

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

Decision No: [2015] NZIACDT 15

Reference No: IACDT 003/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Senitalela Fifita

Complainant

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

DECISION
IMPOSITION OF SANCTIONS

REPRESENTATION:

Registrar: In person

Complainant: Mr R Small, solicitor, Pacific Legal Ltd, Wellington.

Adviser: In person

Date Issued: 6 March 2015

DECISION

This complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Ms Tangilanu published as *Fifita v Tangilanu* [2014] NZIACDT 108. The circumstances are set out in that decision (which can be located on the Ministry of Justice website: www.justice.govt.nz).
- [2] In summary the circumstances giving rise to the complaint were:
- [2.1] The complainant and her then husband were in New Zealand unlawfully, as their visas had expired. The complainant engaged Ms Tangilanu to assist them. Ms Tangilanu promised she would get the complainant a work visa, entered a written agreement that did not comply with the Code, failed to make the application promptly, then belatedly made a request to the Minister and later lodged an application with Immigration New Zealand in relation to the husband. After taking the initial step of making a request of the Minister, she did not have an agreement relating to the subsequent application to Immigration New Zealand.
- [2.2] The events amounted to breaches of the Licensed Immigration Advisers Code of Conduct 2010 (the Code) because the promise of getting a visa was false and Ms Tangilanu did not document or perform her engagement in accordance with the Code.
- [3] The Tribunal upheld the complaint. In particular, breach of the following obligations in the Code:
- [3.1] due care and diligence in performing services (clause 1.1(a)),
- [3.2] reporting and providing timely updates (clause 3(a)),
- [3.3] documenting the engagement and delivering professional services in accordance with the Code (clause 1.5(b), 3 and 8(b)), and
- [3.4] representing immigration opportunities honestly (clause 5.1(c)).

The Parties' Positions on Sanctions

- [4] The parties did not provide submissions on sanctions.

Discussion

Absence of significant mitigating factors

- [5] There is little or no mitigation for this or any of the complaints Ms Tangilanu has faced. Ms Tangilanu has not taken responsibility for her indefensible behaviour across a large number of complaints.

Ms Tangilanu's licence

- [6] On two previous occasions, the Tribunal ordered that Ms Tangilanu could not apply for a licence for a period of two years (separate and accordingly cumulative periods). If Ms Tangilanu were to apply for a licence after that period, she would have to qualify for the profession and satisfy the Registrar that she otherwise meets the statutory requirements.
- [7] It is entirely a matter for the Registrar, not the Tribunal, however the fact an order operates for only two years (the statutory maximum) does not indicate Ms Tangilanu can expect to get a licence after that time. Aside from other standards she will need to meet, section 17(b) of the Act allows the Registrar to take account of Ms Tangilanu's history of professional offending when deciding if she is fit to hold a licence.

- [8] Ms Tangilanu is on any realistic view permanently excluded from the profession. Any re-entry to the profession would be subject to a requalification and rehabilitation process that would be rigorous.
- [9] Accordingly, a further period of prohibition on applying for a licence would be no more than an empty gesture. There will be no further order in these circumstances.
- [10] The other sanctions imposed on Ms Tangilanu take into account the Tribunal has excluded Ms Tangilanu from the profession.

The financial penalty on this complaint

- [11] Ms Tangilanu's conduct in this matter was serious; it involves dishonest deception. She accepted instructions to deal with immigration issues that were of high importance to the complainant. Her instructions were founded on her dishonesty, and then she failed to carry out her instructions to the standard required, and that gravely affected her clients.
- [12] Given the financial penalty is in addition to Ms Tangilanu being excluded from the profession, a penalty of \$7,500 is proportionate to the professional offending, in this matter and overall. The Tribunal must condemn an adviser dishonestly gaining instructions; it is the very sort of conduct the Act is intended to eradicate.
- [13] I am also mindful Ms Tangilanu may not have the means to compensate her former clients (there have been substantial awards in many cases), and this penalty will only make that more difficult. Accordingly, I have regard to the financial consequences of being excluded from the profession in this additional respect, and will reduce the penalty to \$5,500.

Compensation

- [14] The complainant has not sought compensation and accordingly there will be no award.

Refund of fees

- [15] The complainant is entitled to a full refund of fees for the reasons discussed in the decision upholding the complaint; the amount identified is \$1,465.78.

Costs and Expenses

- [16] The parties have not sought costs, so there is no order.

Censure

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

Decision

- [18] Ms Tangilanu is:
- [18.1] Censured,
- [18.2] Ordered to pay a penalty of \$5,500.
- [18.3] Ordered to pay the complainant \$1,465.78, being a refund of fees.

DATED at WELLINGTON this 6th day of March 2015

G D Pearson
Chair