

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

Decision No: [2015] NZIACDT 60

Reference No: IACDT 007/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Suilana Samisoni

Complainant

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

DECISION
IMPOSING SANCTIONS

REPRESENTATION:

Registrar: Ms K England, lawyer, MBIE, Auckland.

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

Adviser: In person

Date Issued: 19 May 2015

DECISION

This Complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Ms Tangilanu (*Samisoni v Tangilanu* [2015] NZIACDT 34; see www.justice.govt.nz).
- [2] The complaints were:
- [2.1] That Ms Tangilanu breached clause 1.1(c) and 3(b) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code) as she did not take reasonable steps to ensure her client's interests were represented when she could not continue as a representative; and did not confirm in writing when she ceased work part way through her instructions. The circumstances were:
- [2.1.1] Ten days after receiving instructions from the complainant, Ms Tangilanu's licence as a licensed immigration adviser expired.
- [2.1.2] She did not tell the complainant, and took no steps to ensure continuing representation or otherwise address the situation.
- [2.1.3] Ms Tangilanu potentially failed to take reasonable steps to ensure the complainant's interests were represented when she could no longer continue as her representative (clause 1.1(c) of the 2010 Code); and
- [2.1.4] She potentially failed to confirm in writing to the complainant when she ceased work part way through the immigration process (clause 3(b) of the 2010 Code).
- [2.2] That Ms Tangilanu breached clause 3(d) of the 2010 Code, as she did not provide any refund payable on ceasing her contract to provide services. The circumstances were:
- [2.2.1] The complainant paid Ms Tangilanu \$500 for professional services, and she had not performed the services before her licence expired.
- [2.2.2] After her licence expired, Ms Tangilanu could no longer provide the services.
- [2.2.3] Ms Tangilanu should have refunded the fees, and did not do so.
- [2.2.4] Clause 3(d) of the Code required Ms Tangilanu to refund the fee.
- [3] The Tribunal upheld the complaints, finding:
- [3.1] Ms Tangilanu's delivery of the services she agreed to provide lacked both due care, and diligence; accordingly she breached clause 1.1(a) of the 2010 Code for those reasons.
- [3.2] Ms Tangilanu failed to report that Immigration New Zealand rejected the request, and did not report why it was rejected. She had a duty to do so, and accordingly breached clause 3(a) of the 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 rather than suggesting specific sanctions. She also reported on Ms Tangilanu's history of offending and her non-compliance with sanctions imposed for earlier complaints.
- [6] For the complainants Mr Small emphasised Ms Tangilanu's lamentable professional disciplinary history, and noted he opposed the Registrar granting Ms Tangilanu a licence when she first became a licensed immigration adviser. He sought orders for his clients that Ms Tangilanu pay her:

- [6.1] A refund of \$500 in fees,
- [6.2] Compensation for the general impact of the offending,
- [6.3] Costs and expenses, plus remedial legal work amounting to \$2,000.

[7] Ms Tangilanu did not make any submissions.

Discussion

Prior licence cancellation and sanctions

- [8] The Tribunal cancelled Ms Tangilanu's licence and twice prohibited her from applying for a licence for consecutive periods; the later period expires on 2 October 2016. The Tribunal has previously upheld and imposed sanctions in 16 previous proceedings, which generally involved complaints regarding more than one aspect of Ms Tangilanu's conduct.
- [9] The Tribunal also made orders for Ms Tangilanu to refund fees, and pay financial sanctions amounting to \$89,975.78. Ms Tangilanu has not made any payments at all; the Registrar has not bankrupted Ms Tangilanu or taken other action as she considers it is uneconomic to incur further costs with virtually no chance of recovering any money.
- [10] Ms Tangilanu has now left New Zealand.

This is one of a series of current complaints

- [11] Ms Tangilanu has had a further four complaints upheld, and this decision is part of that series where the Tribunal is required to make orders in respect of those current complaints.

Ms Tangilanu's circumstances

- [12] Given the content of the Registrar's report, the Tribunal will take the approach Ms Tangilanu has no ability to pay any financial sanctions, and there will be no recovery, unless Ms Tangilanu's circumstances change.
- [13] While the Registrar makes the decision, given Ms Tangilanu's history of professional offending, and her failure to comply with orders of the Tribunal, there can be little doubt Ms Tangilanu will never again successfully apply for a licence under the Act.

The options available to the Tribunal

- [14] The only relevant sanctions the Tribunal can impose on Ms Tangilanu are financial, and a prohibition on applying for a licence for a period of up to two years. The reality is those orders will have no effect, as Ms Tangilanu could not successfully apply for a licence and it appears she will not pay any financial sanctions, so there will be no consequences.
- [15] The sanctions the Tribunal can impose are accordingly simply a marker of the gravity of Ms Tangilanu's offending, and a denunciation of it. Of course, if Ms Tangilanu were to have the means to pay in the future, the financial orders would take effect.
- [16] Naturally, the Tribunal must impose sanctions on a principled basis, reflecting the gravity of the professional offending, and the overall circumstances.

The relevance of Ms Tangilanu's inability to pay

- [17] For reasons discussed in previous sanctions decisions concerning Ms Tangilanu, the Tribunal does not consider lack of means should result in an order lower than what would otherwise apply¹. However, the Tribunal is willing to make orders that will favour payment of compensation and the refund of fees to complainants. In this case, because Ms Tangilanu will not pay any financial sanction, there is in reality nothing that can improve the complaint's position.

¹ See for example, *Kaufusi v Tangilanu* [2014] NZIACDT 105

The financial penalty on this complaint

- [18] Ms Tangilanu's offending in this complaint is in the mid-range. She failed to provide the professional services she agreed to supply; her client was in New Zealand unlawfully and required effective intervention; and an understanding of her options. Instead, Ms Tangilanu failed to do what she agreed, then failed to report when she could no longer act for her. Her failure to deal with her clients professionally when she could no longer act was serious, as her client was in New Zealand unlawfully, that required urgent action. Ms Tangilanu's professional failings were an example of her systematic failure to meet professional obligations.
- [19] In all the circumstances I am satisfied that a penalty of \$4,000 is proportionate, being in the mid-range where the maximum penalty is \$10,000.

Compensation and the refund of fees

- [20] The complainant is entitled to a refund of \$500 in fees. Ms Tangilanu had no lawful instructions.
- [21] The complainant seeks compensation of \$2,000. However, she 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.
- [22] In addition, the complainant sought to recover some of the cost of professional assistance after Ms Tangilanu failed to meet her professional obligations.
- [23] I am satisfied it is reasonable to award compensation of \$1,500 to the complainant in the nature of general damages, and a further \$1,000 for the costs of remediation that Mr Small claimed. That is a total of \$2,500 compensation.

Costs

- [24] The complainant sought costs and expenses of \$2,000 but provided no evidence of actual costs and it included a component for remediation costs. The Tribunal heard this complaint on the papers; Mr Small provided submissions on sanctions. I allowed the cost of remediation as part of the compensation. An award for \$1,500 in costs and expenses is reasonable without proof of actual costs.

Prohibition on applying for a licence

- [25] Ms Tangilanu has failed to pay any disciplinary penalties, has a disciplinary history of: systematically failing to comply with professional obligations, and has done nothing to comply with orders to pay penalties and compensate her former clients. It is likely the only effect of this decision is denunciation of Ms Tangilanu's conduct. Those factors together make it appropriate to impose a further prohibition on Ms Tangilanu applying for a licence on each of the four current charges; notwithstanding that she is never likely to be able to apply successfully for a licence.
- [26] Accordingly, the Tribunal will order that Ms Tangilanu is prohibited from applying for a licence for two years from 2 October 2016.

Censure

- [27] The Tribunal censures Ms Tangilanu for her conduct.

Decision

- [28] Ms Tangilanu is:
- [28.1] Censured.

[28.2] Prevented from applying for a licence for a period of two years from 2 October 2016.

[28.3] Ordered to pay a penalty of \$4,000.

[28.4] Ordered to pay the complainant:

[28.4.1] \$500 as a refund of fees,

[28.4.2] \$2,500 in compensation, and

[28.4.3] \$1,500 in costs and expenses.

DATED at WELLINGTON this 19th day of May 2015

G D Pearson
Chair