

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

Decision No: [2015] NZIACDT 87

Reference No: IACDT 004/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**David Slinger**

Complainant

**AND**

**Na (Fiona) Zhou**

Adviser

---

**DECISION**  
IMPOSITION OF SANCTIONS

---

**REPRESENTATION:**

**Registrar:** In person

**Complainant:** In person

**Adviser:** In person

Date Issued: 27 August 2015

## DECISION

### This Complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Ms Zhou. The circumstances are set out fully in the decision upholding the complaint, [2015] NZIACDT 38 (refer: [www.justice.govt.nz](http://www.justice.govt.nz)).
- [2] In summary, the circumstances giving rise to the complaint were:
- [2.1] This complaint involved a family. The older members of the family are a couple living in New Zealand (the complainant and his wife “the complainants”); they had a business here and were considering retirement. The younger members of the family (the applicants) wanted to migrate from the United Kingdom and planned for one of them to take employment in the complainants’ business, using that to qualify for residence.
- [2.2] They approached the immigration practice of Richard Martin Immigration Ltd. (the Practice). Ms Zhou is the licensed immigration adviser subject to the complaint. Ms Zhou was the sole licensee in the Practice during the events leading to the complaint. Mr Martin controlled the company that owned the Practice and was personally active in the Practice. Mr Martin had previously been a lawyer, but was struck off the roll of barristers and solicitors for misconduct. He has a history of criminal offending against clients and, at the time Ms Zhou commenced employment, he was facing criminal charges for breaches of the Immigration Advisers Licensing Act 2007 (the Act).
- [2.3] The younger members of the family dealt with Mr Martin and he encouraged them to apply for residence, telling them a position of employment in the business would qualify them to migrate to New Zealand. The older members of the family dealt with Ms Zhou. As it transpired, Immigration New Zealand declined the application because the position of employment did not meet the requirements.
- [3] The Registrar investigated the complaint and referred it to the Tribunal on the basis that Ms Zhou failed in her professional obligations as:
- [3.1] She did not attend to the documentation and disclosure requirements to commence a professional relationship;
- [3.2] She did not provide correct advice; and
- [3.3] She allowed Mr Martin to provide immigration advice when the Act prohibits that.
- [4] The Tribunal was required to consider:
- [4.1] Whether Ms Zhou did properly commence the professional relationship. Ms Zhou said she did attend to all of the requirements, and the Tribunal had to determine whether that is factually correct.
- [4.2] Whether Ms Zhou gave adequate advice, despite Immigration New Zealand ultimately finding the application could not succeed.
- [4.3] Whether Ms Zhou failed in her professional obligations by allowing Mr Martin to provide immigration advice (in the extended sense used in the Immigration Advisers Licensing Act 2007) unlawfully.
- [5] The Tribunal has upheld each of the grounds of complaint.

### The Parties’ Positions on Sanctions

#### *The Authority*

- [6] The Authority did not make any submissions on sanctions.

### *The Complainant*

- [7] The complainant sought a refund of fees, being \$5,000. The fees related to invoices issued on 10 August 2011, and 25 October 2011. In addition, there was an Immigration New Zealand fee of £1,090.00 (which they convert to \$2,180).

### *Ms Zhou*

- [8] Ms Zhou provided a submission on sanctions. She says:
- [8.1] She was disadvantaged, as she did not have access to documents in the Practice where she formerly worked.
- [8.2] The complainants should have been on notice regarding the process for initiating the professional relationship.
- [8.3] Immigration New Zealand was potentially wrong in the view they took when declining the applicant's application and, accordingly, the Tribunal's decision regarding Ms Zhou's advice is wrong.
- [8.4] The Tribunal's decision regarding Mr Martin providing immigration advice was wrong.
- [8.5] What Ms Zhou was really guilty of was naivety, being a victim of Mr Martin. Otherwise, she had a good record as a licensed immigration adviser.
- [8.6] She outlined her personal circumstances; in particular, that she has now surrendered her licence as a licensed immigration adviser and her financial position is not good.
- [8.7] Ms Zhou said the penalty should be a censure, and refund of \$1,500.
- [8.8] She also provided a testimonial.

## **Discussion**

### *The principles to apply*

- [9] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]:
- “... the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.”
- [10] When imposing sanctions those statutory purposes require consideration of at least four factors which may materially bear upon maintaining appropriate standards of conduct:
- [10.1] *Protecting the public*: Section 3 of the Act states “The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ...”
- [10.2] *Demanding minimum standards of conduct*: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) and *Taylor v General Medical Council* [1990] 2 AC 539; [1990] 2 All ER 263 (PC) discuss this aspect.
- [10.3] *Punishment*: The authorities, including *Z v Dental Complaints Assessment Committee*, emphasise that punishment is not the purpose of disciplinary sanctions. Regardless, punishment is a deterrent and therefore a proper element of disciplinary sanctions (*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007).
- [10.4] *Rehabilitation*: It is important, when practicable, to have the practitioner continue as a member of the profession practising well (*B v B* [1993] BCL 1093; HC Auckland HC4/92, 6 April 1993).

### *Multiple complaints*

[11] This complaint is one of a series of 4, where the Tribunal is imposing disciplinary sanctions on Ms Zhou.

[12] The Tribunal will take an overall view of Ms Zhou's circumstances.

*Ms Zhou's financial position and its relevance*

[13] Ms Zhou is in a difficult financial position, with financial responsibilities and no income.

Compensation and refund of fees

[14] Orders for compensation do not have a penal component. They are effectively a statutory jurisdiction to allow complainants to recover loss and compensation for harm. The losses may well be recoverable in other civil recovery proceedings. The policy behind this element of the sanctions appears to be an expedient means of giving relief for civil breach of contract or other duties by conferring jurisdiction on this Tribunal to address the issue, when seized of the relevant facts.

[15] Given the apparent policy behind the legislation, it is difficult to see any sensible basis for allowing Ms Zhou's ability to pay to have an effect on the order. It would not be a relevant consideration if the client sought recovery in the Disputes Tribunal or the Courts.

[16] It follows that orders for compensation are on the merits, and Ms Zhou's ability to pay is irrelevant. The same applies to orders to refund fees and expenses paid by clients.

Financial penalty

[17] The financial penalty under section 51(f) is discretionary. The question is whether and in what circumstances Ms Zhou's financial position is relevant. I have no difficulty accepting there are instances where a financial penalty imposes hardship and that in those circumstances it should be taken into account.

[18] It is important to recognise a penalty under the Act is not the same as a fine. In criminal proceedings a fine, penalty, sentence of reparation, or other order for the payment of money that has been made following any conviction or order made under section 106 of the Sentencing Act 2002:

[18.1] Is not a provable debt in bankruptcy; and

[18.2] Is not discharged when a bankrupt is discharged from bankruptcy.

[19] An order made under section 51(f) of the Act is recoverable as a debt due to the Crown under section 51(5) of the Act. It does not survive bankruptcy.

[20] Ms Zhou has indicated she will endeavour to meet any orders the Tribunal makes; accordingly, I am satisfied this is a case where it is appropriate to give priority to the complainant's interests.

Costs and Expenses

[21] Pursuant to section 51(1)(g) the Tribunal may make an order that a adviser pay the costs or expenses of investigation, inquiry, hearing and any related prosecution.

[22] This is a discretionary matter for the Tribunal.

*Mitigating factors*

[23] Ms Zhou took employment in a practice operated by Mr Martin. I am satisfied he manipulated her, but she allowed that to occur. I have not found she joined in Mr Martin's wrongful conduct. Ms Zhou was wholly unequipped to take charge of Mr Martin's practice as the sole licensee. She did not have the technical knowledge to secure a professional practice against improper activity and she did not have the personal skills to deal with Mr Martin. Further, she did not comprehend the gravity of her professional failings.

- [24] The consequences for Ms Zhou have been very considerable already. She is no longer a licensed immigration adviser, is not working, and has liabilities arising from the complaints this Tribunal is now addressing. She took no steps to protect herself against those financial consequences when taking the position in Mr Martin's practice. She has surrendered her licence.
- [25] In short, Ms Zhou was an inexperienced immigration adviser, who took on the role of sole licensee in a practice where Mr Martin was engaging in dishonest practices. At present, he is serving a substantial sentence of imprisonment for his illegal activities in that practice. His history of professional and criminal offending demonstrates that Mr Martin exploited clients when working in substantial law firms, which would have had mechanisms to protect the firms and their clients. Ms Zhou naively thought she was simply an employee, as she had been in another practice and that her personal responsibilities only went as far as the work she personally performed. The reality has been her naivety has resulted in personal and professional disaster.

*The overall approach to sanctions*

- [26] This case is exceptional for the following reasons:
- [26.1] I find Ms Zhou's conduct was the result of naivety and inexperience.
- [26.2] I have found she was not a party to Mr Martin's behaviour; though she failed to control the practice properly, despite being the sole licensee.
- [26.3] At least when Ms Zhou gained some understanding of her true responsibilities, she has shown contrition. Significantly, she has surrendered her licence.
- [26.4] Ms Zhou did not gain anything from the fees clients paid, other than the fees indirectly contributing to her remuneration.
- [26.5] Ms Zhou now faces severe financial consequences given the responsibility she has for refunding fees and paying compensation.
- [26.6] Ms Zhou is willing to meet the financial obligations arising, as far as she can.
- [26.7] The reality of Ms Zhou's financial position is that imposing penalties will be to the detriment of her meeting obligations to complainants.
- [27] This case is different from cases where licensed immigration advisers have belligerently refused to accept responsibility for their actions, failed to comply with orders, and taken no steps such as surrendering their licence or remediating their practices. However, I do have concerns that Ms Zhou still does not fully understand her professional obligations.
- [28] Accordingly, my view is that deterrence is achieved by what has happened to Ms Zhou already. The consequences of her actions have meant that she has lost her livelihood and faces serious financial obligations from orders for compensation and refund of fees; she faces these liabilities despite only being an employee in the practice where the complaints arose and apparently not having been remunerated to take account of those risks, or indemnified against them.
- [29] In these exceptional circumstances, I consider it is not appropriate or necessary to impose a financial penalty. As discussed, orders for compensation and refunds of costs are inevitable and not able to be reduced based on Ms Zhou's financial position.
- [30] The remaining elements are protection of the public and rehabilitation. Ms Zhou is not currently practising, it may well be that she will not practise again. In appropriate circumstances, Ms Zhou could properly return to the profession. The complaints arose from lack of experience and judgment, not dishonesty. When a person in Ms Zhou's circumstances has not held a full licence for six months, they must complete an approved refresher course, and the Registrar must be satisfied they are otherwise fit to be licensed. I will accordingly direct that Ms Zhou may not apply for another licence until 6 November 2015, but allow her to apply to the Tribunal before then to impose specified conditions in place of the prohibition.

- [31] The Tribunal will censure Ms Zhou.
- [32] There has been no application for the costs of the hearing, and in these circumstances, there will be no order.
- [33] Accordingly, it is only necessary to discuss the issue of compensation and refund of fees.

*Compensation and refund of fees*

- [34] The complainants seek a refund of fees of \$5,000, and \$2,180 in application fees paid to Immigration New Zealand.
- [35] It is necessary to establish that the grounds on which the Tribunal upheld the complaint are causally linked to the losses and justifies compensation, and that the amount of the losses has been established.
- [36] The complainants produced receipts for the professional fees, and Immigration New Zealand's fee. Accordingly, the amounts are established. Ms Zhou was the sole licensed immigration adviser in the practice throughout the time the events giving rise to the complaint occurred. The grounds for upholding the complaint were that Ms Zhou failed to commence the professional relationship properly. That included failing to give adequate advice; the residence application ultimately failed for reasons Ms Zhou should have identified and advised on. Then, when attempting to remediate the adverse outcome Mr Martin unlawfully assisted.
- [37] I must inevitably find that the fees were paid for work that produced nothing of value because the application failed for reasons Ms Zhou should have identified and was obliged to advise her clients on. It is likely they would not have lodged the application if properly advised. These matters are all evident in the substantive decision.
- [38] Ms Zhou says that Immigration New Zealand was wrong, and that, rather than it being something she should have foreseen, the adverse decision was simply what one case officer in Immigration New Zealand decided. It is sufficient to note the substantive decision considered this issue and did not accept Ms Zhou's view.
- [39] There will be an order for a refund of the profession fees and Immigration New Zealand's application fee will be in favour of the applicants, who paid the fees.

**Decision**

- [40] Ms Zhou is censured, and
- [41] The Tribunal orders:
- [41.1] Ms Zhou is prevented from reapplying for a licence under the Act until 6 November 2015; she is reserved leave to apply to have the Tribunal substitute specified conditions on reapplying for a licence instead.
- [41.2] Ms Zhou is to pay the applicants, Jo-Anne Lynne Beer and Timothy Beer, \$7,180 in total; being \$5,000 for a refund of fees, and repayment of expenses of \$2,180 paid for Immigration New Zealand fees.

**DATED** at WELLINGTON this 27<sup>th</sup> day of August 2015.

---

**G D Pearson**  
Chair