

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

Decision No: [2015] NZIACDT 63

Reference No: IACDT 015/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Ilaisaane Talanoa

Complainant

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

DECISION
IMPOSING SANCTIONS

REPRESENTATION:

Registrar: Ms K England, Ministry of Business Innovation and Employment, Auckland.

Complainant: Mr N Tupou, Barrister, Auckland.

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 (*Talanoa v Tangilanu* [2015] NZIACDT 40; 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 did not enter into a written agreement regarding the services she was to provide. Her communications were oral, and the complainant did not understand the terms and the services Ms Tangilanu was to provide.
- [2.1.2] Ms Tangilanu accordingly failed:
- [2.1.2] To make the complainant 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 complainant 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 complainant confirm in writing that she accepted the terms of an agreement (clause 1.5(d)).
- [2.2] That Ms Tangilanu breached clause 8(b), (c) and (e) of the 2010 Code, as she failed to set out fees and disbursements before commencing work, set out payment terms, and did not provide invoices. The alleged circumstances were:
- [2.2.1] After Ms Tangilanu was licensed, she did not take any steps to address the obligations contained in clause 8 of the 2010 Code.
- [2.2.2] On 8 March 2011, Ms Tangilanu claimed a fee of \$300, and did not provide an invoice.
- [2.2.3] Ms Tangilanu breached clause 8(b), (c) and (e) of the 2010 Code.
- [3] The Tribunal upheld the complaint. Ms Tangilanu failed to comply with clauses 1.5(a), (b) and (d), and 8(b), (c) and (e) of the 2010 Code are made out. 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. She then failed to document fees and payments as the Code required.
- [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 submitted the Tribunal should make orders relating to Ms Tangilanu's ability to practise, be subject to a penalty of \$8,000, and pay the costs and expenses of the complainants of \$1,200, refund fees of \$800 and pay compensation of \$3,500. There was no evidence to support the level of costs, or the amount of compensation.
- [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, and 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] The Tribunal must of course 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, 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

- [18] Ms Tangilanu's offending in this complaint is in the mid-range. She wholly failed to commence the professional relationship in accordance with the Code of Conduct. That process was essential not only to deal with disclosure and documentation processes, but in addition to obtain informed instructions from her client. Ms Tangilanu's professional failings were an example of her systematic failure to meet professional obligations.

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

- [19] However, I do not consider this is a case where a penalty of \$8,000 can be justified as the complainant contends. The professional offending is in the lower mid-range, arguably exacerbated by Ms Tangilanu's history of similar and systematic professional offending.
- [20] 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

- [21] The complainant is entitled to a refund of \$800 in fees. Ms Tangilanu had no lawful instructions.
- [22] The complainant seeks compensation of \$3,500. 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.
- [23] The complainant clearly did require professional assistance after Ms Tangilanu put her into a difficult situation, and no doubt faced substantial difficulties. I am satisfied it is reasonable to award compensation of \$1,500 to the complainant on that basis.

Costs

- [24] The complainant sought costs and expenses of \$1,200 but provided no evidence of actual costs. The Tribunal heard this complaint on the papers; Mr Tupou provided submissions on sanctions. The claim is in the range for a proper level of costs for Mr Tupou to take instructions and provide submissions, and the inevitable expense of lodging the complaint and assisting with the investigation. The Tribunal will make an award of that level; any higher award would require 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] \$800 as a refund of fees,

[28.4.2] \$1,500 in compensation.

[28.4.3] \$1,200 for costs and expenses.

DATED at WELLINGTON this 19th day of May 2015

G D Pearson
Chair