

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

Decision No: [2017] NZIACDT 8

Reference No: IACDT 008/16.

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

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

Registrar

**Between** **Tuariki Delamere**

Complainant

**AND** **Yang (Jerry) Jiang**

Adviser

---

**DECISION  
SANCTIONS**

---

**REPRESENTATION:**

**Registrar:** Ms Terri Thompson, lawyer, MBIE, Auckland.

**Complainant:** In person.

**Adviser:** Mr Todd Simmonds, Barrister, Auckland.

Date Issued: 24 July 2017

## DECISION

### Introduction

- [1] The Tribunal upheld this complaint in a decision dated 17 February 2007: *Delamere v Jiang* [2017] NZIACDT 1. The Tribunal found Mr Jiang breached his professional obligations.
- [2] The grounds on which the complaint was upheld were:
  - [2.1] Mr Jiang did not have a written agreement, as required by the Licensed Immigration Advisers Code of Conduct 2010 (the Code).
  - [2.2] Mr Jiang negligently failed to inform the complainant of the outcome of a decision of the Immigration and Protection Tribunal, and the consequences for her.
  - [2.3] Mr Jiang failed to maintain complete client records so they were available for inspection by the Authority.
- [3] The substantive decision sets out the background fully. The grounds on which the Tribunal upheld the complaint were of significant gravity. However, they fall well short of the most serious end of professional disciplinary matters. Unfortunately, the most significant matter arising was not the grounds on which the Tribunal upheld the complaint, but the findings relating to Mr Jiang's response to the complaint.
- [4] In reaching its factual conclusions, the Tribunal found Mr Jiang provided misleading information, both in his response to the Authority when it investigated the complaint and to this Tribunal when it heard the complaint. In imposing sanctions, it is important to distinguish between the grounds of the complaint in this case and Mr Jiang's conduct when responding to the complaint. A practitioner's response to a complaint may aggravate conduct and it may alter the evaluation of the practitioner's potential for rehabilitation. However, when imposing sanctions after upholding a complaint, it is not an occasion to impose sanctions because Mr Jiang provided misleading information to the Authority and the Tribunal.
- [5] Accordingly, the Tribunal will maintain a strict distinction between:
  - [5.1] Mr Jiang's conduct in providing misleading information; and
  - [5.2] the grounds of complaint, and matters that mitigate or aggravate those grounds.

### **The Registrar's position**

- [6] The Registrar noted that Mr Jiang is now a lawyer practising in New Zealand and, accordingly, orders relating to him holding a licence as a licensed immigration adviser appear "moot". The Registrar's perspective follows from the reality that both licensed immigration advisers and law practitioners in New Zealand can give immigration advice. Currently, Mr Jiang neither holds a licence as a licensed immigration adviser, nor is he entitled to do so as long as he holds a practising certificate as a lawyer. There is a prohibition on being both a licensed immigration adviser and a lawyer at the same time. Accordingly, Mr Jiang is not a licensed immigration adviser, but he can lawfully provide immigration advice.
- [7] The Registrar identified the obvious matters relating to the importance of complying with professional obligations to promote and protect the interests of consumers, and a need to enforce a high standard of propriety and conduct by practitioners. An element she emphasised was the prevention of unsuitable persons from practising to protect both the public and the profession itself.
- [8] In these circumstances, the Registrar's view was that the Tribunal should make orders:
- [8.1] that Mr Jiang is directed to pay reasonable compensation to the complainant;
  - [8.2] preventing Mr Jiang from reapplying for a licence until he has completed the full graduate diploma in New Zealand immigration advice; and
  - [8.3] for the payment of a penalty not exceeding \$10,000.
- [9] The Registrar said that a financial penalty was justified as a deterrent, and to denounce Mr Jiang's conduct in this case.

### **Mr Jiang's response**

- [10] For Mr Jiang, counsel indicated that it was important to recognise that punishment is not the only purpose of sanctions, as the Registrar had emphasised the punitive aspects in her submissions. Mr Jiang contended that it was important to recognise principles of proportionality and consistency.
- [11] Mr Jiang contended that:

[11.1] In principle, he did not oppose an order to pay reasonable compensation to his former client, but said there was no evidential basis for a compensation order.

[11.2] he accepted that an order preventing him applying for a licence until he had completed the full graduate in New Zealand immigration advice was appropriate, though he noted that he did not intend to return to practising as a licensed immigration adviser.

[11.3] he accepted that a financial penalty was appropriate, in the range between \$5,000 and \$7,500.

## **Discussion**

### *Entitlement to hold a licence*

[12] The only issue of real complexity in the present case is that the Tribunal has made findings regarding how Mr Jiang responded to a proper complaint that potentially make him unfit to hold a licence as an immigration adviser. When a client makes a professional disciplinary complaint, a practitioner has a duty to respond with honesty and candour to the authorities charged with addressing the complaint.

[13] There are cases where practitioners respond in a manner that is inconsistent with membership of the profession; they aggravate the complaint to a point where removal from the profession is the only option. In this jurisdiction, the exemplar of such a case is *MBL v Shadforth* [2016] NZIACDT 37.

[14] However, it is not appropriate to treat this case in that way. That is because Mr Jiang does not currently hold a licence as an immigration adviser. He is currently able to provide immigration services as a lawyer; what he does or can do as a lawyer is outside the jurisdiction of this Tribunal. the Tribunal can make no orders affecting him as a lawyer.

[15] This Tribunal does have power to prevent Mr Jiang from applying for a licence as an immigration adviser for a period of two years, or until he fulfils specified criteria. However, an order preventing Mr Jiang from applying for a licence does not imply that when the two-year period expires he can expect to obtain a licence. That decision is one for the Registrar. Persons with an adverse disciplinary history or a history of dishonesty may never satisfy the Registrar that they are fit to hold a licence.

[16] In these circumstances, my view is that it is not appropriate to make any order relating to Mr Jiang's entitlement to hold a licence. I have had

regard to the Registrar's submission that Mr Jiang should never be able to apply without first undertaking the course required to qualify as a licensed immigration adviser. However, the real issue is Mr Jiang's fitness to hold a licence. In my view, the proposed restriction would give a skewed emphasis to the evaluation Mr Jiang will undergo should he ever apply for a licence. The Registrar would have to be satisfied as to Mr Jiang's fitness and competence. The decision would lie with her. However, in my view it would be wrong to impose a condition relating to competence; that is not the major concern when considering rehabilitation.

- [17] Accordingly, due to the exceptional circumstances that apply to this case, there will be no order relating to Mr Jiang applying for a licence. The Tribunal will direct that a copy of this proceeding be referred to the New Zealand Law Society, to deal with the issues that lie beyond this Tribunal's jurisdiction.

*Compensation and the refund of fees*

- [18] In relation to compensation, Mr Jiang's submission is to the effect that it is necessary to establish both a causal nexus between a professional breach and a loss. He says there is nothing definite in the present case.
- [19] The Tribunal has always been particularly cautious to ensure that compensation does not become a penalty; it must be restricted to being an efficient means of providing a civil remedy for a loss arising from professional disciplinary issues. In some cases, the Tribunal does allow modest awards in the nature of general damages, recognising that clients have inevitably suffered significant detriment, even if not quantified in a precise way. There is also jurisdiction to direct the refund of fees.
- [20] Given the absence of a written agreement, which was the opportunity to make an informed decision regarding services, and the serious failures in the delivery of services, I am satisfied that there should be an order for the refund of fees.
- [21] I am satisfied that in this case an award of compensation of \$1,500 is appropriate. The complainant has been put to expense, inconvenience and concern because of Mr Jiang's professional failings.

*Monetary penalty*

- [22] I accept Mr Jiang's submission that a penalty in the range of \$5,000 to \$7,500 is appropriate. I accept the submission taking into account that the circumstances were aggravated by Mr Jiang's conduct when

responding to the complaint. Even so, the grounds of complaint themselves are no more than mid level. Accordingly, the financial penalty will be \$5,000, allowing for the aggravating factors.

*Direction*

- [23] I refer the substantive decision, this decision, and a record of the hearing to the New Zealand Law Society for consideration in relation to Mr Jiang's conduct.<sup>1</sup>

**Decision**

- [24] Pursuant to s 51 of the Immigration Advisers Licensing Act 2007, Mr Jiang is:

[24.1] censured;

[24.2] ordered to pay a monetary penalty of \$5,000;

[24.3] ordered to refund all fees he received from the complainant relating to the instructions in issue in the complaint; and

[24.4] ordered to pay compensation of \$1,500 to the complainant.

- [25] The Tribunal reserves leave for any party to apply to have the Tribunal quantify the refund of fees.

**DATED** at WELLINGTON this 24<sup>th</sup> day of July 2017.

---

**G D Pearson**  
Chair

---

<sup>1</sup> Being the process applied by the High Court in *Zhang v King David Investments Limited (in liquidation)* [2016] NZHC 3018.