

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 33

Reference No: IACDT 009/17

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

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

**BETWEEN** **MG**  
Complainant

**AND** **JEAN XIUJING HU**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

---

**DECISION  
(Sanctions)  
Dated 17 May 2019**

---

**REPRESENTATION:**

Registrar: S Pragji, counsel  
Complainant: No appearance  
Adviser: P Moses, counsel

## **INTRODUCTION**

[1] The Tribunal upheld this complaint in a decision issued on 10 April 2019 in *MG v Hu* [2019] NZIACDT 20.

## **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 Jean Xiujing Hu is a licensed immigration adviser. She is a director of Leader Investor Group Ltd and New Zealand Ideal Immigration Consultants Ltd.

[4] In about 2012, MG, the complainant, decided to migrate to New Zealand with her family. She intended to purchase from Ms H a fast food business. In April 2012, she entered into a form of conditional contract of purchase with Ms H. It was agreed that Ms H would be responsible for ensuring that the complainant's long-term business visa (LTBV) was obtained and for paying the immigration adviser's fee.

[5] In about December 2012, Ms Hu was formally instructed by the complainant, with Ms H acting as an intermediary. A written agreement for the supply of professional services was entered into between the complainant and Ms Hu on 5 January 2013.

[6] There were numerous communications between Ms Hu and Ms H as the complainant's visa application and supporting documents were compiled.

[7] On 21 April 2013, Ms Hu telephoned the complainant to obtain some information. This was the first direct contact between them.

[8] The LTBV application was lodged by Ms Hu with Immigration New Zealand on 22 April 2013. The business plan was based on the fast food business which the complainant was in the process of buying.

[9] There were a number of direct emails between Ms Hu and the complainant from July to September 2013 concerning Immigration New Zealand's processing of the application.

[10] At the request of the complainant, the business plan was changed from fast food to starting a retail stationery and office supplies business.

[11] The complainant then terminated the agreement with Ms Hu and instructed a new immigration adviser.

[12] The new adviser advised Immigration New Zealand in November 2013 that the LTBV application previously filed may have contained some incorrect information. He alleged that the complainant had never seen the first business proposal, that some of the documents had been signed by Ms H and that none of the information on the application form had been translated or explained to the complainant. Furthermore, the complainant's medical report had been altered, her resume was incorrect and the financial statements for the complainant's company had been artificially inflated. According to the new adviser, the complainant acknowledged that she was not completely innocent in the process but had been acting in good faith in trusting Ms Hu.

#### *Complaint*

[13] The complainant made a formal complaint against Ms Hu to the Immigration Advisers Authority (the Authority) on 24 August 2014. There followed correspondence between the Authority and Ms Hu or her counsel, Mr Moses.

[14] Part of the complaint was referred by the Authority to the Tribunal. The complainant's allegation that Ms Hu was a party to false information being provided to Immigration New Zealand was not referred to the Tribunal.

[15] In its decision of 10 April 2019, the Tribunal found that it should have been readily apparent to Ms Hu that Ms H had a clear conflict of interest in performing the role of intermediary or agent on behalf of the complainant in immigration matters, given that she was also the vendor of the business on which the visa originally depended. However, the critical failure of Ms Hu was accepting an intermediary at all, and therefore not engaging personally with her client, the complainant, during the first nine months of representing her.

[16] Ms Hu was found to be in breach of cl 1.1(b) of the Code of Conduct 2010 (carrying out the informed instructions of the client), 1.5(a) (explaining the terms of the agreement to the client) and 3(a) (confirming in writing to the client when the application was lodged).

## SUBMISSIONS

[17] In her submissions (26 April 2019), Ms Pragji, counsel for the Registrar of Immigration Advisers (the Registrar), submits that Ms Hu should be:

- (1) cautioned or censured;
- (2) ordered to enrol in the New Zealand Immigration Advice Refresher Course provided by Toi-Ohomai Institute of Technology; and
- (3) ordered to pay a penalty not exceeding \$10,000.

[18] Mr Moses, in his submissions (30 April 2019), states that Ms Hu acknowledged at the outset that she had fallen below the expected standard. Her response could give the Tribunal considerable comfort that she understood the importance of the obligations breached. This would enable the Tribunal to approach the matter with a predominantly rehabilitative and restorative, rather than punitive, focus. It is contended that the breaches are at the lower end of the spectrum though they relate to a matter of fundamental importance.

[19] According to Mr Moses, Ms Hu has spent \$3,450 (excluding GST) engaging an auditor, Ms Zeenat Afiz, to review all her processes in order to ensure compliance with her professional obligations. That auditor is well qualified, being a licensed immigration adviser, an enrolled lawyer, a former immigration officer and a former team leader of licensing within the Authority. Ms Hu took this step to ensure that her practice was fully compliant.

[20] There is also a statement from Ms Hu (30 April 2019) recording her acceptance and understanding of the Tribunal's decision. She acknowledges making a fundamental mistake in the way she engaged with the complainant. As for the Registrar's submission that she undertake a refresher course, she accepts it is important to remain current in her knowledge of immigration law and practice, but points out that since 2009 she has regularly attended the continuing professional development events hosted by the New Zealand Association for Migration and Investment. She had also attended seminars and webinars hosted by others, including the Authority itself.

[21] As a result of the audit process, Ms Hu says she changed some processes, has developed template letters and instructed her staff in relation to "immigration advice" (a statutory term). The situation with the complainant, where an intermediary was involved, was isolated. Indeed, this was the only complaint made against her. Ms Hu

advises that she has purchased proprietary file management software specifically designed for immigration practitioners which assists in complying with file management obligations. She operates a sizeable immigration practice responsibly, carefully, successfully and in compliance with the Code.

[22] The Tribunal was also sent the auditor's report of 29 September 2017 and a further letter from her dated 30 April 2019.

[23] The report was a follow-up to an earlier review to ensure that Ms Hu's business was compliant. In particular, the newly implemented practices had been assessed. A number of electronic templates were reviewed and recommendations made. The letter of 30 April records that the auditor was engaged to ensure that Ms Hu's business practices were compliant. She says that Ms Hu was receptive and welcomed the recommendations.

## **JURISDICTION**

[24] The Tribunal's jurisdiction to impose sanctions is set out in the Immigration Advisers Licensing Act 2007 (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.

[25] 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:

---

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

- (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.

[26] 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.

[27] 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.

...

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 *Zideman 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.

---

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

[28] 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>

[29] 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>

[30] 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.

## DISCUSSION

[31] Personal client engagement is a fundamental obligation of an adviser. Clients are entitled to expect that they will deal directly with the licensed person, which provides an assurance of knowledge and being subject to a professional code.

[32] A licensed adviser must directly and personally engage with the client from the acceptance of instructions until the conclusion of the matter. The permitted exceptions are set out in the Act, but in practice they are only clerical work (defined narrowly) and interpretation/translation work.

---

<sup>3</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee*, above n2, 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, [2013] NZAR 320 at [49].

[33] In the decision upholding the complaint, I found that Ms Hu's conduct did not amount to a deliberate breach of her legal and ethical obligations and her breach was not at the high end of the disciplinary spectrum. There was no deliberate or cavalier avoidance by Ms Hu of her obligation to engage with the complainant. She believed that Ms H was faithfully relaying information between the complainant and herself. I noted also that, while there were multiple breaches, there was really only just one overarching failure, being the lack of personal engagement with her client.

[34] I acknowledge Mr Moses' submission that the publication of the Tribunal's decisions on the Tribunal's website is a sanction itself, as is the cost of legal representation in responding to a complaint.

[35] I am impressed by the action undertaken by Ms Hu, done well before the Tribunal's decision, to acknowledge her wrong and take steps within her practice to ensure that it did not happen again. In particular, Ms Hu went as far as to engage a well-qualified auditor to assist her to be fully compliant. Ms Hu is entitled to considerable credit for taking these steps.

[36] Furthermore, this was an isolated occurrence and I am satisfied that a reoccurrence is highly unlikely.

[37] Given the isolated nature of the violation and the professional response to the complaint, a caution is more appropriate than censure.

[38] Ms Pragji seeks an order that Ms Hu enrol in the refresher course offered by Toi-Ohomai. I find this is unnecessary. In respect of the wrongdoing upheld by the Tribunal, I am confident that Ms Hu understands her obligations. She has received advice from the auditor and no doubt from Mr Moses as to what is expected. The isolated nature of the complaint shows that there are no wider issues in relation to Ms Hu's conduct or her understanding of immigration law and practice. I decline to order that Ms Hu undertake the refresher course.

[39] While the underlying failure to engage directly and personally with the complainant in the earlier period of the instructions was a breach of a fundamental obligation of an adviser, I accept Mr Moses' submission that a financial penalty would not be reasonable or proportionate. Ms Pragji does not say why a financial penalty would be appropriate. It is particularly noteworthy in this regard that Ms Hu instructed an auditor to ensure she was fully compliant, at some cost to her. I do not see the need to punish or deter Ms Hu, or to use this example to deter other advisers.

**OUTCOME**

[40] Ms Hu is cautioned.

**ORDER FOR SUPPRESSION**

[41] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>6</sup>

[42] There is no public interest in knowing the name of Ms Hu's client, the complainant.

[43] The Tribunal orders that no information identifying the complainant is to be published other than to the parties and Immigration New Zealand.

---

D J Plunkett  
Chair

---

<sup>6</sup> Immigration Advisers Licensing Act 2007, s 50A.