

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 42

Reference No: IACDT 026/17

IN THE MATTER of an appeal under s 54 of
the Immigration Advisers
Licensing Act 2007

AGAINST A decision of
**THE REGISTRAR OF
IMMIGRATION ADVISERS**

BY **JACINTA SASCHA MARIA
(JAY) SHADFORTH**
Appellant

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 20 June 2019

REPRESENTATION:

Registrar: M Denyer, counsel

Appellant: Self-represented

INTRODUCTION

[1] This is an appeal against the decision of the Registrar of Immigration Advisers (the Registrar) on 14 June 2017 not to pursue a complaint made by Ms Jacinta Sascha Maria (Jay) Shadforth against a licensed adviser, MBL.

BACKGROUND

[2] There is a history of complaint and counter-complaint between Ms Shadforth, a former licensed adviser, and MBL, who remains a licensed adviser.

Complaint to Registrar against Ms Shadforth

[3] It appears to have started with a complaint made by MBL to the Immigration Advisers Authority (the Authority) against Ms Shadforth. Both were licensed at the time and practising in the same city in New Zealand. The Registrar, the head of the Authority, decided not to refer the complaint to the Tribunal.

[4] On 14 November 2014, on appeal by MBL, the Tribunal overturned that decision and directed the Registrar to prepare the complaint for filing with the Tribunal.¹ A statement of complaint was duly filed by the Authority on 30 June 2015.

[5] The Tribunal upheld the complaint against Ms Shadforth in a decision issued on 18 May 2016.² It arose from Ms Shadforth's representation of MBL's former client. She had sought information from MBL. As Ms Shadforth was not satisfied with what he provided, she sent him two emails which were the subject of the complaint.

[6] The first email, sent on 18 November 2013 to MBL and copied to the client, who was described as client A, criticised MBL and described him as "unprofessional in the extreme". Ms Shadforth expressed the view that MBL had failed to properly comply with client A's request to transfer his file to Ms Shadforth. The second email was sent on 3 February 2014 to MBL only, disparaging him. It was in the same context. MBL was accused of a "failure to grasp", of lacking familiarity and experience, and of being incapable.

[7] The complaint by MBL against Ms Shadforth also concerned a series of internet postings critical of his immigration company in relation to client B, including accusing the company of dishonesty. Client B was a former employee of MBL's company as well as a client, and also a former client of Ms Shadforth. While client B was not named in the

¹ *MBL v Registrar of Immigration Advisers* [2014] NZIACDT 115.

² *MBL v Shadforth* [2016] NZIACDT 26.

posts, the Tribunal found that family, friends and even other people would be able to identify her from the information on the postings. Ms Shadforth also accused client B of being unlawfully in New Zealand, being unable to pay her fees and expressed other concerns about client B.

[8] The Tribunal found that Ms Shadforth had breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code) in failing to perform her services with respect and professionalism. Furthermore, she had breached the Code in failing to preserve the client's confidentiality.

[9] The Tribunal issued an interim sanctions decision against Ms Shadforth on 16 June 2016 and then a final sanctions decision on 3 August 2016.³ The sanctions reflected not just the Code breaches, but also her conduct after the Tribunal upheld the complaint on 18 May 2016. Ms Shadforth's licence was cancelled and she was prohibited from applying for a further licence. She was also censured, ordered to pay a penalty of \$7,500 and to make a contribution of \$5,000 towards the Tribunal's costs.

Ms Shadforth's complaint to Registrar

[10] By the time the Tribunal had issued the sanctions decisions against Ms Shadforth, she had made a complaint to the Authority against MBL. It was made on 12 June 2015. It concerned two clients, also described as clients A and B. The Registrar decided on 14 June 2017 that the complaint disclosed only trivial or inconsequential matters and would not therefore be pursued.

[11] Ms Shadforth appealed to the Tribunal. This is the current matter before the Tribunal. I will return to this.

Further complaint to Registrar against Ms Shadforth

[12] [redacted]

[13] It was found by the Tribunal that Ms Shadforth had put incorrect information on her website. She had claimed membership of professional bodies to which she did not belong. Additionally, she had posted on her website a passage from another tribunal's decision which she had altered to create a favourable impression of herself.

[14] Accordingly, the Tribunal determined that Ms Shadforth had failed to be professional, diligent and to conduct herself with due care. Furthermore, she had represented or promoted herself in a deceptive manner. Ms Shadforth was therefore in

³ *MBL v Shadforth* [2016] NZIACDT 31, *MBL v Shadforth* [2016] NZIACDT 37.

breach of the Code. While the complaint was upheld, the Tribunal took no further action, given the significant sanctions already imposed on her and her medical circumstances.

JURISDICTION AND PROCEDURE

[15] The grounds for a complaint against a licensed adviser are listed in s 44(2) of the Immigration Advisers Licensing Act 2007 (the Act):

- (a) negligence;
- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour; and
- (e) a breach of the Code of Conduct.

[16] Section 45(1) provides that on receipt of a complaint, the Registrar may:

- (a) determine that the complaint does not meet the criteria set out in section 44(3), and reject it accordingly;
- (b) determine that the complaint does not disclose any of the grounds of complaint listed in section 44(2), and reject it accordingly;
- (c) determine that the complaint discloses only a trivial or inconsequential matter, and for this reason need not be pursued; or
- (d) request the complainant to consider whether or not the matter could be best settled by the complainant using the immigration adviser's own complaints procedure.

[17] In accordance with s 54 of the Act, a complainant may appeal to the Tribunal against a determination of the Registrar to reject or not pursue a complaint under s 45(1)(b) or (c).

[18] After considering the appeal, the Tribunal may:⁴

- (a) reject the appeal; or

⁴ Immigration Advisers Licensing Act 2007, s 54(3).

- (b) determine that the decision of the Registrar was incorrect, but nevertheless reject the complaint upon another ground; or
- (c) determine that it should hear the complaint, and direct the Registrar to prepare the complaint for filing with the Tribunal; or
- (d) determine that the Registrar should make a request under section 45(1)(d).

[19] The adviser against whom the complaint is made is not a party to the appeal and has not been served. The appeal cannot of itself result in the Tribunal upholding the complaint against the adviser.

[20] In the complaint here, the Registrar decided that it disclosed only trivial or inconsequential matters and in accordance with s 45(1)(c) that it would therefore not be pursued.

[21] The Tribunal has received from Ms Shadforth a completed appeal form (4 August 2017), with comprehensive particulars of the complaint against MBL, together with supporting documents.

[22] The previous Tribunal chair (Mr Pearson) issued directions on 25 August 2017 setting out a timetable for providing submissions and evidence, together with a request that Ms Shadforth provide an affidavit indicating the circumstances in which the material on which she relied had come into her possession.

[23] Ms Shadforth duly provided an affidavit sworn on 7 September 2017. In that affidavit, she withdraws all aspects of the complaint relating to client B. Client A is identified as UQG, a former client of both MBL and Ms Shadforth.

[24] Ms Shadforth requests the Tribunal to obtain a full copy of the file from the Authority. I decline to do so. For the reasons given in the assessment which follows, the complaint does not warrant any fuller investigation.

[25] The Registrar's investigator, Mr Theodore John Lloyd Ashton, also provided an affidavit sworn on 6 October 2017 setting out the steps in his investigation and his conclusion in relation to each item of complaint made.

[26] Ms Shadforth replied to Mr Ashton's affidavit on 13 October 2017.

ASSESSMENT

[27] The genesis of this complaint is a dispute between two competing professionals practising in the same city who, at different times, acted for the same clients. One of

those advisers, Ms Shadforth, is no longer licensed, as the Tribunal cancelled her licence upon the complaint of the other adviser, MBL. An important factor for the Tribunal to take into account is that the client who should be at the centre of this complaint did not advance it. It is not even clear whether he is aware of it.

[28] The complaint against MBL, as it concerns client A, is very broad. It is fully particularised by Ms Shadforth on the appeal form and is broken down into the following sections:

1. Failure to execute professional engagement.
2. Failure to undertake adequate assessment.
3. Negligence and/or incompetence.
4. Acting in the best interests of the client.
5. Misrepresentation to Immigration New Zealand of the client's character issues.
6. Misrepresentation to the client of the likelihood of success.
7. Permitting unlicensed individuals to provide immigration advice.
8. Withholding the client's personal information.

[29] Of these, the most serious allegations are that MBL misrepresented the client's character issues to Immigration New Zealand, and that he permitted unlicensed individuals to provide immigration advice. I will deal with each of these briefly. For the reasons given later, I decline to assess the balance of the complaint.

Misrepresentation to Immigration New Zealand

[30] The alleged misrepresentation relates to client A's Irish criminal history.

[31] The background to this issue is that client A had been issued with a deportation liability notice by Immigration New Zealand on 10 September 2013, based on his criminal convictions in New Zealand. MBL was instructed to represent client A who wished to remain here.

[32] Furthermore, the client's passport name omitted his birth middle name. MBL's staff had obtained an Irish police certificate using the passport name, which disclosed he had no convictions. MBL provided it to Immigration New Zealand on 1 October 2013.

[33] In the same letter of 1 October 2013 to Immigration New Zealand, MBL responded to information that the agency had from the Irish police that client A (with a middle name) had previously come to the attention of the police there in relation to drug, public disorder and bail offences. Two warrants had been issued for his arrest. MBL said in the letter this information appeared to be a case of mistaken identity, which could have something to do with the middle name. MBL added that his client was confused on the point.

[34] According to Ms Shadforth's complaint, MBL repeatedly represented to Immigration New Zealand that the client had no previous convictions in relation to the misuse of drugs. Ms Shadforth states that "[w]hilst technically correct", MBL had prior knowledge of an arrest and court appearance in Ireland for misuse of drugs.⁵ According to her, MBL's statements to Immigration New Zealand were carefully made with the specific intention of misleading the agency in regard to the client's character issues.

[35] In determining not to pursue the complaint on 14 June 2017, the Registrar stated that MBL obtained the client's Irish police certificate and acted in accordance with the information on the certificate, which was that the client had no convictions in Ireland. Furthermore, Immigration New Zealand's deportation liability notice had been based on his New Zealand police certificate, not his Irish one.

[36] Mr Ashton, the Registrar's investigator, deposes in his affidavit that he considered whether MBL had misled Immigration New Zealand as to the client's criminal history in Ireland. He concluded that there was insufficient evidence of this allegation.

[37] According to Mr Ashton, the client had advised MBL that he had been charged with offences in Ireland, but did not tell him he had any active charges, warrants for his arrest or convictions. In his view, MBL undertook the proper course of action of seeking a police certificate in the client's correct full name and date of birth, as recorded on his passport.

[38] Mr Ashton found no evidence any false details had been provided to the Irish authorities. This is understood to be a reference to the application by MBL's staff for an Irish police certificate in the name on the passport (being different from the client's birth name). Mr Ashton also found no evidence that MBL had reason to believe that he had received any incorrect or incomplete conviction information from the Irish. Furthermore, according to Mr Ashton, Immigration New Zealand does not normally regard a past charge as a character issue, unless it resulted in a conviction or it remained outstanding.

⁵ Appeal to Tribunal (4 August 2017) at [34].

[39] Mr Ashton did, however, acknowledge that MBL may not have had reasonable grounds for suggesting to Immigration New Zealand that there appeared to be a case of mistaken identity in relation to the Irish police intelligence as to the warrants.

[40] Ms Shadforth does not reply to Mr Ashton's affidavit in her submissions to the Tribunal on 13 October 2017.

[41] On the basis of the evidence before the Tribunal, I agree with the Registrar that this allegation should not be pursued. Irrespective of the client's legitimate multiple names, there is no suggestion that he has any convictions in Ireland. So far as I know, an Irish police certificate in his full birth name would not have disclosed convictions. Nor is there any evidence of any active charge or warrant there. MBL's production to Immigration New Zealand of a certificate in the name on his passport was not misleading.

[42] As for MBL's claim of possible mistaken identity, it is not clear from the evidence that MBL was attempting to mislead Immigration New Zealand over the arrest warrants in Ireland in his middle name. The client certainly disclosed to MBL that he had been arrested in Ireland, but did not advise any convictions presumably because there were none. Mr Ashton says the client did not tell MBL that any charges were active. There is no evidence MBL was withholding any material information from Immigration New Zealand.

[43] I note also that Immigration New Zealand, to MBL's knowledge, knew that client A had a middle name as this was the name under which he was convicted in New Zealand. It is therefore not logical to attribute to MBL any sinister motive for raising the possibility of mistaken identity.

[44] I agree with Mr Ashton's overall conclusion that there is insufficient evidence of misleading conduct, in relation to both the use of a police certificate omitting the client's middle name and the claim of mistaken identity, to warrant further investigation.

[45] It is relevant to note, as the Registrar states, that Immigration New Zealand's focus was on his New Zealand criminal record, not his Irish record. He had convictions in New Zealand, but not in Ireland. An arrest which did not result in a conviction was not a character issue. There is no evidence Immigration New Zealand was actually misled. Indeed, it is apparent that the agency was always aware of both his names.

[46] The client's apparent disinterest in this complaint might be explained by his success, due to Ms Shadforth's advocacy, in obtaining a further work visa as Immigration

New Zealand in effect waived the deportation notice.⁶ This is another factor which weighs against the further investigation of this complaint.

Permitting unlicensed individuals to give immigration advice

[47] This brings me to the second serious allegation, which is that MBL permitted unlicensed staff to provide immigration advice. This is serious because it can amount to a criminal offence in this country, both for the staff and the adviser employing such a person to provide advice of that nature.⁷

[48] According to Ms Shadforth's appeal, this relates to an employee of MBL (a trainee immigration adviser) advising the client to "forget his middle name" presumably when signing the Irish police certificate application form, which was lodged on his behalf by the employee.

[49] The Authority's investigation of possible unlicensed advice was wider than this. It looked at whether two trainee advisers had been more generally advising clients prior to obtaining their licences. The Registrar concluded on 14 June 2017 that there was no evidence to show those individuals went beyond clerical work while under MBL's guidance. According to the Registrar, screenshots of clients thanking these employees was not evidence of unlicensed activity.

[50] The possibility [] had given unlicensed advice was also investigated. The Registrar recorded in his decision letter that, while [] had publicly commented on issues relating to the immigration industry and Immigration New Zealand processes, they did not appear to be instances of MBL facilitating the provision of immigration advice by [].

[51] In his affidavit, Mr Ashton explains the investigation which led to the Registrar's decision. He says he considered the broader issue of MBL facilitating unlicensed immigration advice, but found no evidence of advice being provided or of any link between any such advice and MBL. The allegation had been based on images on MBL's website of unlicensed employees with clients and thank-you messages addressed to those employees. Mr Ashton notes that in some cases, the advisers had subsequently obtained a licence and the messages could relate to advice given legitimately. Regardless of this, according to Mr Ashton, there is no evidence of advice being given.

[52] Mr Ashton further deposes that other allegations by Ms Shadforth relate to online comments about immigration matters by employees that do not involve MBL's clients.

⁶ Email from Immigration New Zealand to Ms Shadforth, 11 December 2013.

⁷ Immigration Advisers Licensing Act 2007, ss 6, 63(1) & 68(1).

He found that none of the documentation provided by her identifies an example of MBL facilitating unlicensed advice to a client.

[53] In reply to the affidavit, Ms Shadforth on 13 October 2017 states that the photos on the website were originally dated, but the website by then omitted the dates.

[54] Ms Shadforth has not provided to the Tribunal the screenshots allegedly evidencing unlicensed immigration advice, dated or otherwise, but I would not regard screenshots of clients thanking employees as sufficient evidence of unlicensed advice. As the Registrar states, unlicensed employees may undertake “clerical work” (a statutory term) which could involve direct dealings with the client from time to time.

[55] As for the more specific instance of alleged unlicensed advice given to client A, to omit his middle name in an application for a police certificate, I accept that it is arguably immigration advice but it would not cross the threshold warranting disciplinary action if an isolated incident.

[56] Finally, as for []’s public comments on topical immigration issues, they would not amount to “immigration advice” (as defined in the Act) unless given to advise or assist a specific person. Ms Shadforth has provided some comments made by [] on the situation of a [person]. I gather he was neither a client of MBL nor Ms Shadforth. She alleges MBL misled readers into believing he was acting for [person]. There is no evidence MBL or [] ever said or wrote this. They were merely commenting on an immigration issue which had arisen in the public media.

Conclusion

[57] The two allegations reviewed above are the most serious allegations made by Ms Shadforth against MBL. I agree with the Registrar that they do not warrant a referral to the Tribunal. I decline to assess all the other heads of complaint. There is no public interest in doing so.

[58] A threshold as to gravity must be met in order to warrant referring a complaint to a judicial body such as the Tribunal.⁸ This threshold is reflected in the Registrar’s discretion not to pursue a complaint. The complaint, as presented, does not meet the threshold. I have taken into account the thorough and professional nature of Mr Ashton’s investigation. The Registrar’s letter of 14 June 2017 declining to pursue the complaint is detailed as to the reasons. Furthermore, the events giving rise to the complaint are now more than five years old. Moreover, client A himself has no interest in pursuing it.

⁸ *Orlov v New Zealand Law Society* [2012] NZHC 2154 at [79]–[80].

OUTCOME

[59] The appeal is rejected.

ORDER FOR SUPPRESSION

[60] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.⁹

[61] There is no public interest in knowing the name of the adviser against whom the complaint is made. Nor would that be fair given that the complaint was dismissed by the Authority and will not be heard by the Tribunal. Nor is there any public interest in knowing the name of client A, who has not even made a complaint.

[62] The Tribunal orders that no information identifying the adviser, his wife or client is to be published other than to the parties and Immigration New Zealand.

D J Plunkett
Chair

⁹ Immigration Advisers Licensing Act 2007, s 50A.