

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

Decision No: [2015] NZIACDT 61

Reference No: IACDT 008/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

U U and G U

Complainant

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

**THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE
PUBLISHED**

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 (*U v Tangilanu* [2015] NZIACDT 35; see www.justice.govt.nz).
- [2] The complaints were:
- [2.1] That Ms Tangilanu breached clause 1.5(a), (b) and (d) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). Those provisions required Ms Tangilanu to have written terms of engagement, explain all relevant matters, and have her clients confirm in writing they accepted the terms. The alleged circumstances were:
- [2.1.1] Ms Tangilanu took no steps to establish her professional relationship pursuant to the disclosure, and documentation process those provisions of the 2010 Code required.
- [2.1.2] She accordingly failed:
- [2.1.2] To make the complainants aware, in writing and in plain language of the terms of the agreement and all significant matters relating to it (clause 1.5(a) of the 2010 Code);
- [2.1.2] To ensure the complainants engaged her pursuant to a written agreement that contained a full description of the services she would provide (clause 1.5(b) of the 2010 Code); and
- [2.1.2] To have the complainants confirm in writing that they accepted the terms of an agreement (clause 1.5(d)).
- [2.2] That Ms Tangilanu breached clause 8(b) of the 2010 Code, as she failed to set out fees and disbursements before commencing work. The alleged circumstances were:
- [2.2.1] Ms Tangilanu received \$1,500 for her services, but did not set out the fees and disbursements before commencing the work.
- [2.2.2] She did so in breach of clause 8(b) of the 2010 Code.
- [2.3] That Ms Tangilanu was negligent, which is a ground for complaint pursuant to section 44(2)(a) of the Immigration Advisers Licensing Act 2007 (the Act). The alleged circumstances were:
- [2.3.1] Ms Tangilanu failed to respond to Immigration New Zealand's letter of 22 June 2011, and as a result, the visitor visa applications were declined.
- [2.3.2] Ms Tangilanu did not tell the complainants she was applying for visitor visas, or tell them when Immigration New Zealand declined those applications.
- [2.3.3] Ms Tangilanu did not respond to Immigration New Zealand's 4 August 2011 letter, and as a result the female complainant's application for a work visa was declined, and Ms Tangilanu did not tell the complainants about those matters.
- [2.3.4] Ms Tangilanu was negligent because:
- [2.3.4] She prepared and submitted a work visa without instructions.
- [2.3.4] She failed to tell the complainants about Immigration New Zealand's inquiries, and the need to respond.
- [2.3.4] She failed to reply to Immigration New Zealand's queries.

[2.3.4] She did not tell her clients the applications failed.

[2.3.5] The Registrar also identified potential breaches of the 2010 Code arising from the same matters, if the more serious finding of negligence is not made out.

[3] The Tribunal upheld the complaints, finding:

[3.1] Ms Tangilanu failed to comply with clauses 1.5(a), (b) and (d), and 8(b) of the 2010 Code. Ms Tangilanu simply failed to have a written agreement, failed to explain the essential matters that were to be in the agreement, and did not set out her fees before commencing work.

[3.2] She was also negligent, as she:

[3.2.1] Failed to get instructions before lodging applications for visitor visas.

[3.2.2] She was also negligent in failing to inform her clients about Immigration New Zealand's queries, and then not taking instructions and replying to Immigration New Zealand.

[3.2.3] Failed to report to her clients, they were in a situation where they were in New Zealand unlawfully, and failing to respond appropriately would potentially harm their long-term immigration prospects.

[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 \$1,500 in fees,

[6.2] Compensation of \$2,000 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 complainant's position.

The financial penalty on this complaint

- [18] Ms Tangilanu's offending in this complaint is in the mid-range. She failed to commence her professional relationship properly, which included a failure to provide advice he clients required. She was the negligent in multiple respects, indeed grossly so. Ms Tangilanu's professional failings were an example of her systematic failure to meet professional obligations.
- [19] In all the circumstances I am satisfied a penalty of \$6,000 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 \$1,500 in fees. Ms Tangilanu had no lawful instructions, and did not deliver services to a minimum professional standard.
- [21] The complainants seek compensation of \$2,000. 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.

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

- [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 \$6,000.
 - [28.4] Ordered to pay the complainant:
 - [28.4.1] \$1,500 as a refund of fees,
 - [28.4.2] \$2,500 in compensation, and
 - [28.4.3] \$1,500 in costs and expenses.

Order prohibiting publication of the complainant's name or identity

- [29] 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.
- [30] 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.

[31] Leave is reserved for the complainant 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** considers should have a copy of the decision.

DATED at WELLINGTON this 19th day of May 2015

G D Pearson
Chair