

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

Decision No: [2014] NZIACDT 118

Reference No: IACDT 019/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

Between

Mallikarjun Eppanapally

Complainant

AND

Na (Fiona) Zhou

Adviser

DECISION

REPRESENTATION:

Registrar: Mr M Denyer, lawyer, Ministry of Business, Innovation and Employment

Complainant: No appearance

Adviser: Mr G P Tyrell, lawyer, Weston Ward & Lascelles, solicitors, Christchurch

Date Issued: 13 February 2015

DECISION

Introduction

- [1] Mr Eppanapally was an existing client of Richard Martin Immigration Ltd (the Practice) when Ms Zhou took up employment in the Practice. Mr Martin controlled the company that owned the Practice and was personally active in the Practice. Mr Martin had been a lawyer, before the Lawyers and Conveyancers Disciplinary Tribunal struck him off the roll of Barristers and Solicitors. He has a history of criminal offending against clients, and at the time Ms Zhou commenced employment he was facing criminal charges for breaches of the Immigration Advisers Licensing Act 2007 (the Act).
- [2] Ms Zhou took over Mr Eppanapally's file soon after she started working in the practice. She was the sole licence holder in the practice at that time. She wrote a submission in response to a query from Immigration New Zealand. However, Immigration New Zealand was not satisfied with the response, requested more information and provided a deadline for the reply. Ms Zhou rang Mr Eppanapally's agent (though he disputes the person was authorised) and requested the particulars.
- [3] Further than that, Ms Zhou did not follow up, and Immigration New Zealand declined Mr Eppanapally's application as it had said it would. Immigration New Zealand wrote to the Practice stating that Mr Eppanapally's application had failed due to the non-response.
- [4] The decline was not initially communicated to Mr Eppanapally. Some months later when Mr Eppanapally made enquiries, Mr Martin wrote and told him the application had failed and falsely represented that this was because he had not met the attendance requirements of his previous student visa. Later Ms Zhou sent a further letter that blamed the delay on Mr Martin for not passing on mail.
- [5] Ms Zhou says she did not know about the letter from Immigration New Zealand telling her Mr Eppanapally's application failed. She blames Mr Martin for interfering with her email and intercepting correspondence. She says no rational decision-maker could find she was party to Mr Martin treating clients unprofessionally (as she says he was). She says, she maintained proper professional standards, and the Tribunal should regard her as a victim of Mr Martin. Her position is that Mr Martin was of bad character, manipulative and dishonest.
- [6] The Tribunal is required to consider:
 - [6.1] Was Ms Zhou party to an unprofessional enterprise with Mr Martin,
 - [6.2] Did she personally perform her duties to Mr Eppanapally with professionalism in dealing with her instructions,
 - [6.3] Did she fall short of meeting her professional standards in respect of the failure to reply to Immigration New Zealand's letter that led to Mr Eppanapally's application failing, and
 - [6.4] Did she meet her obligations in relation to the refund of fees when her engagement ended?

Jurisdiction

- [7] Before going further, I note that the Tribunal does not have jurisdiction in relation to Mr Martin's actions, as he is not a licensed immigration adviser. As a result, any comments made in relation to his conduct, or the actions of Ms Zhou in furthering his conduct, are relevant only to the extent that they are relevant to whether or not Ms Zhou met her obligations as a licensed immigration adviser under the Code of Conduct 2010 and the Act.

Background

- [8] The Registrar filed a Statement of Complaint and the Tribunal issued an interim decision, which identified potential conclusions based on the material then before it.
- [9] Since that decision, Ms Zhou has filed an affidavit and given oral evidence. The Registrar and Mr Eppanapally did not present any evidence at the oral hearing.
- [10] The interim decision identified the following factual background and potential findings.

Before Ms Zhou started working in the Practice

- [11] On 19 July 2012, a decision of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (*Auckland Standards Committee v Richard Martin* [2010] NZLCDT 17), had struck Mr Martin off the roll of barristers and solicitors, noted his criminal offending against clients, and commented unfavourably on his character.
- [12] Mr Eppanapally engaged the Practice to assist him with immigration matters before Ms Zhou had any association with the Practice. A licensed immigration adviser working in the Practice had dealt with Mr Eppanapally's instructions until he resigned with effect from 13 April 2011.
- [13] Ms Zhou commenced working in the practice on 30 May 2011, she was the only licensed immigration adviser working there.

After Ms Zhou started working in the Practice

- [14] Mr Eppanapally wanted to migrate to New Zealand under the Long Term Business Visa regime. Mr Eppanapally signed a form (INZ form 1160) saying he had appointed a new licensed immigration adviser to represent him. He signed that form on 23 May 2011. Ms Zhou did not sign the form at that time.
- [15] From 24 May 2011, Mr Richard Martin communicated with Mr Eppanapally and his agent. He apparently did so unlawfully, as the communication amounted to providing immigration advice as defined by the Act. Mr Martin, among other things, provided unfounded assurances to Mr Eppanapally.
- [16] On 1 June 2011, Ms Zhou signed the form (Immigration New Zealand form 1160) saying she was now Mr Eppanapally's licensed immigration adviser, and communicated that to Immigration New Zealand by lodging the form.
- [17] There was email communication, apparently between the Department of Labour official and Ms Zhou, in late June 2011. It included comments regarding the request for information of 29 June 2011. The interim decision noted Ms Zhou claimed Mr Martin tampered with her email.
- [18] On 2 August 2011, Immigration New Zealand wrote to Mr Eppanapally, care of Richard Martin Immigration New Zealand. This letter informed him Immigration New Zealand declined his application for a work permit under the Long Term Business regime. The letter said there had been an earlier letter dated 29 June 2011 requesting information and he had not provided the information. It appears Mr Martin withheld the letter declining the application from Mr Eppanapally. Mr Martin continued to deal with Mr Eppanapally's immigration affairs and to give him advice, but did not tell him of the true circumstances, including the fact Immigration New Zealand had already declined the application.
- [19] On 1 December 2011, Mr Eppanapally approached the Department of Labour official directly and requested information on his application. The official told him to contact his adviser. On 13 December 2011, Mr Eppanapally sent an email to Mr Martin and sent a copy to Ms Zhou. On 28 December 2011, Mr Eppanapally sent an email to both Mr Martin and Ms Zhou complaining he was not getting responses to correspondence.

- [20] On 21 January 2012, Mr Martin sent an email to Mr Eppanapally's brother in which he misrepresented what had occurred with Mr Eppanapally's application. In particular:
- [20.1] He said the visa application was refused due to issues with a previous student visa Mr Eppanapally had held,
- [20.2] That he had "used all his sources and experience to" avoid that outcome, and
- [20.3] Refused to refund fees.
- [21] Mr Martin's email, dated 21 January 2012, was a dishonest attempt to mislead Mr Eppanapally. It failed to explain the grounds set out in Immigration New Zealand's letter of 2 August 2011 and provided an explanation intended to hide the facts. Further, the letter contains evidence that he had acted unlawfully in relation to the application.
- [22] On 13 February 2012 Ms Zhou wrote to Mr Eppanapally. Although the language used is somewhat unclear, she appears to have stated that:
- [22.1] She had just recently become aware of an unanswered letter dated 29 June 2011 and the 2 August 2001 letter.
- [22.2] At some uncertain point she had discovered a letter from Immigration New Zealand to the previous adviser, of 7 January 2011, that was unanswered until Ms Zhou did so on 24 June 2011.
- [22.3] She disclosed the contents of Immigration New Zealand's letter of 2 August 2011 to Mr Eppanapally.
- [23] On 17 February 2012 Ms Zhou emailed Mr Eppanapally and said:

As your adviser, I was supposed to get all updated information whenever it was received from Immigration New Zealand. However, Richard Martin is the only one allowed to open the mail every day. I even found some emails sent to me were put into the deleted box recently. Once I was aware of this serious problem this year, I insisted I open the mail beside Richard Martin to avoid the same situation happening again and affecting clients.

I understand the upset and disappointment; I will be the one who suffers the most. As an adviser I understand what my duties are, but as an employee, I need to follow some of the rules of the company without breaching the Code of Conduct." (Modified for readability)

The potential findings if the facts were established

- [24] The Tribunal reviewed the potential duties Ms Zhou had and findings that may result if the facts were as outlined. In summary, the interim decision identified two potential adverse findings:
- [24.1] Ms Zhou failed to personally manage the Practice and Mr Eppanapally's instruction; or
- [24.2] Ms Zhou was a party to Mr Martin's unlawful activity.

Ms Zhou's response

- [25] Ms Zhou presented a response to the interim decision by affidavit and later at an oral hearing.
- [26] In her affidavit, Ms Zhou said she completely rejected the potential findings that she was in any way a party to Mr Martin's alleged criminal offending and said she was shocked by the evidence that came out regarding the alleged actions of Mr Martin. She said she took reasonable steps to ensure the Practice was properly managed and complied with her professional obligations. Ms Zhou said the reason Mr Eppanapally's visa application failed was his own fault due to not making academic progress in a course he pursued whilst under a previous student visa.

- [27] Ms Zhou said she was not aware of Mr Martin unlawfully providing immigration advice and confirmed she worked in the practice from 30 May 2011 to January 2013. She said she did not consider it appropriate to discuss Mr Martin's past with him. However, she was the sole licensee in the practice during that period and, before accepting employment in the practice, Ms Zhou wrote to the Authority and asked whether working in the Practice would complicate renewal of her licence. She was notified in writing by the Authority that maintaining the integrity of her licence was her own responsibility and that 'it is a matter of public record that Richard Martin is currently being prosecuted by the Authority for a number of offences against our Act.' She also noted she was aware of a rumour Mr Martin had been arrested in December 2011, and the Authority showed her old newspaper articles about Mr Martin.
- [28] Ms Zhou accepted that she was aware Mr Martin would delay providing documents and that that had occurred in relation to Mr Eppanapally's affairs, but she was not aware of Mr Martin unlawfully providing immigration advice.
- [29] In relation to Mr Eppanapally's affairs, Ms Zhou said she accepted the instruction to act for Mr Eppanapally on 1 June 2011 and had a telephone conversation with Mr Eppanapally's contact person. She said when she engaged with the instructions:
- [29.1] She found a letter dated 7 January 2011 which the previous licensed immigration adviser did not address.
- [29.2] On 24 June 2011, she prepared a submission for Mr Eppanapally and notified Mr Eppanapally's contact person.
- [29.3] She received an email in response from Immigration New Zealand on 29 June 2011, she rang Mr Eppanapally's contact person.
- [29.4] She did not know about or receive Immigration New Zealand's letter of 2 August 2011 declining the application. She did not receive emails of 13, 27, 28, 29 December 2011. She was first aware of them when she had an exchange of correspondence with Mr Eppanapally in February 2012, and first knew of Immigration New Zealand declining the application on 13 February 2012 when she emailed the case officer.
- [29.5] She did not know why neither she nor Mr Eppanapally saw the Immigration New Zealand letter declining the application.
- [29.6] She did not know why she did not see correspondence addressed to her, but noted she did not have a password on her computer and Mr Martin had access to it. She believed Mr Martin undermined her ability to do her job by hiding documents from her, but does not know why he would do that or what happened to emails she did not receive.
- [30] Ms Zhou claimed her actions in relation to Mr Eppanapally's affairs were professional, but accepted from the complaint it appeared Mr Martin's actions were not. However, she did not regard it as within her ability to control Mr Martin, as he was her employer. Until February 2012, she did not consider Mr Martin was a risk to clients. She was satisfied with the arrangements she had in place to ensure she provided advice and that Mr Martin's role in the practice was appropriate given the fact he did not hold a licence.
- [31] Through her counsel Ms Zhou apologised for delays experienced by Mr Eppanapally, and submitted:
- [31.1] The Tribunal's interim decision was unreasonable, in that no reasonable decision maker could reach the potential conclusions signalled in that decision.
- [31.2] The Tribunal exhibited apparent bias in its interim decision.
- [31.3] Different decision makers should hear complaints 'separated by time and circumstance involving some of the same parties.'
- [31.4] The Tribunal had heard other complaints relating to the Practice and that may affect the decision on this complaint.

- [32] Ms Zhou was a victim of Mr Martin, who had acted unlawfully.
- [33] Mr Tyrrell also referred to the decision *Immigration Advisers Authority v Yap* [2014] NZHC 1215, and the District Court's decision in that matter (DC Christchurch, 2013-009-001684, 28 January 2014). In particular, he relied on the argument that Ms Zhou is not responsible for what she could not control.
- [34] He also emphasised the importance of the factual base required before a finding of dishonesty could be made.

Mr Eppanapally's response

- [35] Mr Eppanapally emphasised Ms Zhou's failure to manage his application after she engaged with it.
- [36] He also pointed out Ms Zhou continued to work in the Practice for approximately a year after she was aware of the difficulties Mr Martin had caused in his immigration affairs. He wanted to know how she could continue without control over the Practice despite knowing the issues.
- [37] He expressed concern that Ms Zhou did not respond to correspondence.
- [38] Mr Eppanapally also pointed out that the 29 June 2011 letter was crucial and he suspected Ms Zhou did receive it.

The Registrar's position

- [39] The Registrar did not take any position on the facts. She took the position Ms Zhou carried personal responsibility as the licensed immigration adviser in the Practice, and the Tribunal should evaluate her responsibilities in relation to her instructions from Mr Eppanapally.

Oral hearing

- [40] The Tribunal convened an oral hearing to allow Ms Zhou to present her case. Neither Mr Eppanapally nor the Registrar sought to give evidence.
- [41] The issues largely turn on Ms Zhou's knowledge and intentions; she was the only witness regarding them. Any matters where Ms Zhou gave oral evidence on a factual matter, the Tribunal has dealt with that evidence on the basis that there was no competing evidence. However, the various events are largely documented and not contested.
- [42] In her oral evidence, Ms Zhou reiterated the information she presented in her affidavit. In relation to her professional obligations, Ms Zhou essentially claimed she extended deference to Mr Martin as her employer and believed she had no alternative. She said she considered, despite being the sole licence holder, she was an employee and had limited authority.

Discussion

Dishonesty

- [43] At the outset, I will deal with potential findings of dishonesty. I consider Ms Zhou's claim, that there is no case to answer on the allegation she was a party to improper conduct by Mr Martin, as unrealistic.
- [44] Ms Zhou claims she did not know of Mr Martin's improper conduct but she accepts Mr Martin did improperly intervene in Mr Eppanapally's affairs. The written record shows:
- [44.1] Mr Richard Martin communicated with the complainant, reporting on his application. That amounted to immigration advice as defined in the Act. That was unlawful. His representations were false and misleading.

- [44.2] Mr Martin withheld communications from Immigration New Zealand and the letter declining the application from the complainant.
- [44.3] He gave a false reason for Mr Eppanapally's application failing.
- [45] Ms Zhou says that the email correspondence where her name appears is not reliable as Mr Martin interfered with her computer. She accepts Mr Martin apparently withheld the critical information from Mr Eppanapally that his application had been declined, whereas he had represented it was still progressing and misrepresented what Immigration New Zealand's concerns were.
- [46] Ms Zhou says the Tribunal could not reasonably suppose she had a part in Mr Martin's conduct. However, there is strong circumstantial evidence Ms Zhou was knowingly a party to Mr Martin's conduct.
- [47] First, Ms Zhou was aware Mr Martin's history gave rise to concern. She approached the Authority asking whether association with Mr Martin could affect her licence. The Authority told her Mr Martin was facing criminal charges under the Act. She elected to take over responsibility for the practice after receiving that information.
- [48] Having joined the practice, the next point of enquiry is what Ms Zhou did to ensure she secured the practice, given her knowledge of Mr Martin's circumstances. The interim decision pointed out to Ms Zhou a licensed immigration adviser in such circumstances would be expected to:
- [48.1] Ensure she identified all current instructions (clause 3 of the Code of Conduct required that proper business records should exist and be maintained).
- [48.2] Ensure she managed and controlled communications occurring with the practice (clause 3 of the Code of Conduct).
- [48.3] Ensure clients understood she was the only person in the practice holding a licence and obtain their written authority to act (clause 2.1 of the Code of Conduct).
- [48.4] Satisfy herself client funds were banked in an appropriate bank account, and account to her clients for those funds (clauses 4 and 8 of the Code of Conduct).
- [48.5] Satisfy herself that the persons responsible had managed the engagement professionally to that point and that accordingly she could continue with the instructions. If she identified any difficulties in the work already carried out, then she had to inform and advise her clients of the options open to them.
- [48.6] Take personal responsibility for the future conduct of the engagement and personally ensure Mr Martin had no opportunity to provide immigration advice to her clients or otherwise act against their interests (clauses 1.1 and 3 of the Code of Conduct). In the present case, that would potentially have required explaining to her clients that Mr Martin could not lawfully give immigration advice, the extent of any offending to that point, and the options available.
- [49] However, Ms Zhou failed to do any of those things in a manner that could be expected to address the concerns she should have held, knowing Mr Martin was facing prosecution for offending against the Act.
- [50] Next Ms Zhou made a serious error in her handling of Mr Eppanapally's file. Ms Zhou admitted in her affidavit: *On 29 June 2011, there was an email back from Immigration New Zealand. In response to that email, I rang [Mr Eppanapally's agent] to contact the complainant.* She failed to follow up, and entirely predictably Immigration New Zealand rejected Mr Eppanapally's application for that reason.
- [51] Ms Zhou did not tell Mr Eppanapally, she should have know that the failure to respond would lead to the application being rejected shortly after the expiry of the 1 month deadline set out in the 29 June letter.

- [52] Some months later, after Mr Eppanapally made inquiries, Mr Martin wrote to Mr Eppanapally and gave a fabricated explanation that his application failed, not due to Ms Zhou's failure, but because he did not attend a course with sufficient regularity. Accordingly, Ms Zhou made a serious error and Mr Martin attempted to cover it up in an email of 21 January 2012.
- [53] Ms Zhou wrote to Mr Eppanapally on 17 February 2012 and said:
- As your adviser, I was supposed to get all updated information whenever it was received from Immigration New Zealand. However, Richard Martin is the only one allowed to open the mail every day. I even found some emails sent to me were put into the deleted box recently. Once I was aware of this serious problem this year, I insisted I open the mail beside Richard Martin to avoid the same situation happening again and affecting clients.
- I understand the upset and disappointment; I will be the one who suffers the most. As the adviser I understand what my duties are, but as an employee, I need to follow some of the rules of the company without breaching the Code of Conduct." (Modified for readability)
- [54] Ms Zhou did not address the fact her error resulted in Immigration New Zealand declining the application or point out Mr Martin had provided a false explanation.
- [55] Despite her knowledge of these issues, Ms Zhou continued as the sole licensee in the practice for a further 11 months, and says she only left for family reasons.
- [56] Those circumstances amount to a strong *prima facie* case, at the standard of proof required for a finding of dishonesty, that Ms Zhou was well aware of Mr Martin's conduct and they acted together to cover up her professional failings.
- [57] The oral hearing was an opportunity for Ms Zhou to present her defence to that potential finding.
- [58] Ms Zhou's answer is essentially that she naively thought her duties as an employee exempted her from taking the steps outlined above in paragraph [48]; she could not take those steps as Mr Martin was her employer and entitled to deference. She states that she tried her best in the circumstances. Having listened to Ms Zhou's explanation, and tested it, the overwhelming impression is that Ms Zhou was uncomprehending of her professional duties, how they relate to her role as an employee and the potential consequences of failing to meet them. I was satisfied she was in a position where she was virtually entirely lacking in the skills required to deal with the difficult environment presented by Mr Martin's conduct. Ms Zhou had a duty to control him and was not equipped to do so. Accordingly, I find I must reject the conclusion Ms Zhou embarked on a joint enterprise with Mr Martin that was not what occurred.
- [59] There will be no finding that Ms Zhou breached her professional responsibilities by becoming a party to any potential offending by Mr Martin or that she assisted him in any unlawful or improper activity. However, that is not the end of the matter. Ms Zhou was the licence holder and is accountable for her conduct in the Practice as it related to Mr Eppanapally.

Responsibility

- [60] In the Tribunal's decision *JM v DTM* [2011] NZIACDT 1, the Tribunal emphasised these aspects of professional responsibility:
- [38] It is evident a key element of the mechanism in the Act is that licensed immigration advisers are clearly identified; client relationships commence with the adviser identifying their standing, and providing of a copy of the Code (Code clause 1.4). The scope of section 6 is wide, and one no doubt intended to ensure licensed advisers are not able to be used as a "front" for unlicensed operators. The legislation is structured to effect functional exclusion from the professional relationship of any person who is not either licensed or exempt.
- [39] The legislation provides an important privilege to licensed immigration advisers in allowing them to exclusively provide immigration advice (along with exempt persons). However, consistent with that, licensed advisers carry professional

obligations. They are personally responsible for the professional relationship, regardless of whether they are employees, or otherwise.

- [40] Dealings in relation to fees in my view come with section 7, so a licensed immigration adviser must deal with the client in relation to fees (unless it is simply a clerical aspect such as issuing invoices, which is provided for in section 7(b)(iii)). Determining the value of professional work, and negotiating what is to be paid requires knowledge and experience in immigration, and assists with an immigration matter.
- [41] The purpose of the Act is set out in section 3, and it includes promoting and protecting the interests of consumers receiving immigration advice. Abusive practices in relation to fees were certainly among the concerns the Act was intended to meet. Some confirmation licensed immigration advisers are responsible for dealing with fees as well as other aspects of the professional relationship is found in the scope of disciplinary sanctions. Licensed immigration advisers will potentially be personally responsible under section 51(1)(h) for the refunding of fees in the event such an order is made as a disciplinary sanction. It will not be an answer to say their employer received the fees.
- [42] Accordingly, licensed immigration advisers are given the freedom to practise as employees where they have little control over the business practices of their employer. However, they do so at their peril unless they establish proper protection for their professional independence, and assurance they can ensure they manage and deliver service for all aspects of the professional relationship (alone or with another licensed adviser). It is not open to Ms Zhou to claim they are subordinate to an employer or contractor, or say an unlicensed person was responsible for aspects of the professional relationship.

- [61] There is nothing in the decisions *Immigration Advisers Authority v Yap* [2014] NZHC 1215, and the District Court's decision in that matter (DC Christchurch, 2013-009-001684, 28 January 2014) which reverse those views. The two decisions are essentially decisions on facts and the proposition that something truly beyond a person's control does not trigger professional disciplinary consequences is self-evident. The usual point of difficulty is what is controllable. Proper control often requires that a professional person maintain effective control over employees and resources within a practice. Regardless, there are occasions when professional persons are blameless victims of deception, or other circumstances, and that does not trigger professional disciplinary consequences.

The grounds of complaint

- [62] Having found Ms Zhou was not a party to Mr Martin's conduct, the following grounds of complaint identified in the interim decision remain:
- [62.1] Ms Zhou acted unprofessionally without due care and diligence regarding the complainant's instructions (clause 1 of the Code of Conduct).
- [62.2] She failed to undertake the work required and communicate with her client (clauses 1 and 3 of the Code of Conduct).
- [62.3] She failed to refund fees due when her instructions terminated (clause 3(d) of the Code of Conduct).

Taking charge of Mr Eppanapally's instructions

- [63] As from 1 June 2011, Ms Zhou personally knew of the complainant's instructions and had represented to Immigration New Zealand that she was dealing with them personally, as required by the Act. Her duties to Mr Eppanapally were to take the steps outlined above in paragraph [48].
- [64] She failed to do that, and in particular:
- [64.1] She failed to manage and control communication in the Practice;

[64.2] She did not convey to Mr Eppanapally the importance of, and reasons for, dealing with her and not Mr Martin.

[64.3] She did not have control over arrangements relating to client fees in the practice.

[64.4] She did not secure the practice against Mr Martin's activities.

[65] The result was that Mr Martin was able to, and did, interfere with Immigration New Zealand's communications regarding Mr Eppanapally and then misrepresented Mr Eppanapally's circumstances. Accordingly, Ms Zhou failed to perform her services for Mr Eppanapally with due care, diligence and professionalism. She breached clause 1.1 (a) of the Code of Conduct in those respects.

Failure to perform work and communicate

[66] As noted, Ms Zhou admitted: 'On 29 June 2011, there was an email back from Immigration New Zealand. In response to that email, I rang [Mr Eppanapally's agent] to contact the complainant.'

[67] The failure to respond to the 29 June 2011 letter was the reason for Immigration New Zealand declining Mr Eppanapally's application. Their 2 August 2011 letter said:

We have carefully considered your application, but in the absence of response to my letter dated 29 June, we are unable to make an assessment that the above criteria are met.

[68] The 29 June 2011 letter was critical. Failure to respond would have a clear and obvious result, which indeed followed. Mr Eppanapally says that the person Ms Zhou rang was not authorised. However, that is incidental. Ms Zhou had to ensure that Mr Eppanapally understood the importance of the 29 June 2011 letter and had to follow up to make sure she had the necessary information. Clause 3(f) requires written confirmation of important communications.

[69] Ms Zhou should have been aware in the absence of a response the application would fail and should have expected notification from Immigration New Zealand about the time Immigration New Zealand did decline the application.

[70] Ms Zhou's failure to deal adequately with the 29 June 2011 letter was far short of minimum professional standards. I am satisfied her failure to follow up amounted to failure to perform her services for Mr Eppanapally with due care, diligence and professionalism. Accordingly, she breached clause 1.1(a) of the Code of Conduct in that respect.

[71] Further, her failure to write to him and identify the importance of responding amounted to a failure to provide timely updates (clause 3(a) of the Code of Conduct), and confirm in writing the details of a material discussion (clause 3(f)).

Refunding fees

[72] On 21 January 2012, Mr Martin wrote to Mr Eppanapally via the apparent contact person. Mr Eppanapally disputes the standing of that person, however that is not of immediate significance.

[73] Mr Martin said in this letter:

[73.1] Immigration New Zealand declined Mr Eppanapally's application for a business visa because he only attended 28% of classes while studying on a previous student visa and was not a *bona fide* student.

[73.2] He, that is Mr Martin, had used all his 'sources and experience to make [the] application a success.'

[73.3] There would be no refund of professional fees.

- [74] Ms Zhou was certainly aware of the issues and should have fully investigated before she wrote her letter on 17 February 2012 to Mr Eppanapally. She should have known that Mr Martin's letter was dishonest (and known what he was writing), and that the failure of Mr Eppanapally's application was the result of her own failure to deal with the 29 June 2011 letter from Immigration New Zealand.
- [75] Ms Zhou's own professional failings had precluded Mr Eppanapally's application having any chance of success. Mr Eppanapally was entitled to have some or all of the fees he paid refunded.
- [76] Ms Zhou had an obligation on the termination of her instructions to provide any refunds payable pursuant to clause 3(d) of the Code of Conduct. I am satisfied Ms Zhou failed to carry out her duties in relation to refunding fees and breached the Code in that respect.

Apparent bias

- [77] The Tribunal issued a reasoned interim decision, which drew Ms Zhou's attention to a potential view of the information before the Tribunal, pointed out the possible consequences of the potential findings, expressed concern regarding the limited response she made to a serious complaint, and drew her attention to her right to legal representation and the value in seeking it.
- [78] The Tribunal has a duty to ensure advisers facing complaints are aware of potential findings. Interim decisions are largely for the benefit of the adviser, so that they may provide a full response to information before the Tribunal. There is no merit in the claim that doing so amounts to apparent bias.

New decision maker for each complaint

- [79] Mr Tyrrell cited no authority for his proposition that different decision makers should hear complaints 'separated by time and circumstance involving some of the same parties.' In the professional disciplinary context, the practical difficulties of doing so are formidable. Numerous complaints have arisen in the Practice; that is also true of other practices and occurs in many summary jurisdictions.
- [80] Judicial officers are required to deal with matters independently on the evidence relating to the specific matter and after ensuring affected parties are on notice of issues. Those things are the proper protection; not finding a new decision-maker for each complaint.

Decision

- [81] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [82] Ms Zhou breached the Code of Conduct in the respects identified.
- [82.1] Clause 1.1(a) - Ms Zhou failed to perform her services for Mr Eppanapally with due care, diligence and professionalism in relation to managing the Practice, and the instructions.
- [82.2] Clause 1.1(a) - Ms Zhou failed to deal adequately with Immigration New Zealand's 29 June 2011 letter requesting further information.
- [82.3] Clause 3(a) and (f) - Ms Zhou failed to provide timely updates (clause 3(a) of the Code of Conduct), and confirm in writing the details of a material discussion (clause 3(f)), in relation to responding to the 29 June 2011 letter.
- [82.4] Clause 3(d) - Ms Zhou failed to provide a refund of fees pursuant to clause 3(d) of the Code of Conduct.
- [83] They are grounds for complaint pursuant to section 44(2)(e) of the Act.
- [84] In all other respects, the Tribunal dismisses the complaint.

Submissions on Sanctions

- [85] The Tribunal has upheld the complaint; accordingly, pursuant to section 51 of the Act, it may impose sanctions.
- [86] The Authority and Mr Eppanapally now have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees and compensation.
- [87] Whether they do so or not, Ms Zhou is entitled to make submissions and respond to any submissions from the other parties.
- [88] Any application for an order for the payment of costs or expenses under section 51(1)(g) should be accompanied by a schedule particularising the amounts and basis for the claim.

Timetable

- [89] The timetable for submissions will be as follows:
- [89.1] The Authority and Mr Eppanapally are to make any submissions within 10 working days of the issue of this decision.
- [89.2] Ms Zhou is to make any further submissions (whether or not the Authority or Mr Eppanapally makes submissions) within 15 working days of the issue of this decision.
- [89.3] The Authority and Mr Eppanapally may reply to any submissions made by Ms Zhou within 5 working days of him filing and serving those submissions.

DATED at WELLINGTON this 28th day of November 2014.

G D Pearson
Chair