

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

Decision No: [2015] NZIACDT 89

Reference No: IACDT 042/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Sukumaran Alagappa

Complainant

AND

Taifau Tai (Tai) Ah-Kuoi

Adviser

DECISION

UPHOLDING COMPLAINT AND IMPOSING SANCTIONS

REPRESENTATION:

Registrar: Mr A Dumbleton, lawyer, Ministry of Business, Innovation and Employment, Auckland.

Complainant: Mr J Tam, lawyer, KBS Lawyers, Auckland.

Adviser: In person

Date Issued: 17 September 2015

DECISION

The complaint

- [1] Mr Ah-Kuoi admitted the complaint in part; in particular, that he negligently:
- [1.1] Advised the complainant he could continue to work on his current work visa in a self employed capacity;
 - [1.2] Failed to advise his client he had to notify Immigration New Zealand of changed circumstances; and
 - [1.3] Failed to recognise his client could not meet the requirements for a Long Term Business Category visa.
- [2] The parties do not pursue other aspects of the complaint. I accordingly uphold the complaint against Mr Ah-Kuoi, in the respects he admitted. Negligence is a ground for complaint pursuant to section 44(2)(a) of the Immigration Advisers Licensing Act 2007.

Sanctions

- [3] Mr Ah-Kuoi apologised to the complainant and her family. I accept what happened was a result of Mr Ah-Kuoi undertaking work for which he did not have the skills; he did not intentionally breach his professional obligations. Mr Ah-Kuoi does not now hold a licence, and his financial position is not strong.
- [4] The complainant seeks a refund of fees of \$4,500.
- [5] After reviewing the options with Mr Ah-Kuoi, and the other parties I am satisfied this is a case where the focus on financial aspects of the sanctions should be to ensure Mr Ah-Kuoi pays the refund. The complainant and Mr Ah-Kuoi both accept he can pay in instalments of \$500/month.
- [6] Ordinarily a prohibition on practising because of an isolated negligent action would be disproportionate. However, a financial penalty will be problematic. In these particular circumstances, I discussed the matter with Mr Ah-Kuoi. He accepts it is in his interests that rather than imposing the usual financial penalties, I should prohibit him applying for a licence for two years. In these particular circumstances, I am satisfied this meets the requirements for deterrence, and is a just result for the parties; provided Mr Ah-Kuoi pays the instalments. While the Registrar did not consider it necessary to take any position, she did not oppose this course.
- [7] I will however reserve jurisdiction to impose a financial penalty in place of the prohibition if Mr Ah-Kuoi does not complete refunding the fees on the terms directed.
- [8] Inevitably, censure will also apply.

Decision

- [9] The Tribunal upholds the complaint pursuant to section 50 of the Act, in that Mr Ah-Kuoi was negligent in the identified respects; and otherwise dismisses the complaint.
- [10] Mr Ah-Kuoi is censured, and
- [11] The Tribunal orders:
- [11.1] Mr Ah-Kuoi is to pay the complainant \$4,500 being a refund of fees.
 - [11.2] The payment of \$4,500 is to be in instalments of \$500, paid each month on or before the 7th day of the month, the first instalment to be paid on 7 October 2015.

[11.3] Mr Ah-Kuoi is prevented from reapplying for a licence under the Act for two years from the date of this decision.

[12] The Tribunal reserves jurisdiction to substitute, or add, a financial penalty pursuant to section 51(1)(f) of the Act, if Mr Ah-kuoi does not pay any or all of the instalments as ordered. The Complainant or the Registrar may apply to have the matter brought on for hearing in the event of default in paying an instalment/s.

DATED at WELLINGTON this 17th day of September 2015

G D Pearson
Chair