

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

Decision No: [2015] NZIACDT 110

Reference No: IACDT 025/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**Between**

**Rajapaksha Senadipathi and Jeewani  
Xavier**

Complainant

**AND**

**Eduardo Maala Sampang**

Adviser

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**DECISION**  
IMPOSING SANCTIONS

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**REPRESENTATION:**

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

**Complainant:** Mr A McClymont, Lawyer, McClymont & Associates, Auckland.

**Adviser:** In person.

**Date Issued:** 23 December 2015

## DECISION

### This Complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Mr Sampang (*Senadipathi and Xavier v Sampang* [2015] NZIACDT 43; see [www.justice.govt.nz](http://www.justice.govt.nz)).
- [2] The complaint was that Mr Sampang accepted instructions and received a fee to assist the complainants with a request for a visa. The allegations are that he:
  - [2.1] Failed to comply with the requirements to commence a professional relationship. He had no written agreement, and did not attend to the various disclosure requirements.
  - [2.2] He offered one of the complainants employment, and said that would allow her to qualify for a work visa. The employment was not satisfactory to qualify for a work visa.
  - [2.3] The application for a visa failed, and Mr Sampang advised one of the complainants to continue to work for him; it was unlawful for her to do so.
  - [2.4] He then failed to record his advice in writing.
- [3] The Tribunal upheld the complaint, as Mr Sampang breached the Licensed Immigration Advisers Code of Conduct 2010 Code.
- [4] The full circumstances are set out in the substantive decision.

### The Parties' Positions on Sanctions

- [5] The Registrar provided submissions on sanctions; she reviewed the general principles and reported on Mr Sampang's history of offending, and his non-compliance with sanctions imposed for earlier complaints.
- [6] It appears Mr Sampang has not complied with a requirement to undertake training, pay a penalty of \$3,500 or pay the complainant \$13,620 as required by a previous order of this Tribunal in another complaint.
- [7] The Registrar drew attention to the consumer protection the Immigration Advisers Licensing Act 2007 provides. The Registrar considered Mr Sampang lacked the skills to practise, and if he is to practise, he should complete the necessary training first. Mr Sampang does not currently hold a licence under the Act.
- [8] Mr Sampang did not make any submissions.

### Discussion

#### *Failure to comply with previous orders and the gravity of this complaint*

- [9] The present position presents a concerning picture from the point of view of consumers promised protection under the Act. The previous complaint involved matters sufficiently serious to warrant a retraining requirement, and payment of substantial compensation and penalties. The present complaint involves offering employment, which did not qualify for visa purposes, and then encouraging an employee to continue working unlawfully.
- [10] In short, Mr Sampang's conduct is inconsistent with him having the integrity and skill to offer immigration services to the public as a licensed immigration adviser. His failure to comply with previous orders increases the level of concern.
- [11] The only substantial sanctions the Tribunal can impose on Mr Sampang are financial, and a prohibition on applying for a licence for a period of up to two years. The Tribunal must of course impose sanctions on a principled basis, reflecting the gravity of the professional offending, and the overall circumstances.

*The starting point for sanctions for this complaint*

- [12] Mr Sampang's offending in this complaint is at the high end. His professional offending involved offering employment in his own practice, using his standing as a licensed immigration adviser to induce a vulnerable migrant to accept an offer of employment; and ultimately he encouraged her to continue working unlawfully. That involves a concerning element of exploitation, and disregard for the immigration laws Mr Sampang is required to apply and respect.
- [13] In relation to Mr Sampang's licence, the encouragement to work unlawfully in his practice would usually require at least a period of suspension. However, the issues relating to Mr Sampang's licence requires a broader approach, focused on consumer protection.
- [14] Accordingly, the starting point is:
- [14.1] Censure,
- [14.2] A financial penalty of \$7,500,
- [14.3] An order suspending or cancelling Mr Sampang's licence, with a potential return to practice after training, in a mentored environment, and
- [14.4] Any refund of fees and compensation due to the complainant.
- [15] There are no mitigating circumstances. The additional factor that I have considered is Mr Sampang's failure to comply with previous orders, and his lack of engagement with this complaint. That includes his failure to offer an explanation or justification for his failure to comply with previous orders. This Tribunal has repeatedly set out the principles relating to rehabilitation, and that exclusion from the profession is a last resort. In cases such as this, where a person has formerly been a licensed immigration adviser, shown no commitment to honouring their legal commitment to clients they have harmed, and not gained the skills required to practise competently, then, exclusion from the profession is the only response left.
- [16] Accordingly, the Tribunal will make an order that Mr Sampang cannot apply for a licence of any kind under the Act for a period of two years, the statutory maximum. However, while the decision is for the Registrar, not the Tribunal, Mr Sampang should not expect to qualify for a licence after that period. The Registrar is entitled to take his disciplinary history into account when deciding whether to grant a licence then, or at any time in the future.
- [17] The Tribunal will also impose a financial penalty of \$7,500.

*Compensation and the refund of fees*

- [18] The complainant is entitled to a refund of \$5,000 in fees. Mr Sampang had no lawful instructions and failed to provide effective services.
- [19] The complainants also relocated due to a promise of employment, and immigration services so they could commence a pathway to long-term migration. However, they provided no evidence of quantified loss. The Tribunal on some occasions has awarded compensation in the nature of general damages, for the suffering, inconvenience and expense of rectifying the failure of a licensed immigration adviser to deliver professional services to minimum standards. However, the awards are modest, and the Tribunal is concerned to ensure they are not simply an additional financial penalty.
- [20] The complainant clearly did require professional assistance after Mr Sampang put her into a difficult situation, and no doubt faced substantial difficulties. I am satisfied it is reasonable to award compensation of \$3,500 to the complainant on that basis. The relocation itself was clearly a serious burden.

*Censure*

- [21] The Tribunal will censure Mr Sampang for his conduct.

**Decision**

[22] Mr Sampang is:

[22.1] Censured.

[22.2] Prevented from applying for a licence of any kind under the Act for a period of two years from the date of this decision.

[22.3] Ordered to pay a penalty of \$7,500.

[22.4] Ordered to pay the complainant:

[22.4.1] \$5,000 as a refund of fees,

[22.4.2] \$3,500 in compensation.

**DATED** at WELLINGTON this 23<sup>rd</sup> day of December 2015

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**G D Pearson**  
Chair