

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

Decision No: [2015] NZIACDT 62

Reference No: IACDT 011/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

M N and L N

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**THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE
PUBLISHED**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 Ltd, 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 (*N v Tangilanu* [2015] NZIACDT 37; see www.justice.govt.nz).
- [2] The complaints were:
- [2.1] That Ms Tangilanu breached clause 1.1(a), of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). That provision required her to perform her services with due care, diligence, respect and professionalism. The circumstances alleged to amount to a breach of that obligation were:
- [2.1.1] Ms Tangilanu delayed making any request for a visa for some two months after receiving instructions in early May 2011. That delay was due to a lack of diligence.
- [2.1.2] Ms Tangilanu ultimately made the request for a visa, but only for one of the complainants, when both were in New Zealand unlawfully, and it only consisted of a letter with no supporting documents. The information was inadequate to support the request, and Immigration New Zealand concluded that made declining the request necessary.
- [2.1.3] Making a request for one complainant and not including sufficient information was due to a lack of care.
- [2.1.4] Ms Tangilanu breached clause 1.1(a) due to her lack of care and diligence in performing her service of making the request under section 61.
- [2.2] That Ms Tangilanu breached clause 3(a), of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). That provision required Ms Tangilanu to maintain professional business practices, including confirming in writing to clients when she lodged applications, with ongoing timely updates. The circumstances alleged to amount to a breach of that obligation were:
- [2.2.1] When Immigration New Zealand made a decision on the request on 30 August 2011, Ms Tangilanu did not report to the complainants.
- [2.2.2] The complainants only ascertained the position from their own inquiries.
- [2.2.3] Ms Tangilanu breached her obligation to report when Immigration New Zealand declined the request, and accordingly breached clause 3(a) for that reason.
- [3] The Tribunal upheld the complaints, finding:
- [3.1] Ms Tangilanu's performance 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] The complainant and Ms Tangilanu did not make any submissions.

Discussion

Prior licence cancellation and sanctions

[7] 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.

[8] 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.

[9] Ms Tangilanu has now left New Zealand.

This is one of a series of current complaints

[10] 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

[11] 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.

[12] 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

[13] 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, and there will be no consequences.

[14] 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.

[15] 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

[16] 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, it does not appear Ms Tangilanu will pay any financial sanction so there is in reality nothing that can improve the complainant's position.

The financial penalty on this complaint

[17] Ms Tangilanu's offending in this complaint is in the mid-range. She failed to provide the professional services she agreed to supply; her clients were in New Zealand unlawfully and they required effective intervention; and an understanding of their options. Instead, Ms

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

Tangilanu failed do what she agreed, failed to do it with care, and then failed to report. Failing to report was a critical failure given that her clients were in New Zealand unlawfully, and they had to deal with Immigration New Zealand rejecting the request for a visa. Ms Tangilanu's professional failings were an example of her systematic failure to meet professional obligations.

- [18] In all the circumstances I am satisfied that a penalty of \$5,000 is proportionate, being in the mid-range where the maximum penalty is \$10,000.

Compensation and the refund of fees

- [19] The complainant is entitled to a refund of \$500 in fees. Ms Tangilanu had no lawful instructions.
- [20] The complainant did not seek compensation.

Costs

- [21] The parties did not seek costs, accordingly there will be no orders.

Prohibition on applying for a licence

- [22] 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.
- [23] Accordingly, the Tribunal will order that Ms Tangilanu is prohibited from applying for a licence for two years from 2 October 2016.

Censure

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

Decision

- [25] Ms Tangilanu is:
- [25.1] Censured.
- [25.2] Prevented from applying for a licence for a period of two years from 2 October 2016.
- [25.3] Ordered to pay a penalty of \$5,000.
- [25.4] Ordered to pay the complainant \$500 as a refund of fees.

Order prohibiting publication of the complainant's name or identity

- [26] 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.
- [27] 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.

[28] 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** consider should have a copy of the decision.

DATED at WELLINGTON this 19th day of May 2015

G D Pearson
Chair