

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

Decision No: [2018] NZIACDT 32

Reference No: IACDT 014/17

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration  
Advisers**

Registrar

**BETWEEN**

**Rogelio Herrera Castillo Jr**

Complainant

**AND**

**Nicola Clare Lynley Jones**

Adviser

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**DECISION  
(SANCTIONS)**

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**REPRESENTATION:**

**Registrar:** Ms J Ongley, lawyer, MBIE, Wellington.

**Complainant:** Ms R Burgess, lawyer, Lawhub Ltd, Christchurch for all complainants

**Adviser:** Mr M Smith, barrister Wellington, on instructions from Lane Neave,  
solicitors, Christchurch

Date Issued: 13 September 2018

## DECISION

### Background

- [1] This complaint involved incorrect certification, and the scope of the adviser's services. The complainant and the adviser agree on the outcome, the Registrar is not opposed to the outcome, so I do not need to set out the complaint in detail. The Authority has not made factual findings.
- [2] It is appropriate to note that a key element of the adviser says she was operating under the direction of a more experienced adviser, and her role was only in respect of part of the work performed. I infer that the parties accept that explanation, given the agreed penalties.
- [3] The agreed full and final resolution of the complaint is:

#### **Refund of fees (s 51(1)(h) of the Act)**

The Adviser will pay Mr Castillo the sum of NZ\$1,000 as a partial refund of fees paid for the services in issue.

#### **Financial penalty (s 51(1)(1) of the Act)**

The Adviser will pay the sum of NZ\$1,000 to the Registrar as a financial penalty in relation to Mr Castillo's complaint.

#### **Other redress**

At the complainant's request, the Adviser has also agreed to write to Immigration NZ in relation to the file it holds for Mr Castillo, acknowledging that she erroneously checked the box on his work visa application form saying that immigration advice had not been provided by the Adviser when it had been provided. The Adviser will further acknowledge, in the same letters, that she did not directly/personally speak with Mr Castillo before he submitted his work visa application form to Immigration NZ.

### Discussion

- [4] The Registrar protects the public interest in relation to complaints. She has investigative powers to do that, and this Tribunal is limited to the Registrar's grounds of complaint.<sup>1</sup> As the Registrar accepts the proposed outcome, this Tribunal should not exercise its inquisitorial powers as there are no countervailing factors. I am satisfied that it is appropriate to record the agreed outcome all the parties accept.
- [5] The sanctions should not be seen as a guide to the appropriate sanctions beyond the circumstances in this case, and the view the agreed view of the parties regarding those circumstances.

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<sup>1</sup> *Mizoguchi v Shihaku* [2017] NZHC 3198 at [42]–[44].

**Order**

[1] The Tribunal orders that Ms Jones will:

[1.1] Pay Mr Castillo the sum of NZ\$1,000;

[1.2] Pay the sum of \$1,000 to the Registrar as a financial penalty.

[2] The Tribunal records:

[2.1] Ms Jones has agreed to write the letter referred to above, and in the terms indicated.

[2.2] The obligation relating to the letter will not be subject to a formal order, however failing to write the letter promptly and appropriately would obviously not be professional. The Tribunal has drawn this to Ms Jones' attention, given how important it is for her to comply.

**DATED** at WELLINGTON this 13<sup>th</sup> day of September 2018

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**G D Pearson**  
Chair