

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

Decision No: [2015] NZIACDT 102

Reference No: IACDT 045/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Christiaan Hendrik Muller**

Complainant

**AND**

**Sharon Gail Yerman**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** Ms C J Pendleton, lawyer, MBIE, Auckland.

**Complainant:** In person.

**Adviser:** Mr H Thompson and Ms J Rutherford, McMahon Butterworth Thompson, lawyers,  
Auckland.

Date Issued: 11 December 2015

## DECISION

### The complaint

- [1] The Tribunal upheld this complaint in a decision dated 25 June 2015, *Muller v Yerman* [2015] NZIACDT 77 ([www.justice.govt.nz](http://www.justice.govt.nz)). The Tribunal found:
- [1.1] The complainant engaged Ms Yerman to assist him and his family to migrate to New Zealand from South Africa. The proposal was to apply for residence visas relying on the skilled migrant category for the principal applicant. To do so successfully, the complainant needed an offer of employment in New Zealand. He had an oral offer, but it has to be a firm written offer to qualify.
- [1.2] When a written employment offer was not forthcoming, Ms Yerman and the complainant developed a different strategy where the initial step was to get employment in New Zealand, subject to obtaining a work visa. Accordingly, Ms Yerman directed most of her services to a work visa application.
- [1.3] Ms Yerman could not produce documentation recording the change from seeking a residence visa to seeking a work visa. Nor could she produce records of her advice, or a written agreement to provide services for the work visa.
- [1.4] When the complainant had difficulties finding work in New Zealand, he terminated Ms Yerman's instructions. She refunded him half of the fee he paid.
- [2] The Tribunal concluded that Ms Yerman:
- [2.1] Failed to confirm details of material discussions;
- [2.2] Failed to alter her service agreement to accommodate the change of circumstances; and
- [2.3] Did not provide a proper refund.
- [3] It followed Ms Yerman breached clauses 3(f), 1.5(e) and 3(d) of the 2010 Licensed Immigration Advisers Code of Conduct. In addition, the Tribunal indicated to Ms Yerman that it had further concerns, as it had previously issued a warning in relation to an earlier complaint on 31 July 2012. The Tribunal formally cautioned Ms Yerman in these terms:
- “Ms Yerman is [c]autioned that her failure to accept responsibility for professional failings, and instead attempting to blame her client, raises the question of her fitness to practice without supervision. She is strongly encouraged to reflect on the circumstances that led to this complaint, and pursue further training and education in relation to professional ethics. Should Ms Yerman have another complaint upheld against her, this caution may be considered in relation to the appropriate sanctions to impose.
- [4] The Tribunal requested that Ms Yerman, who lives and practices in South Africa, travel to New Zealand to appear before the Tribunal.

### Ms Yerman's response

- [5] Ms Yerman attended a hearing before the Tribunal on the matter of sanctions; the complainant did not take any role in relation to sanctions. The Registrar took a neutral position, but recognised Ms Yerman was in a situation where she needed to address some attitudinal issues.
- [6] It was clear to me that Ms Yerman has reflected on her circumstances and the nature of her duties to her clients. If there is a “golden thread”, in the distinction between professionalism and the standard commercial obligations of service providers, it lies in putting a client's interests before your own. There are of course limits to that principle, however, the Tribunal saw in her responses to complaints, and the circumstances leading to the original complaint, a lack of insight on Ms Yerman's part. That was not evident when Ms Yerman appeared before

the Tribunal and gave evidence. It was clear she had taken advice from her counsel, and had a quite different appreciation of the nature of her duties as a professional person.

- [7] It is also evident Ms Yerman has taken steps to alter her practice. Significantly, she now has another licensed immigration adviser working with her. As Ms Yerman is not in New Zealand, the opportunities for professional networking and collegiality are more limited than they are for most licensed immigration advisers.
- [8] Ms Yerman gave evidence of changes she has implemented to ensure she is working in a respectful and collegial way with her colleague.
- [9] Ms Yerman also agreed to refund the balance of the fees she received.

### Discussion

- [10] This complaint in isolation is at the lower end of the scale, though certainly not trivial.
- [11] The appropriate sanctions very much turn on Ms Yerman's attitude, and the confidence the Tribunal has that Ms Yerman will in future meet the standards promised by the Act. 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.”
- [12] Despite the grounds of this particular complaint being at the lower end of the scale, I considered that unless I could be satisfied that Ms Yerman's attitudes had changed and she is working in an environment that gives confidence she will maintain standards, orders affecting her licence would potentially be necessary. This was because Ms Yerman had already been subject to a complaint before the Tribunal and had received a formal warning about her attitude towards her professional responsibilities and her behaviour.
- [13] I am satisfied Ms Yerman is genuinely committed to meeting the standards of her profession, and has taken active and tangible steps to do so. I had the impression from Ms Yerman's evidence she has the ability to provide professional services to a high standard, and indeed that generally she does so. I am satisfied this is an occasion where the Tribunal should extend a considered trust to Ms Yerman. The Tribunal will not issue a formal caution, as it is not necessary to do so to bring home to Ms Yerman what the consequences of failing to maintain professional standards would be.
- [14] I also take account of the cost she has already undertaken in travelling to New Zealand to appear before the Tribunal.
- [15] In the unusual circumstances of this case, the only sanction the Tribunal will impose is to require Ms Yerman to repay the balance of the fees she received from the complainant.

### Order

- [16] Ms Yerman is to refund the balance of all fees paid to her in respect of the instructions to which this complaint relates.

**DATED** at WELLINGTON this 11<sup>th</sup> day of December 2015.

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**G D Pearson**  
Chair