

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

Decision No: [2016] NZIACDT 3

Reference No: IACDT 036/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Joseph San Juan

Complainant

AND

Genoveva Evelyn Ramos

Adviser

DECISION
IMPOSITION OF SANCTIONS

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: Mr P Moses, barrister, Auckland.

Date Issued: 14 January 2016

DECISION

This Complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Ms Ramos (refer decision *Juan v Ramos* [2015] NZIACDT 48; www.justice.govt.nz).
- [2] Ms Ramos is a licensed immigration adviser. She assisted the complainant for a nominal fee in an immigration matter. She did not attend to the disclosure requirements for commencing a professional relationship. She had claimed that was appropriate, as she gave assistance as the chair of the Philippine Migrant Centre, a community organisation.
- [3] Part of the work Ms Ramos did was to reply to Immigration New Zealand's concerns regarding a visitor visa application the complainant had lodged himself. Her response failed to address Immigration New Zealand's concern regarding whether the complainant was a genuine "visitor". Ms Ramos said her response was adequate.
- [4] The Tribunal has upheld the complaint, as it is satisfied the community organisation had no standing to exempt it from compliance with the law relating to giving immigration advice. Accordingly, Ms Ramos had to act as a licensed immigration adviser and comply with her usual professional obligations.
- [5] In relation to Ms Ramos' response to Immigration New Zealand, the Tribunal found she failed to address the central element of Immigration New Zealand's concerns. Accordingly, her response did not meet minimum standards of professional service delivery.
- [6] The full circumstances are set out in the substantive decision.

The Parties' Positions on Sanctions

- [7] Only Ms Ramos provided submissions on sanctions. Her counsel provided thoughtful and realistic submissions. One of the material circumstances is that the Tribunal upheld an earlier complaint, and imposed sanctions. The decision is *Saul v Ramos* [2014] NZIACDT 114. The orders included payments to the complainant of \$7,500, a penalty of \$4,000 and a requirement to undertake the Bay of Plenty Polytechnic course: for a Graduate Certificate in New Zealand Immigration Advice Level 7. The course is the full qualification for entrants to the profession.
- [8] In the *Saul* complaint the Tribunal cautioned Ms Ramos regarding the consequences of any further complaints, and expressed concerns regarding her response to that complaint.
- [9] Mr Moses in his submissions for Ms Ramos rightly pointed out that the present complaint arose out of events that occurred some two years prior to the Tribunal's decisions in the *Saul* complaint. Further:
 - [9.1] Since the *Saul* decisions Ms Ramos has gained insight into the true nature of the professional obligations that apply to her as a licensed immigration adviser. Ms Ramos provided a significant reference regarding her values, and the high regard the community of filipino persons living in New Zealand have for her. The reference spoke of her selfless assistance to persons in need in that community.
 - [9.2] The grounds for the present complaint lie at the lower end of the scale of seriousness. Some recognition is due for the *pro bono* nature of the services Ms Ramos provided, and the rather difficult circumstances her clients were in.
 - [9.3] Ms Ramos was fully compliant with the orders in the *Saul* complaint, including successfully complying with the training requirement.
 - [9.4] In all the circumstances, a financial penalty is an adequate response.

- [10] A statement from Ms Ramos supported Mr Moses submissions. Significant points are:
- [10.1] Ms Ramos is a very well educated woman, with qualifications and experience in social work and journalism. Her education includes a diploma and bachelor and masters degrees in New Zealand universities.
 - [10.2] She is successfully completing the Graduate Certificate in New Zealand Immigration and has met all the financial obligations arising from the *Saul* complaint.
 - [10.3] She accepts the Tribunal's findings in this complaint, but asks the Tribunal recognise the good service she usually provides, including her work in complex immigration matters.

Discussion

The principles to apply

- [11] 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.
- [12] When imposing sanctions those statutory purposes require consideration of at least four factors which may materially bear upon maintaining appropriate standards of conduct:
- [12.1] *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 ..."
 - [12.2] *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.
 - [12.3] *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).
 - [12.4] *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).
- [13] Mr Moses' submissions identified those principles.

My approach to this case

- [14] Applying those principles, two matters are very important:
- [14.1] Ms Ramos's skills and attitude; and
 - [14.2] The orders made in the *Saul* complaint are to achieve the four objectives identified. To the extent, they do so; there is no purpose in seeking to do the same thing again, as the events giving rise to this complaint predate those orders.
- [15] A practitioner's attitude to professionalism and their ability to practise well are fundamental. Without those qualities, their clients will not receive what the Act promises to consumers.
- [16] In addition, because the events giving rise to the present complaint arose prior to this Tribunal making its findings on the *Saul* complaint, I will also apply the totality principle to the sanctions imposed across the two complaints.

- [17] It appears that while Ms Ramos has had a background as a professional person she failed to grasp some of the implications of a client relationship. While unsupported assertions of future compliance can only give limited confidence, I give considerable weight to the fact Ms Ramos has complied with previous orders of the Tribunal, and is successfully completing the Graduate Certificate. I give further weight to the testimonial from a person who has knowledge of her personal and professional circumstances, and attests to her values. In addition, Ms Ramos has a background of educational and professional experience that gives confidence she has the ability to provide immigration services at a high level. Given these factors, I am satisfied that the orders in the *Saul* complaint adequately establish a process to give Ms Ramos the opportunity to put herself in a position where she can and will operate as a respected licensed immigration adviser providing services of a high standard. I do not consider it appropriate to make any further orders affecting her practice, or impose any other conditions.
- [18] As Mr Moses and Ms Ramos recognised it is appropriate to impose a financial penalty to denounce the matters giving rise to the complaint. I give Ms Ramos the benefit of recognising the grounds for complaint were not due to her wilful defiance of professional obligations, rather she erroneously believed she could perform *pro bono* work under a different service delivery paradigm. Ms Ramos has already had a financial penalty of \$4,000 imposed on the *Saul* complaint, given the additional training requirement, my view is that a total penalty of \$5,000 across the two complaints is appropriate, having regard to the totality principle. Accordingly, the additional penalty on this complaint will be \$1,000.

Other orders

- [19] The complainant paid only a nominal fee of \$150 in the form of a donation to a community organisation. It is neither necessary nor appropriate to make an order for the refund of fees.
- [20] The parties have not sought orders for compensation, or costs. Accordingly, there will be no orders.
- [21] In accordance with the usual practice of disciplinary tribunals, censure will be an express sanction. It is appropriate to make that finding where conduct is not a mere lapse from minimum standards.

Observation

- [22] The Tribunal commends Ms Ramos for the steps she had taken to address difficulties in her practice. As with many licensed immigration advisers, given that it is a relatively newly regulated profession created by the Act, it appears she had not had the benefit of a mentored entry to the profession. The nuances of professional standards in a real world environment are more readily absorbed in that way.
- [23] The Tribunal recommends that Ms Ramos and, other licensed immigration advisers, take advantage of professional networking opportunities, particularly those provided by their professional associations.

Decision

- [24] Ms Ramos is:
- [24.1] Censured, and
- [24.2] Ordered to pay a penalty of \$1,000.

DATED at WELLINGTON this 14th day of January 2016