

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

Decision No: [2015] NZIACDT 109

Reference No: IACDT 019/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

N G and N M N

Complainant

AND

Ueite (Itaotemai) Letalu

Adviser

**THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE
PUBLISHED**

DECISION
IMPOSITION OF SANCTIONS

REPRESENTATION:

Registrar: In person.

Complainant: Mr R Small, lawyer, Pacific Legal, Lower Hutt.

Adviser: In person.

Date Issued: 22 December 2015

DECISION

This complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Mr Letalu. The circumstances are set out fully in the decision upholding the complaint (refer: www.justice.govt.nz [2015] NZIACTD 41).
- [2] The grounds on which the Tribunal upheld the complaint were:
- [3] Mr Letalu accepted instructions to assist the complainants to apply for visas. At the time they were in New Zealand unlawfully, as their visas had expired some years before. Mr Letalu agreed to apply under a discretionary provision for visas. The allegations are that he:
- [3.1] Failed to lodge the request promptly, and then lodged an unsatisfactory request.
- [3.2] He charged too much for the work he did.
- [3.3] He issued an invoice, which had the wrong GST rate, and double charged GST.
- [3.4] He failed to tell his clients when the request failed.
- [4] The Tribunal upheld the complaint due to breaches of the Code of Conduct (2010).
- [5] The full circumstances are set out in the substantive decision.

The Parties' Positions on Sanctions

The Authority

- [6] The Authority did not make any submissions on sanctions.

The Complainant

- [7] The complainant sought costs of \$3,450.00, and compensation of \$2,000 to remediate the deficiencies in the service Mr Letalu provided.

Mr Letalu

- [8] Mr Letalu did not provide any submissions
- [9] In the past, he has claimed his has difficulty paying a financial penalty. It appears likely to remain the position.

Discussion

The principles to apply

- [10] 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.
- [11] When imposing sanctions those statutory purposes require consideration of at least four factors which may materially bear upon maintaining appropriate standards of conduct:
- [11.1] *Protecting the public*: Section 3 of the Act states “The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ...”

- [11.2] *Demanding minimum standards of conduct: Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) and *Taylor v General Medical Council* [1990] 2 AC 539; [1990] 2 All ER 263 (PC) discuss this aspect.
- [11.3] *Punishment*. The authorities, including *Z v Dental Complaints Assessment Committee*, emphasise that punishment is not the purpose of disciplinary sanctions. Regardless, punishment is a deterrent and therefore a proper element of disciplinary sanctions (*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007).
- [11.4] *Rehabilitation*: It is important, when practicable, to have the practitioner continue as a member of the profession practising well (*B v B* [1993] BCL 1093; HC Auckland HC4/92, 6 April 1993).

Previous complaints

- [12] This complaint follows a series of complaints in other unrelated matters. One of them involved dishonest and misleading conduct. The sanctions in that complaint included effectively removing Mr Letalu from the profession. I will consider that prohibition when determining what additional sanctions should apply.

Mr Letalu's financial position

- [13] While Mr Letalu's financial position does not absolve him from liability, in the present case I am satisfied I should give priority to the interests of the complainants.
- [14] I will have regard to the past financial penalties, and that Mr Letalu has been removed from the profession; and only make orders in favour of the complainants. That is based solely on the interests of the complainants who were vulnerable clients.

Refund of fees

- [15] The Tribunal will order Mr Letalu to refund the fees of \$3,450, as he failed to perform any services of value.

Compensation

- [16] The complainants are entitled to \$2,000 as a contribution to their costs of remediating their position; the grounds for complaint led to the complainants having to remediate Mr Letalu's failure to carry out their instructions.

Censure

- [17] In accordance with the usual practice of disciplinary tribunals, censure will be an express sanction.

Decision

- [18] Mr Letalu is:
- [18.1] Censured,
- [18.2] Ordered to refund fees of \$3,400 to the complainants.
- [18.3] Ordered to pay compensation of \$2,000 to the complainants.

Order prohibiting publication of the complainant's name or identity

- [19] As the complainants were in New Zealand unlawfully, the Tribunal orders that their names and any information that may identify them is not to be published.

- [20] This order recognises that persons seeking advice regarding their unlawful status in New Zealand are entitled to complain regarding professional misconduct, without fear of publication that may adversely affect them.
- [21] Leave is reserved for the complainants or the Registrar to apply to vary this order. The order does not prevent the complainants disclosing the decision to their professional advisers, or any authority they consider should have a copy of the decision.

DATED at WELLINGTON this 22nd day of December 2015

G D Pearson
Chairperson