

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 39

Reference No: IACDT 011/17

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

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

**BETWEEN** **WQ**  
Complainant

**AND** **LAVENIA EMBERSON**  
Adviser

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

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**REPRESENTATION:**

Registrar: S Pragji  
Complainant: Self-represented  
Adviser: Self-represented

## **PRELIMINARY**

[1] The Tribunal upheld this complaint against Ms Emberson, the adviser, in a decision issued on 8 May 2019 in *WQ v Emberson* [2019] NZIACDT 28. It found that Ms Emberson had not been professional and diligent, nor had she conducted herself with due care and in a timely manner. This was due to delays in filing an application with Immigration New Zealand and replying to her client's questions. She was found to be in breach of cl 1 of the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

## **BACKGROUND**

[2] The narrative leading to the complaint is set out in the decision of the Tribunal upholding the complaint.

[3] Ms Emberson is a licensed immigration adviser, based in Dubai. At the relevant time, she worked for a law firm there.

[4] On 19 May 2016, the complainant entered into a written agreement with the law firm for the purpose of obtaining permanent residence in New Zealand. Throughout May and June 2016, Ms Emberson worked compiling the relevant application to be made to Immigration New Zealand. This required obtaining information and documents from the complainant and from others such as the New Zealand Qualifications Authority. In doing so, Ms Emberson was slow to respond to a number of queries from the complainant.

[5] By late September 2016, the application had still not been filed, but Ms Emberson formally stopped working at the law firm. However, she continued to assist the replacement employee with various files, including that of the complainant. She also continued to communicate using the firm's email address.

[6] The complainant's application was not filed with Immigration New Zealand until 10 or 11 October 2016. On 12 October, the agency changed its policy by increasing the number of points required for automatic selection which meant the complainant was no longer eligible.

[7] A complaint was made by the complainant to the Immigration Advisers Authority (the Authority) on 13 November 2016. The head of the Authority, the Registrar of Immigration Advisers (the Registrar), referred that complaint to the Tribunal on 16 June 2017.

[8] As noted above, the Tribunal issued its decision on 8 May 2019. It found that Ms Emberson had delayed lodging the application and communicating with the

complainant. This was a breach of cl 1 of the Code requiring her to be professional and diligent, and to conduct herself with due care and in a timely manner.

## **SUBMISSIONS**

[9] Counsel for the Registrar, Ms Pragji, in her submissions (22 May 2019) contends that Ms Emberson should be cautioned or censured.

[10] The complainant sent an email to the Tribunal on 25 May 2019 requesting the Tribunal not to impose any penalty on Ms Emberson. He did not want her to pay anything to him.

[11] There were no submissions from Ms Emberson.

## **JURISDICTION**

[12] 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:<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.

[13] 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:

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

- (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.

[14] 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.

[15] 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 *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.

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

[16] 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>

[17] 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>

[18] 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

[19] While Ms Emberson has not produced any submissions to the Tribunal in reply to either the complaint or the invitation to provide submissions on sanctions, she did acknowledge the delays in filing the application in her letter of 23 May 2017 to the Authority. She acknowledged that the complainant missed four draws by Immigration New Zealand as a result of her delays and apologised for this.

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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].

[20] According to Ms Emberson, the application would not have been successful even if it had been filed earlier, as the complainant would have been caught by another policy change concerning the English language criterion. There is no evidence before the Tribunal contradicting her contention that the application would have failed anyway.

[21] It is disappointing that Ms Emberson did not see fit to acknowledge her wrongdoing to the Tribunal and advise how she had adjusted her business practice accordingly.

[22] Nonetheless, there is no reason to believe this was not an isolated incident. I note she has left the employment of that law firm. In setting the sanctions, I will take into account that the complainant does not seek a sanction.

[23] The only sanction sought by the Registrar is a caution or censure. The professional violation by Ms Emberson could not be described as serious, particularly if it is correct that her tardiness would have made no difference to the outcome of the application. I note that Ms Emberson has not appeared before the Tribunal before. A caution, rather than censure, is therefore appropriate. If she appears before the Tribunal in the future for dilatory performance of her instructions, she could not expect to be treated so leniently.

## **OUTCOME**

[24] Ms Emberson is cautioned.

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D J Plunkett  
Chair