptly, expressed contrition and shown insight, a more favourable view could be formed. She has done none of those things.
- [72] Despite the fact Ms Gu-Chang accepts she should return over \$21,000 of a fee of \$29,600, she says she is entitled to the balance. She appears to have no insight into the fact she procured the engagement dishonestly, and advanced it when licensed.
- [73] I am satisfied:
- [73.1] Ms Gu-Chang was guilty of a serious dishonesty on clear evidence. It involved the dishonest treatment of a client, by abusing the client's trust. It was a vulnerable client. Ms Gu-Chang has been, and is, uncomprehending of the gravity of that.
- [73.2] She was aware of her professional obligations when she offended; the only apparent alternative explanation would be that, both then and now, she had no understanding of the obligations of professionalism. Each possibility is equally concerning as to future conduct.
- [73.3] In the course of the complaint being addressed by the Tribunal, she has shown little insight. She rejects the findings against her. She contends she should suffer no financial penalty, should continue to practise and only have some of the fees refunded.

Ms Gu-Chang's licence will be cancelled

- [74] Ms Gu-Chang's offending was serious; it is an example of the conduct the Act was intended to eradicate.

- [75] It will be an exceptional situation where serious dishonesty of this kind will leave the Tribunal satisfied that a licensed immigration adviser should continue to hold a licence. As the authorities indicate, dishonesty will usually result in removal from a profession.
- [76] There is little to suggest that the generally inevitable consequences of dishonesty should not follow here. It will require more than a demonstration that the professional concerned has other clients who are satisfied or that there is only one instance of dishonesty.
- [77] The dishonesty in relation to fees, given the magnitude (at least \$21,000) and the proportion (less than a third of the fee could potentially be justified), is sufficient to require that Ms Gu-Chang have her licence cancelled. Removal from the profession is the only appropriate consequence.
- [78] In addition, I have an adverse view of Ms Gu-Chang prospects of reforming and becoming a member of the profession who fully accepts the obligations and standards required of her.
- [79] I am satisfied Ms Gu-Chang should be removed from the profession. Her licence will be cancelled and she will not be permitted to apply for any licence for a period of two years. After that point Ms Gu-Chang will have to qualify for the profession and satisfy the Registrar that she otherwise meets the statutory requirements.
- [80] I have considered whether allowing Ms Gu-Chang to hold a provisional licence, after establishing a regime of appropriate supervision, is an option. I am satisfied that is not appropriate.
- [81] The seriousness of the dishonesty is such that she is not fit to hold a licence. The Act was intended to eradicate behaviour of the kind in which Ms Gu-Chang engaged and the legislation requires firm action to achieve that objective.
- [82] I am satisfied, that if she is to practice, Ms Gu-Chang should qualify for professional practice through the mechanism of academic study and mentoring, and satisfy the Registrar that she otherwise meets the standards of the profession. She has abused the privileged entry she had to the profession and used the standing accorded to licensed professionals to engage with a client dishonestly. Any lesser response than removal from the profession would fail to enforce the Act adequately.
- [83] The financial penalty must have regard to the amount involved in the dishonesty. On the figures Ms Gu-Chang is using, she has taken fees of \$29,600 and now says the work was only worth \$8,280 of that. While that may well be very generous to Ms Gu-Chang, the extent of the dishonesty was \$21,320 on those figures.
- [84] I consider the starting point is a penalty of \$8,000, which is necessarily related to the statutory maximum of \$10,000. The figure will be discounted having regard to Ms Gu-Chang's previous good standing, the loss of her livelihood and the fact that Mr Loh was involved in the offending. I am satisfied that a financial penalty of \$6,000 against Ms Gu-Chang is appropriate.
- [85] Ms Gu-Chang and Mr Loh appear to be the only persons holding licences in at least one practice where they operate. She may have a substantial number of active files and it will take time to arrange for substituted licensed immigration advisers to take over the files.
- [86] It is a matter of some concern that Ms Gu-Chang should undertake that process without supervision; however, there is no jurisdiction to impose conditions.
- [87] The Tribunal formally warns Ms Gu-Chang pursuant to section 51(1)(a) of the Act, that she is required to meet the standards of the profession while she continues to hold a licence. Any failure to do so in the face of that warning will be addressed sternly.

The respective roles of Ms Gu-Chang and Mr Loh

- [88] There has been a difference in the roles of Ms Gu-Chang and Mr Loh and in addition, some of Ms Gu-Chang's conduct occurred before she was a licensed immigration adviser and so is not within the jurisdiction of this Tribunal.
- [89] It is necessary to be satisfied Ms Gu-Chang is only subject to sanctions that are proportional to the elements of the complaint upheld against her.
- [90] For the reasons set out in the decision upholding the complaint, I am satisfied Ms Gu-Chang was party to the dishonesty at the outset, though that was not within the Tribunal's jurisdiction. However, when she was licensed she was fully aware of that dishonesty and dealt with Mr Chen with that knowledge. After she was licensed she continued to hold the fees dishonestly procured and refused to refund them in whole or in part. In these circumstances, I consider that Ms Gu-Chang is a party to the dishonesty and does not avoid responsibility for it.

Compensation and refund of fees

- [91] There is no nexus between the grounds on which the complaint has been upheld and Mr Chen continuing to live in Auckland. That was what he wanted to do; he had his home there with his wife. The objective of seeking a visa was to remain in Auckland; he cannot link the cost of remaining in Auckland with the grounds of complaint.
- [92] The Tribunal has from time to time awarded compensation on similar principles to general damages, but on a basis that it does not become a penalty, which is routinely added to other penalties. Accordingly, the Tribunal has looked for more than the time, trouble, and inconvenience that inevitably follows from a professional person failing to meet their obligations to a client.
- [93] In this case I am satisfied that Ms Gu-Chang's conduct does justify an award of general damages but it will be modest. Ms Gu-Chang has persistently resisted taking responsibility for refunding fees and effectively put Mr Chen to the greatest difficulty possible in addressing Ms Gu-Chang's misconduct.
- [94] I am satisfied an award of \$1,000 will reflect the time, trouble, and stress Mr Chen has faced. I note there will be a similar award in relation to Mr Loh that is cumulative with this award.
- [95] Ms Gu-Chang contends that she should only be required to refund the fees in part and should be entitled to claim fees at a rate of \$300/hour plus GST for the work she performed.
- [96] I am not satisfied the work was performed at a level that would justify that rate or that the work was well directed. Largely, what was done was repetitive of submissions already made, and more competently so, by a previous adviser.
- [97] However, the real difficulty with Ms Gu-Chang's contention is that she was a party to the professional engagement being entered into dishonestly. When an engagement is tainted by dishonesty that unravels the foundation of the agreement. She was responsible for these circumstances and knew of them, when she accepted and furthered the engagement after she was licensed.
- [98] If I were to apply the principles in the Illegal Contracts Act 1970 and consider whether there was discretion to grant some form of relief, in the circumstances of this case, I do not consider any fee should be retained.
- [99] In terms of setting professional standards, it is most unattractive to allow a professional to retain part of a fee for a professional engagement attended by dishonesty that directly relates to the fee.
- [100] In addition, this particular client was a vulnerable person who was exploited. If an informed bystander had advised Mr Chen of his immigration prospects and the proper cost of the work required, there can be little doubt that he would have rejected any involvement with Ms Gu-Chang. She should not retain any benefit from her dishonesty.

[101] That her professional time was wasted was Ms Gu-Chang's own fault and she should bear the cost of it.

[102] I am satisfied the fees should be refunded in full.

Determination and orders

[103] Ms Gu-Chang is:

[103.1] Censured.

[103.2] Ordered to pay a penalty of \$6,000.

[103.3] Directed to refund fees of \$29,600 (she has joint and several liability with Mr Loh).

[103.4] To pay Mr Chen the sum of \$1,000 in compensation.

[104] Any licence presently held under the Act by Ms Gu-Chang is cancelled with effect at 5:00 pm on the 30th clear calendar day after this decision is delivered to Ms Gu-Chang.

[105] Ms Gu-Chang is prevented from reapplying for any category of licence as a licensed immigration adviser for a period of two years from the date her licence is cancelled.

[106] Ms Gu-Chang is cautioned that during the period she continues to hold a licence, she is bound by the Code of Conduct. She will be accountable for ensuring she conducts herself in a professional manner, including providing refunds of fees to the extent they are payable, as required by the Code.

DATED at WELLINGTON this 30th day of August 2013

G D Pearson
Chairperson