

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 32

Reference No: IACDT 017/18

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

**BY** **THE REGISTRAR OF  
IMMIGRATION ADVISERS**  
Registrar

**BETWEEN** **PETER HAHN**  
Complainant

**AND** **PETRA WALKE**  
Adviser

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**DECISION  
(Sanctions)  
Dated 14 May 2019**

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**REPRESENTATION:**

Registrar: T Thompson, counsel  
Complainant: No appearance  
Adviser: Self-represented

## INTRODUCTION

[1] The Tribunal upheld this complaint against Ms Walke, the adviser, in a decision issued on 8 April 2019 in *Hahn v Walke* [2019] NZIACDT 19.

## BACKGROUND

[2] The narrative is set out in the decision of the Tribunal upholding the complaint and will only be briefly summarised here.

[3] Ms Petra Walke was a licensed immigration adviser resident in Germany. She surrendered her licence on 3 May 2019, after the Tribunal issued its decision. Mr Hahn, the complainant, is a licensed adviser resident in New Zealand, who also represents German-speaking migrants to New Zealand.

[4] Ms Walke's group of companies operate in a number of countries offering migration services to New Zealand and Australia. They hold seminars at which prospective migrants can hear information about New Zealand's living conditions and immigration criteria. The speaker at those seminars is Mr Alexander Walke, who is not licensed under New Zealand law to give immigration advice. The Tribunal found he is likely to be Ms Walke's husband.

[5] Ms Walke is listed by the Authority on its website at the following location, which is information she would have provided:

New Zealand Migration International Pty Ltd  
c/o Sydney Migration International  
Kaiserswerther Str.115  
Ratingen  
Dusseldorf 40880

[6] New Zealand Migration International Pty Ltd (NZMI) was an Australian registered company. It was deregistered on 27 September 2018.

[7] Despite being deregistered, NZMI retains a website. The current website provides an Auckland telephone number and an email address but does not identify any person. The website says that "our founder" (Ms Walke) laid the cornerstone for the first office in 2008 but today "New Zealand Migration International has grown from a single office to an international business". It is said to be part of the Migration International Group.

[8] The company's New Zealand website currently advertises seminars and conferences in Dubai and Los Angeles. Places can be booked on the site. It holds itself out as providing assistance on virtually all visa types into New Zealand. The "success stories" tab on the website has a large number of testimonials, most of which are addressed to "Petra" or "Frau Walke".

[9] The New Zealand website in January 2018 advertised a seminar in Los Angeles on 28 April 2018, "Upgrade Your Lifestyle". It stated (*verbatim*):

What are your chances having a New Zealand visa or permanent residency granted? Your opportunities of becoming a New Zealand resident is one of the many items addresses during our seminars. We furthermore provide you with extensive information regarding visa application processes, requirements, advice about living costs such as housing, schools and insurances and the New Zealand work environment in general.

Each seminar last four hours during which time you can meet with us personally. At the end of the seminar we allow sufficient time to address your individual questions. If you would like us to cover certain topics, please contact us prior to the seminar and we will incorporate your requests.

[10] NZMI's blog contains the following information (*verbatim*):

Stay Informed with our Migration Blog

Details

Created: 05 May 2017

Living and working in New Zealand – we just welcomed the 1000<sup>th</sup> participant

This March again, New Zealand Migration International hosted its popular seminar "Living and Working in New Zealand" with a wide range of interactive presentations, our migration advisers introduced the specifics of living and working in New Zealand to the seminar participants and informed them about current visa updates and successful strategies for migrating to New Zealand.

This year's seminars mainly focussed on different visa options for professionals, family businesses, self-employed persons and freelancers. The seminar participants were especially excited about the possibility of a "Branch-Out", which offers businesses, self-employed persons and freelancers the opportunity to start a business in New Zealand whilst keeping the existing overseas business.

In addition, the seminar hosts also provided many useful and practice-orientated information concerning relocating to New Zealand and the local job market. Furthermore, there was enough time for personal discussion with other seminar participants and for individual talks with our experts.

[11] In early 2017, Ms Walke authored two articles which were published in a German language magazine, *360° Neuseeland*. Ms Walke was described in the articles as an immigration adviser under the relevant German legislation, a licensed immigration adviser for New Zealand and a registered migration agent for Australia.

[12] The English translation of the first article gives the heading:

**Try out New Zealand:** Residency and work visa for entrepreneurs, freelance and self-employed professionals

[13] The article was directed at entrepreneurs with existing businesses in Germany whom it was said could establish a branch in New Zealand and become permanent residents with dual citizenship. It set out how this could be achieved:

In the “branch out” process, the “Residency” status as well as the work visa are attached to an existing and continuously operating business in Germany.

...

This – very popular – model offers those entrepreneurs, freelance and self-employed professionals, toying with the “branch out” idea, the very attractive opportunity to immigrate to New Zealand with their entire family, without having to give up their business enterprises in Germany.

[14] The title of the second article (as translated) was:

Immigrating for family entrepreneurs and self-employed professionals:

**Choosing the correct visa category and status**

**Part 2 of our series “Doing Business in New Zealand”**

[15] The second article’s topics were:

- (a) The New Zealand visa conditions;
- (b) Visa status: rights and opportunities;
- (c) Dream outcome for many immigrants: New Zealand citizenship;
- (d) The path to dual citizenship; and
- (e) The special visa path for family entrepreneurs.

[16] It concluded by promoting a seminar:

UPGRADE YOUR LIFESTYLE – NOVEMBER 2017

Targeted toward all family entrepreneurs, New Zealand Migration International offers focus events on 11 and 25 November 2017, giving detailed information on the topic: “branch-out”. The focal point of the events is the current New Zealand “Investment Attraction Strategy” and the resulting visa advantages for family entrepreneurs.

**For further information:** [www.newzealand-migration.de](http://www.newzealand-migration.de)

[17] Both articles were followed by advertisements for seminars by NZMI in Frankfurt and Stuttgart in March 2017 and in an unnamed location in November 2017. The advertisements identified the Auckland telephone number of NZMI and the Dusseldorf telephone number of Sydney Migration International GmbH.

[18] These branch-out seminars, appearing on the NZMI website, blog and Facebook page, took place in Germany, Singapore, the United States and Dubai. Participants paid a fee to attend (\$A290).

[19] According to an English language brochure for the seminar "Upgrade Your Lifestyle Living and Working in Australia or New Zealand", the presenter was Mr Walke. The brochure described him as the director of the New Zealand branch and as available at the seminar to answer questions and to provide information relevant to the individual circumstances of the participant.

[20] The program in the seminar brochure listed topics such as visa categories for New Zealand and a free visa assessment. Under the heading visa categories, the following topics were listed:

- (a) Possible visa options;
- (b) Distinction between temporary and permanent visa categories;
- (c) Expression of interest & skill assessments;
- (d) The advantage of a state sponsorship; and
- (e) How to apply for your visa.

[21] The brochure was issued by "Migration International Group". It contained the website address and Auckland telephone number of NZMI, as well as the website addresses and telephone numbers of Sydney Migration International, Melbourne Migration International and Sydney Migration International GmbH (Dusseldorf).

### *Complaint*

[22] Mr Hahn filed a complaint against Ms Walke in October 2017 with the Immigration Advisers Authority (the Authority), headed by the Registrar of Immigration Advisers (the Registrar). It concerned the "branch – out" visa seminars.

[23] The Authority first raised the complaint with Ms Walke on 23 January 2018. It formally wrote to Ms Walke on 19 February 2018 setting out details of the complaint.

[24] There followed an exchange of letters and emails between the Authority and Ms Walke or the in-house lawyer of the Migration International Group.

[25] The Registrar referred the complaint to this Tribunal on 24 April 2018.

#### *Decision of Tribunal*

[26] The Tribunal found that Ms Walke had facilitated the unlawful conduct of an unlicensed person, Mr Walke, who hosted seminars in different countries at which he provided immigration advice, contrary to the Immigration Advisers Licensing Act 2007 (the Act). At the seminars, Mr Walke presented an immigration strategy Ms Walke had created, or at least promoted and endorsed in her articles. Her conduct in knowingly facilitating her husband's seminars was also contrary to the Act. Additionally, she had failed to exercise due care in ensuring that her husband not give unlicensed immigration advice. Ms Walke was found to be in breach of cls 1 and 3(c) of the Code of Conduct 2014 (the Code).

#### **SUBMISSIONS**

[27] In her submissions (29 April 2019), Ms Thompson, on behalf of the Registrar, contends that Ms Walke's response to the complaint indicates that rehabilitation is an unrealistic prospect and therefore cancellation of her licence is in the public interest for the protection of consumers. It is submitted that Ms Walke currently has little regard for, or knowledge of, her professional obligations.

[28] Ms Thompson submits that the appropriate sanctions would therefore be:

- (1) Caution or censure;
- (2) Order for payment of a penalty not exceeding \$10,000;
- (3) Cancellation of licence; and
- (4) An order preventing Ms Walke from reapplying for a licence until she completes the Graduate Diploma in New Zealand Immigration Advice available from Toi-Ohomai Institute of Technology.

[29] Ms Walke, in her submissions (24 April 2019), contends that the website information relied on by the Tribunal should not have been used, as it may be incomplete and/or partly inaccurate. She does not accept the Tribunal's finding that she considers herself to be outside the legal requirements of the Act, since she respects all laws and regulations applying to her professional conduct.

[30] Ms Walke states that she does not recognise the Tribunal's jurisdiction to impose any sanction on a German resident. It is seeking to enforce an unenforceable law. Moreover, the Registrar is imposing an occupational ban for all advisers licenced by the German government within Germany and regulated by the German Office of Administration if they are not licensed by the New Zealand government at the same time. This can only be described as discrimination against foreign firms and advisers licensed by the German government residing in Germany.

[31] It appears to Ms Walke that the Tribunal and the Authority are relying on the exercise of New Zealand's sovereign authority and they deny Germany, German residents and advisers within Germany, the very same rights.

[32] According to Ms Walke, the Tribunal is alleging that she is a clairvoyant. Furthermore, it is applying a collective punishment and/or clan liability. As the Tribunal determined that she had to surrender her New Zealand licence in order to comply with German law, she has therefore surrendered her New Zealand licence. In her view, the Tribunal saw a possibility of using its powers to hit back and cause damage and loss. The assumptions and allegations made by the Tribunal are false and as a result the determination is wrong. She reserves all her rights at law.

## **JURISDICTION**

[33] The Tribunal's jurisdiction to award sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following action:<sup>1</sup>

### **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.

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<sup>1</sup> Immigration Advisers Licensing Act 2007.

[34] 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:
  - (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.

[35] 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.

[36] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:<sup>2</sup>

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.

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

...

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.

[37] 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.<sup>3</sup>

[38] 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.<sup>4</sup>

[39] The most appropriate penalty is that which:<sup>5</sup>

- (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.

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

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

<sup>5</sup> *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 at [49].

## DISCUSSION

[40] In terms of sanctions, I record that the breach of cl 1 of the Code (not exercising due care in ensuring that Mr Walke not give immigration advice) adds little to the breach of cl 3(c) (not acting in accordance with New Zealand immigration legislation). The sanctions will be in respect of the latter.

[41] The starting point is the seriousness of the complaint. It was by using Ms Walke's name as a licensed adviser to attract participants at his seminars that her unlicensed husband could provide immigration advice. Both Ms Walke and her husband may have committed criminal offences. That is not for me to decide, but this possibility shows the gravity of her misconduct.

[42] Attendees at Mr Walke's seminars are clients of Ms Walke's companies who have paid to attend. They are entitled to have their immigration matters personally handled by an adviser who is licensed and therefore both knowledgeable and subject to a code of professional standards. This includes advice given to them at seminars.

[43] Ms Walke correctly contends that she must comply with German law. There is no evidence before the Tribunal that the legal obligations of a licensed adviser under New Zealand law are in any way inconsistent with German law. As I said in the earlier decision, if the legal regimes are in fact incompatible, then Ms Walke must surrender her licence. I therefore regard German law and German licensing of Ms Walke and Mr Walke as irrelevant to whether she is bound by New Zealand law regulating advisers. The New Zealand law applies extra-territorially.<sup>6</sup>

[44] I agree with Ms Thompson that rehabilitation is unrealistic. Ms Walke does not understand that by signing up to the New Zealand licensing regime, she has agreed to be bound by the legal obligations of a licensed adviser set out in the Act and the Code. She believes that she is entitled to the privileges of a New Zealand licensed adviser, but not to the obligations.

[45] I will consider the potentially appropriate sanctions in the order in which they appear in s 51.

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<sup>6</sup> Immigration Advisers Licensing Act 2007, ss 8 & 73.

*Caution or censure*

[46] A censure is appropriate to mark the Tribunal's disapproval of Ms Walke's conduct. A caution would not reflect the seriousness of the breaches, nor that they concerned many clients.

*Training*

[47] As Ms Walke has surrendered her licence, it would not be appropriate to order her to undergo training. I make the point though that should she contemplate seeking any licence in the future, she must first complete the full Graduate Diploma available from Toi-Ohomai. Ms Walke needs to be educated concerning the legal and ethical requirements attaching to a New Zealand licence.

*Cancellation of licence*

[48] Ms Walke has already surrendered her licence, so there is no need for it to be cancelled. Had she not done so, the Tribunal would have cancelled her licence.

*Prohibiting reapplication*

[49] Given Ms Walke's refusal to recognise New Zealand law and her professional obligations, it is not appropriate for her to hold any licence. The public must be protected from such an adviser. There will be an order preventing her from reapplying for a licence for the maximum period of two years.

[50] If in the future Ms Walke accepts New Zealand law and seeks to reapply, I have already noted that she must complete the Graduate Diploma. Accordingly, I will also make an order preventing Ms Walke from reapplying for a licence until she has completed that qualification.

*Penalty*

[51] The maximum penalty is \$10,000. Given the seriousness of the breach and its magnitude in light of the large number of attendees at the seminars, the penalty will be set at the higher end of the scale.<sup>7</sup>

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<sup>7</sup> See *Hahn v Walke* [2019] NZIACDT 19 at [44].

[52] There have been a number of decisions of the Tribunal concerning advisers who permitted unlicensed people to give immigration advice. It has established a level of sanctions for such conduct at the upper end of the sanctions spectrum.

[53] More recent decisions include *Immigration New Zealand (Carley) v De'Ath* [2019] NZIACDT 1, where Mr De'Ath was ordered to pay a penalty of \$8,500 in respect of 11 clients. In *Immigration New Zealand (Foley) v Niland* [2019] NZIACDT 16, there was a penalty of \$4,000 against Ms Niland in respect of four clients. In both cases, other factors also informed the level of penalty. Furthermore, the factual situation in those cases was different in that the advisers were representing clients who actually filed immigration applications, but the underlying professional violation, permitting unlicensed people to give immigration advice, was the same.

[54] A highly aggravating feature of Ms Walke's conduct is her lack of remorse. Indeed, Ms Walke displays a contempt for all those involved in the disciplinary regime.

[55] In setting a penalty, I take into account that Ms Walke has already surrendered her licence. There will presumably be a financial cost to her of doing so, as she will no longer be able to represent clients seeking to migrate to New Zealand in their applications to Immigration New Zealand.

[56] An appropriate penalty would be \$8,500.

## **OUTCOME**

[57] Ms Walke is:

- (1) censured;
- (2) prohibited from applying for any licence for two years;
- (3) prohibited from applying for any licence until she has completed the Graduate Diploma in New Zealand Immigration Advice available from Toi-Ohomai Institute of Technology; and
- (4) ordered to immediately pay to the Registrar a penalty of \$8,500.