

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

Decision No: [2015] NZIACDT 74

Reference No: IACDT 46/15

**IN THE MATTER** of a referral under s 48 of the  
Immigration Advisers  
Licensing Act 2007

**BY** **The Registrar of  
Immigration Advisers**  
  
Registrar

**BETWEEN** **Masanobu and Atsuko  
Kashimoto**  
  
Complainant

**AND** **Kotaro Mizoguchi**  
  
Adviser

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**DECISION**  
(SANCTIONS)

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**REPRESENTATION:**

**Registrar:** Mr Dumbleton, lawyer, Ministry of Business, Innovation and  
Employment

**Complainant:** Mr A Holmes, lawyer, Auckland (instructed by Vincent Carmine,  
lawyer Auckland).

**Adviser:** Mr Nishimura, lawyer, Rosebank Law, Auckland

Date Issued: 21<sup>st</sup> day of November 2016

## DECISION

### The complaint

- [1] The Tribunal upheld this complaint in a decision dated 30 August 2016, *Kashimoto v Mizoguchi* [2016] NZIACDT 42 ([www.justice.govt.nz](http://www.justice.govt.nz)). The Tribunal found:
- [1.1] Mr Mizoguchi is a licensed immigration adviser.
- [1.2] He failed to obtain a written agreement for the services as required under Code of Conduct.
- [1.3] After the complainants terminated his instructions, he attempted to have them sign a back dated agreement, and withheld a refund because they did not do so.
- [2] This decision imposes sanctions following the Tribunal upholding the complaint.

### The Registrar and Complainant's position on sanctions

- [3] The Registrar noted that Mr Mizoguchi previously had sanctions imposed in relation to a complaint *Yu v Mizoguchi* [2016] NZIACDT 28. She expressed the view:
- [3.1] The conduct in this complaint was wilful;
- [3.2] The attempt to procure a back dated agreement was unethical and unprofessional, and raised questions of competence to be a licensed immigration adviser.
- [3.3] This complaint was more serious than the previous complaint.
- [3.4] The appropriate response would include cancellation of Mr Mizoguchi's licence, and a prohibition on reapplying for a licence until he has entered into a supervision agreement.
- [3.5] While retraining was necessary, Mr Mizoguchi was already addressing the issue, so no further order was required.
- [3.6] The Registrar supported the recovery of fees by the complainants.
- [3.7] She reported that Mr Mizoguchi had complied with the orders made in relation to the previous complaint.

- [4] The complainant sought compensation and the refund of fees amounting to \$14,510, being:
  - [4.1] The costs of medical processes for immigration certificates amounting to \$680.
  - [4.2] Legal expenses of \$5,780.
  - [4.3] A refund of professional fees paid to Mr Mizoguchi of \$8,050.

**Mr Mizoguchi's position on sanctions**

- [5] Through his counsel, Mr Mizoguchi indicated he intended to respond to the original complaint on the basis:
  - [5.1] He accepted full responsibility in relation to the matters in respect of which the Tribunal made adverse findings;
  - [5.2] The complainant was entitled to a refund, but there had been some disagreement regarding the quantum.
- [6] Accordingly, his response to the complaint should not be seen as less than full acceptance of his responsibilities.
- [7] In relation to the failure to obtain a written agreement, Mr Mizoguchi takes the position that the original difficulty lay with him failing to check he had complied. He had originally intended to send the agreement with an email on 20 November 2014, and when he actually sent it in May 2015 he was unprofessional to ask that it be signed with the original date.
- [8] However, while the agreement was not included in the 20 November 2014 communication, that communication did include:
  - [8.1] A written agreement in respect of a different client;
  - [8.2] An explanation about Mr Mizoguchi in Japanese;
  - [8.3] A fact sheet about professional standards (produced by the Authority);
  - [8.4] A copy of Mr Mizoguchi's complaint's procedure;
  - [8.5] A fact sheet about making a complaint; and
  - [8.6] An invoice for the first instalment of costs. The costs were \$11,250, of which \$8,050 was for Mr Mizoguchi's fees, and \$3,200 for Immigration New Zealand's filing fee.

- [9] The failure to notice the error regarding the agreement had contributing factors, including Mr Mizoguchi being unwell at the time. After the complainant cancelled Mr Mizoguchi's engagement, which led to him discovering the absence of an agreement. He accepts his attempt to deal with the issue with a back dated agreement involved poor judgement.
- [10] Mr Mizoguchi's counsel noted both that the previous complaint and the present complaint had elements of similarity, and both occurred in the same time period. Accordingly the totality principle may apply.
- [11] In relation to refunding costs, Mr Mizoguchi accepts he should have refunded the Immigration New Zealand filing fee of \$3,200 promptly. However, he says he received \$8,050 (including GST) in professional fees, but performed work to a value of \$10,810 (including GST). He did however accept in the circumstances a refund of 50% of the professional fees would be appropriate.
- [12] Mr Mizoguchi opposed the medical expenses, as they were double counted, or required to support applications he was not responsible for.
- [13] Mr Mizoguchi took issue with the costs claimed by the complainant, contending they were not reasonable and involved matters beyond the complaint.
- [14] Mr Mizoguchi also took issue with the Registrar's characterisation of his conduct as wilful, as the complaint was not particularised in that way. This complaint involves findings that sit at the low end of seriousness.

#### **The Registrar and Complainant's reply to Mr Mizoguchi**

- [15] The Registrar is responsible for ensuring the public are protected in their dealings with licensed immigration advisers. She helpfully expressed her view of Mr Mizoguchi's position in relation to the refund of fees.
- [16] The Registrar considered that a full refund of \$8,050 is appropriate. Her reasoning is that the Licensed Immigration Advisers Codes of Conduct (in this case the 2014 version) relies on a written agreement as a foundation for the relationship between a licensed immigration adviser and their client. In the absence of a written agreement, there is no basis for the recovery of fees relying on a *quantum meruit*, or otherwise.
- [17] The Registrar emphasised the importance of a written agreement, which is to reflect a client engagement process that involved explaining all

significant terms and conditions. The Codes of Conduct<sup>1</sup> have a significant emphasis on fees, and compliance with those requirements is a pre-condition to any liability to pay professional fees. That approach avoids disputes, and costly, time consuming processes to deal with the consequences of non-compliance.

- [18] The complainant's counsel indicated that Mr Mizoguchi's resistance to taking responsibility for the medical expenses was the result of misunderstanding the dates.

## Discussion

### *Perspective*

- [19] The two parts of the complaint were:

[19.1] Not having a written agreement, and

[19.2] Mr Mizoguchi pressuring his clients sign a back dated agreement, by withholding a refund.

- [20] Having a written agreement is central to the client engagement process. The requirement to explain relevant matters in the agreement means the omission is not easily dismissed as a simple oversight. I do however accept the evidence does not establish Mr Mizoguchi intentionally failed to comply; the proper characterisation is that he failed to give the matter the attention it required. The view is supported by the previous complaint involving a similar lapse, and that Mr Mizoguchi did send an agreement, which related to another client. I accordingly accept the absence of an agreement was not wilful.

- [21] The more serious element of the complaint is the attempt to procure a back dated agreement, and refusing to refund of disbursements as leverage to have the complainants sign the back-dated agreement. The Registrar has taken the approach Mr Mizoguchi has a future in the profession, which implies she accepts Mr Mizoguchi did not understand the true gravity of refusing to refund money held on trust to pressure a client to sign a document that contained false information.

- [22] I do not accept Mr Mizoguchi's counsel's characterisation of the grounds of complaint; he contended the gravity of the misconduct saying it was "on the low end". He characterised the Tribunal's decision in *Chaiyapoom v Hu* [2016] NZIACDT 11 as "involving the misappropriation of client

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<sup>1</sup> The series of statutory regulations mandating the Code of Conduct have consistently taken this approach.

funds”, and not resulting in the cancellation of the adviser’s licence. The adviser in that case did not misappropriate funds, his fault lay in failing to manage an employee, and deal properly with the consequences of the employee misappropriating funds. In addition he referred to *Ye v Chen* [2016] NZIACDT 2, a case where there was no written agreement, and it arose out of a misconception on the part of the adviser. It had none of the serious factors in issue in this proceeding.

- [23] This complaint includes refusing to return client funds, held in trust as a device to encourage a client to sign an agreement containing false information. The gravity is obvious.

*The legal principles relating to exclusion from the profession*

- [24] The authorities indicate it is a last resort to deprive a person of the ability to work as a member of their profession. However, regard must be had to the public interest when considering whether a person should be excluded from a profession due to a professional disciplinary offence: *Complaints Committee of Waikato Bay of Plenty District Law Society v Osmond* [2003] NZAR 162 (HC) at paragraphs [13]-[14].

- [25] Rehabilitation of a practitioner is an important factor when appropriate (*B v B* HC Auckland, HC4/92, 6 April 1993). In *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [30]-[31], the Court stressed, when imposing sanctions in the disciplinary process applicable to that case, that it was necessary to “consider the alternatives available to it short of removal and to explain why the lesser options have not been adopted in the circumstances of the case”.

- [26] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 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.

- [27] The statutory purpose is achieved by considering at least four factors that materially bear upon maintaining appropriate standards of conduct:

- [27.1] *Protecting clients*: section 3 of the Immigration Advisers Licensing Act 2007 (the Act) states that “[t]he purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ...”

[27.2] *Demanding minimum standards of conduct: Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 725-726 and *Taylor v General Medical Council* [1990] 2 All ER 263 (PC), discuss this aspect.

[27.3] *Punishment*: the authorities, including *Z v Dental Complaints Assessment Committee* at [1], [65], [70] & [149]-[153], emphasise that punishment is not the primary purpose of disciplinary sanctions. Regardless, there is an element of punishment that serves as a deterrent to discourage unacceptable conduct (*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28]).

[27.4] *Rehabilitation*: it is an important object to have the practitioner continue as a member of the profession practising well, when practicable (*B v B* HC Auckland HC4/92, 6 April 1993).

*Alternatives to exclusion from the profession*

[28] I give considerable weight to the Registrar's view that rehabilitation is the appropriate focus of the sanctions. I take account of Mr Mizoguchi having embarked on further training. However, I am concerned that the submissions on his behalf have endeavoured to minimise what is serious professional offending. In isolation that is a strong indication that rehabilitation is an unrealistic expectation. However, it does appear that potentially while Mr Mizoguchi must have known his actions were wrong; he did and still does lack comprehension of the gravity of his conduct.

[29] The potential for rehabilitation must be balanced against protecting consumers of immigration services, and their particular vulnerability. Given Mr Mizoguchi's lack of insight; in my view the disciplinary response must ensure that there is oversight over his practice until there is some assurance he has a better understanding of his professional obligations. Mr Mizoguchi should not continue as a principal offering services to the public, without that component; to permit that would be a failure to provide the protection the Act offers to consumers of immigration services.

[30] Accordingly, I consider the Registrar's approach of looking to manage Mr Mizoguchi's ongoing participation in the profession, while he undertakes training in a mentored environment is both the minimum necessary intervention; and the most constructive approach.

*Cancellation of full licence and opportunity to apply for a provisional licence*

- [31] The Registrar's view is that cancellation of Mr Mizoguchi's licence, and allowing him to reapply for a licence only after he has entered into a supervision agreement is an appropriate way of managing Mr Mizoguchi practice in a safe environment.
- [32] The Tribunal has no power to impose the requirement that Mr Mizoguchi practise under conditions, other than undertaking specified training or remedying any deficiency. Lack of supervision is potentially a deficiency, if so an order could be made on that basis. Otherwise there are two potential approaches:
- [32.1] The Tribunal can suspend Mr Mizoguchi's licence until he meets specified conditions (section 51(1)(c)); or
- [32.2] Cancel his licence and order he meets specified conditions before reapplying (section 51(1)(d) and (e)).
- [33] The Tribunal can only suspend or cancel Mr Mizoguchi's licence if that is a justified and proportionate disciplinary response. As noted, the Tribunal must consider lesser alternatives. The range of options are:
- [33.1] Suspension, or cancellation of Mr Mizoguchi's licence and a prohibition on reapplying for a licence for a period of up to two years, or on fulfilment of particular conditions;
- [33.2] Imposing training or remedial requirements on Mr Mizoguchi;
- [33.3] A financial penalty on its own or in combination with the preceding directions.
- [34] Suspension may ensure that a proportional consequence is imposed: *A v Professional Conduct Committee* HC Auckland CIV-2008-404-2927, 5 September 2008 at [81], and would potentially bring home to Mr Mizoguchi the nature of the professional obligations he carries.
- [35] However, for the reasons discussed, this complaint is at the high end of gravity, and Mr Mizoguchi has shown a concerning lack of recognition of that in his response to the complaint and the Tribunal's findings. At this point it should have been obvious to Mr Mizoguchi that withholding trust funds to pressure his client to sign a false document is a grave matter; and it does him no credit that he has instructed his counsel to say otherwise.

- [36] Given that lack of insight my view is that the Tribunal should not use suspension. The more satisfactory response is the one the Registrar sought. If Mr Mizoguchi's licence is cancelled, the Registrar may grant a provisional licence under section 19(5) of the Act on the basis Mr Mizoguchi requires direct supervision. The Tribunal will allow Mr Mizoguchi to immediately applying for a provisional licence after cancellation, but not apply for a full licence until he has completed appropriate training and mentoring.
- [37] This approach will engage the Registrar's decision making powers in relation to any fitness issues, and the statutory regime relating to supervision in the Immigration Advisers Competency Standards 2016. These are matters for the Registrar, not the Tribunal.
- [38] The Tribunal requests that the Registrar engage with Mr Mizoguchi to put in place an arrangement that will allow him to prepare an application and mentoring arrangement and have the Registrar review it; then the Registrar can decide whether to issue a provisional licence as soon as practicable after cancellation of Mr Mizoguchi's current licence. The Tribunal will reserve leave to alter the date of cancellation to allow minimum necessary disruption to Mr Mizoguchi's practice.

#### *Refund of fees*

- [39] The Licensed Immigration Advisers Code of Conduct, from its initial version to the current 2014 version are legislative instruments that are very prescriptive in relation to the client engagement process. As this Tribunal has repeatedly observed, the process protects both the adviser, and their clients, avoids disputes, and makes disputes easier to resolve.
- [40] The process under the 2014 Code of Conduct required that Mr Mizoguchi engage with his client, and gain informed instructions (clause 2(e)). Only after doing so could he enter into an agreement for the provision of substantial services. There is specific provision for initial consultations where an adviser wishes to charge a fee for those initial consultations (clause 16). The provision relating to the absent written agreement giving rise to this complaint required:
- [40.1] That Mr Mizoguchi explained all significant matters (clause 18(b)).
- [40.2] That the agreement contain a full description of the services to be provided (clause 19(e)), which could only be provided when Mr Mizoguchi had informed instructions and his client had chosen an

approach based on an informed evaluation of the opportunities, risks, and costs.

[40.3] Particulars of fees and disbursements (clause 19(f) – (k)), were to be set out in the agreement.

[40.4] The agreement also need to record that a copy of the summary of the adviser's professional responsibilities had been provided and explained to the client (clause 19(m)).

[41] Of course clause 18(c) required that Mr Mizoguchi ensure that his clients "sign [the agreement] or confirm in writing that they accept it". Mr Mizoguchi did not have an agreement. What he did was:

[41.1] Send another client's agreement, which related to quite different circumstances, thereby breaching the other client's confidentiality; and

[41.2] Failed to see that there was confirmation in writing the agreement was accepted.

[42] Those circumstances indicate a high level of fault given the strictly mandated client engagement process.

[43] In terms of the legal consequences, Mr Mizoguchi had an illegal contract. As the Registrar observes, potentially Mr Mizoguchi could potentially justify fees on an *quantum meruit*, but that is a contractual basis, which is affected by illegality. In the Registrar's view Mr Mizoguchi should not retain any of the fees.

[44] Mr Mizoguchi relies on an illegal contract as defined in section 3 of the Illegal Contract Act 1970, so he cannot enforce it, section 6 of that Act deprives the contract of effect.

[45] The Tribunal could validate the contract for the purposes of the Immigration Advisers Licensing Act 2007 under section 7(1) of the Illegal Contract Act, and on that basis determine Mr Mizoguchi had an entitlement to some of the fees he had been paid. When considering whether to give any relief, section 7(3) requires that the Tribunal shall have regard to:

- (a) the conduct of the parties; and
- (b) in the case of a breach of an enactment, the object of the enactment and the gravity of the penalty expressly

provided for any breach thereof; and (c) such other matters as it thinks proper;

but shall not grant relief if it considers that to do so would not be in the public interest.

- [46] In the present case Mr Mizoguchi's conduct was deplorable. He withheld trust funds to try and hide the illegality by pressuring his client to sign a false document. The Act and the 2014 Code of Conduct are designed to prevent the very difficulties Mr Mizoguchi now faces; and the Act provides for a range of sanctions; including removal from the profession. In this case this was not a simple oversight, it was serious conduct made much worse by Mr Mizoguchi's post-breach conduct.
- [47] I am satisfied it is not appropriate to grant relief because of Mr Mizoguchi's conduct and the object of the provision he breached; and that it would not be in the public interest to do so.
- [48] I have regard to Mr Mizoguchi's claim he expended time that would justify a higher fee than he received. However, the reality is that the client relationship broke down. I do not need to speculate whether that was because his clients did not have the information that should have been in a written agreement, and the explanation of that material that was required. However they were entitled to it, and in my view having regard to all the circumstances and Mr Mizoguchi's conduct, it is appropriate that he does not recover any fees.
- [49] Accordingly, the contract remains illegal and Mr Mizoguchi is not entitled to retain the fees he solicited. Accordingly there will be an order that Mr Mizoguchi refund all of the fees paid by the complainants. The same result would apply whether exercising the discretion in section 7 of the Illegal contract Act, or section 51 of the Immigration Advisers Licensing Act.

#### *Compensation*

- [50] The complainants seek a refund of medical expenses. The grounds were that the adviser failed to lodge certificates, and agreed to refund the complainant. Mr Mizoguchi resisted on the basis of the timing and duplication.
- [51] However, the material before me does not establish a clear nexus between the grounds of complaint and the loss relating to the medical certificates.

- [52] Accordingly, there will be no compensation relating to the medical certificates. However, I do consider there are grounds for a modest award of compensation in the nature of general damages. The Tribunal limits such awards, as they can readily become part of a monetary penalty, and that is not appropriate.
- [53] In this case, the absence of a written agreement, withholding trust funds, and pressure to sign a false document amount to a most unsatisfactory engagement with a professional holding a statutory licence. It was plainly distressing, and disruptive to the complainants' immigration objectives; they are entitled to an element of compensation. There will be an award of \$1,500 compensation; it also recognises there will be no award of interest on fees that the Tribunal requires Mr Mizoguchi to refund.

*Monetary penalty*

- [54] The starting point for a financial penalty would be \$7,500, in addition to the other orders. That reflects the withholding of trust funds, and the attempt to have a client sign a false document. It is conduct that is wholly inconsistent with the standards of the profession, and it is an appropriate penalty to denounce it.
- [55] However, I am mindful that Mr Mizoguchi has shown a willingness to retrain and restore himself to successful practice; however, it is tempered by the wholly unrealistic refusal to recognise the gravity of his conduct in respect of this complaint. Mr Mizoguchi also has the benefit of not being excluded from the profession, so the overall effect of the sanctions is reduced.
- [56] Given the matrix of mitigation, and concessionary approach in relation to the other elements of the sanction, the penalty will be discounted to \$6,500.
- [57] I note the claim the totality principle should apply; however, I find no disparity in the overall penalties imposed on Mr Mizoguchi. This complaint involves conduct that has taken Mr Mizoguchi very close to permanent removal from the profession. His conduct is in a category that brings his fitness to be a licensed immigration adviser into question; and is the very sort of conduct the Act was intended to eliminate. A proportionate penalty is important in such circumstances. It maintains confidence in the ability of the disciplinary process to effectively underpin the standards the Act offers to consumers of immigration services.

## Costs

[58] The Tribunal upheld the complaint, Mr Mizoguchi did make some concessions, but has largely resisted admitting the key elements of the complaint, indeed he still does.

[59] Costs are a usual part of the professional disciplinary process, and provided for in section 51(1)(g) of the Act; that includes the costs of the Tribunal hearing the complaint. The section is a somewhat extended version of the power that commonly applies in professional disciplinary jurisdictions.

[60] The principles of costs in professional disciplinary cases are discussed in *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850; [2011] NZAR 639. In that case actual costs of investigation of \$76,000 had resulted in an award of \$40,000. At [43] the Court commented:

An award of costs under s 129 of the 1982 Act (and the 2006 Act) is entirely discretionary. ... It is clear that expenses include salaries and staff and overhead expenses incurred by the societies that investigate and bring proceedings before the Tribunal.

[61] Those principles appear to apply, with necessary modifications, to the Act and the present proceedings.

[62] In *O'Connor v Preliminary Proceedings Committee HC Wellington* AP280/89, 23 August 1990, where an order for costs of \$50,000 out of a total of \$70,500 was awarded, Jeffries J said:

It is a notorious fact that prosecutions in the hands of professional bodies, usually pursuant to statutory powers, are very costly and time consuming to those bodies and such knowledge is widespread within the professions so controlled. So as to alleviate the burden of the costs on the professional members as a whole the legislature had empowered the different bodies to impose orders for costs. They are nearly always substantial when the charges brought are successful and misconduct admitted, or found.

[63] Under the Act, the mechanism is less direct as the Authority and the Tribunal are statutory bodies. Nonetheless, members are levied through an obligation to pay licensing fees and there can be little doubt that the purpose of section 51(1)(g) is the same in effect as that applied in the authorities discussed. The costs of investigation, prosecution, and the costs of the Tribunal are all part of costs awards.

[64] The Registrar has not sought costs; I will accordingly consider the complainant's entitlement to costs taking that into account.

- [65] The Registrar filed this complaint with some 500 pages of evidential material. Mr Mizoguchi did not remove large parts of that material from contention. The complainants engaged counsel to represent them in the proceedings before the Tribunal. It was appropriate that they did so, as the Registrar takes the approach it is not her role to prosecute complaints.
- [66] Counsel for the complainants sought the complainants' actual costs of \$5,780.00 (including GST and disbursements). The claim is supported by invoices, which show:
- [66.1] Attendances relating to the Registrar's investigation and potential mediation, and incidental matters was subject to a fee of \$980.00 (including GST and disbursements).
- [66.2] Attendances relating to reviewing the statement of complaint, and filing a statement of reply, showed a fee of \$800 (including GST and disbursements).
- [66.3] Attendances relating to the Tribunal's processes, these processes involved directions from the Tribunal regarding the issues and the format of the hearing. Some of these matters required decisions regarding the scope of the complaint; the Tribunal noted in a direction that potentially some grounds could give rise to the jurisdiction relating to compensation for the costs of international tuition fees. These fees amounted to \$4,000 (including GST and disbursements).
- [67] For Mr Mizoguchi his counsel characterised the fees as patently unreasonable, including matters outside of the complaint, and said that for reasons of public policy indemnity costs should not be awarded. He then contended that applying a District Court scale approach the costs would be much lower, contending the claim equated to 3.5 days of costs at the District Court category 2 level.
- [68] I do not accept the characterisation of the fees as unreasonable, the attendances are particularised. I do accept that there references to correspondence with "SFO", it is not clear who that is, but the dates certainly coincide with the Tribunal arranging a telephone conference, as do the narrations. The claim the fees are inherently unreasonable fails to recognise that there are some 500 pages of documentation, and the Tribunal requested that the complainants make decisions regarding whether they would pursue wider grounds of their complaint. If so, it would have potentially led to substantial compensation claims. They were not

trivial decisions, and required a full understanding to the evidence and issues. In my view the fees were, on their face, reasonable.

- [69] I do not accept the characterisation of the fees as equating to 3.5 days of hearing in the District Court. Scale cost for a two day hearing in the District Court allowing for all the processes and disbursements will frequently approach \$20,000. While it may be open to use an approach analogous to scale costs in that they broadly compensate to the level of something in the order of two thirds of actual costs, it is not a common approach in disciplinary proceedings.
- [70] While there are variations among disciplinary tribunals, a common model is a discretionary award of between 50% and 100% of actual costs when a complaint is upheld. That includes the costs of investigation, hearing and the decision-maker. It is an approach that lies within the scope of available approaches under section 51(g) of the Act.
- [71] On any view of the matter the Registrar's costs of investigation, filing, and representation will greatly exceed the complainant's actual costs.  
This Tribunal's costs would also be significant.
- [72] The Registrar has not said why she is not seeking costs. However, the Registrar takes the view she does not prosecute complaints, and she does not either represent or fund complaints. Accordingly, complainants have to advance their complaints before the Tribunal.
- [73] Complainants should not be out of pocket after successfully pursuing a disciplinary complaint at their own expense, a professional disciplinary process is concerned primarily with the public interest. Whether it is the Registrar's intention or not, I consider it is appropriate to consider the overall costs the Tribunal would award, and allow costs the Registrar chooses not to claim to contribute to the claimant's costs.
- [74] I am satisfied that an award of \$5,780.00 in favour of the complainants is appropriate. I note that the award is substantially less than 50% of the actual costs incurred by the Complainants, the Registrar and the Tribunal. Accordingly the award is a modest one in the context of professional disciplinary proceedings.

*Caution*

- [75] I formally caution Mr Mizoguchi under section 51(1) of the Act.
- [76] Mr Mizoguchi should understand that two elements of his conduct made this a very serious complaint, he withheld trust funds, and his motivation

was to have his clients sign a false document to advance his personal interests.

[77] Removal from the profession is the starting point when evaluating the consequences of such conduct.

[78] His attempt to say through his counsel this was “misconduct being on the low end”, and there was no “need for protective sanctions” caused

me to question whether the Registrar’s restorative approach could be justified. By a fine margin, I have given Mr Mizoguchi the benefit of the doubt, principally because the Registrar reported that Mr Mizoguchi has already commenced study to gain the professional qualifications that are now available.

[79] Mr Mizoguchi should understand any further professional offending may well have severe consequences; and he is invited to reflect with care as to why the Tribunal regards this complaint as a very serious matter that potentially went to his fitness to practise.

#### *Determination and Orders*

[80] Any licence Mr Mizoguchi holds under the Act is cancelled at 5:00 pm on the 20th working day after this decision is delivered.

[81] Mr Mizoguchi is prevented from:

[81.1] Applying for any category of licence under the Act until he has discharged the monetary orders made in this decision.

[81.2] Prevented from applying for any licence under the Act, except for a provisional licence, until he has completed the requirements for the issue of the Graduate Diploma in New Zealand Immigration Advice (Level 7), and has over a two-year period (after this decision), practised under a provisional licence in full compliance with a supervision regime approved by the Registrar.

[82] Mr Mizoguchi is:

[82.1] Formally cautioned in the terms set out above.

[82.2] Ordered to pay a monetary penalty of \$6,500.

[82.3] Ordered to pay to the Complainants a total of \$15,330, being:

[82.3.1] \$8,050.00 being a refund of the professional fees the complainants paid;

[82.3.2] \$1,500 being compensation in the nature of general damages; and

[82.3.3] \$5,780.00.

[83] The orders to make payments take immediate effect.

[84] The Tribunal reserves leave for the Registrar or Mr Mizoguchi to apply to vary the orders relating to the cancellation of Mr Mizoguchi's licence, and his entitlement to apply for a licence. This decision does not imply Mr Mizoguchi meets does or will meet the requirements to be issued with a licence if he applies for a further licence. That is not a decision for the Tribunal.

**DATED** at Wellington this 21<sup>st</sup> day of November 2016.

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**G D Pearson**  
Chair