

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 29

Reference No: IACDT 007/17

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **SANTOKH SINGH**
Complainant

AND **JIGNESH PATEL**
Adviser

**DECISION
(Sanctions)
Dated 9 May 2019**

REPRESENTATION:

Registrar: M Denyer
Complainant: No appearance
Adviser: Self-represented

INTRODUCTION

[1] The Tribunal upheld the complaint against Mr Patel, a licensed adviser, in *Singh v Patel* [2019] NZIACDT 17.

[2] Mr Patel was found to have failed to make a record of meetings and discussions with his client, Mr Singh, and to have failed to confirm material discussions in writing. This was a breach of cl 26(a)(iii) and (c) of the Code of Conduct 2014 (the Code).

BACKGROUND

[3] The chronology leading to the complaint was set out in the Tribunal's earlier decision. It will be repeated here in summary only.

[4] Mr Singh entered into a service agreement with Mr Patel on 27 March 2014. Mr Patel would prepare and complete ready for lodgement a retirement category residence application for a fee of \$10,000, or \$15,000 if the application was successful.

[5] Mr Patel went ahead and prepared an application ready for lodgement with Immigration New Zealand, with Mr Singh paying \$10,000. However, prior to lodgement, a dispute arose between Mr Patel and Mr Singh. The latter uplifted the file on 21 May 2014 and requested a refund of his fees. Mr Patel initially declined a refund.

[6] Mr Singh made a wide-ranging complaint against Mr Patel to the Immigration Advisers Authority (the Authority) on 10 July 2014. At the prompting of the Registrar of Immigration Advisers (the Registrar), the head of the Authority, Mr Patel eventually refunded \$5,000 on about 17 November 2014.

[7] The history of the complaint is set out in the earlier decision. In due course, the Registrar referred to the Tribunal only certain aspects of the complaint, being Mr Patel's file management, the amount of his fee and the slow refund of part of the fee. The Tribunal upheld only the head of complaint relating to file management, as noted above.

SUBMISSIONS

[8] Mr Denyer, on behalf of the Registrar, accepts that the breaches of the Code are relatively minor and since Mr Patel has already admitted them and offered to undertake further training, the upholding of the complaint is a sufficient penalty.

[9] There were no submissions from Mr Singh.

[10] Mr Patel, in his submissions (17 April and 1 May 2019) contends that a caution or censure would be appropriate, if any sanction was to be imposed. He sets out at some length the changes to file management practice in his office and the professional development training he has undertaken, as well as the regular in-house training conducted by him and his staff. He points out that he took all this remedial action from the moment the breaches were identified in 2014.

JURISDICTION

[11] The Tribunal's jurisdiction to award sanctions is set out in the Immigration Advisers Licensing Act 2007 (the Act). Having heard a complaint, the Tribunal may take the following action:¹

50 Determination of complaint by Tribunal

After hearing a complaint, the Tribunal may—

- (a) determine to dismiss the complaint:
- (b) uphold the complaint but determine to take no further action:
- (c) uphold the complaint and impose on the licensed immigration adviser or former licensed immigration adviser any 1 or more of the sanctions set out in section 51.

[12] The sanctions that may be imposed are set out at s 51(1) of the Act:

51 Disciplinary sanctions

(1) The sanctions that the Tribunal may impose are—

- (a) caution or censure:
- (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
- (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
- (d) cancellation of licence:
- (e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:
- (f) an order for the payment of a penalty not exceeding \$10,000:
- (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:

¹ Immigration Advisers Licensing Act 2007.

- (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
- (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[13] In determining the appropriate sanction, it is relevant to note the purpose of the Act:

3 Purpose and scheme of Act

The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.

[14] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:²

It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because 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.

...

The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

...

Lord Diplock pointed out in *Ziderman v General Dental Council* that the purpose of disciplinary proceedings is to protect the public who may come to a practitioner and to maintain the high standards and good reputation of an honourable profession.

[15] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the profession itself.³

² *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

³ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee* at [151].

[16] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.⁴

[17] The most appropriate penalty is that which:⁵

- (a) most appropriately protects the public and deters others;
- (b) facilitates the Tribunal's important role in setting professional standards;
- (c) punishes the practitioner;
- (d) allows for the rehabilitation of the practitioner;
- (e) promotes consistency with penalties in similar cases;
- (f) reflects the seriousness of the misconduct;
- (g) is the least restrictive penalty appropriate in the circumstances; and
- (h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

DISCUSSION

[18] While the complaint upheld met the threshold for disciplinary action, I agree with Mr Denyer that no formal caution or censure or other sanction is warranted. Mr Patel has demonstrated an awareness of the need to improve his file management and has taken steps to ensure he and his staff comply with their obligations.

OUTCOME

[19] In accordance with s 50(b) of the Act, the Tribunal takes no further action.

D J Plunkett
Chair

⁴ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

⁵ *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51] and *Katamat v Professional Conduct Committee* [2012] NZHC 1633, [2013] NZAR 320 at [49].