

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2020] NZIACDT 27

Reference No: IACDT 034/18

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **QM**
Complainant

AND **SANDRA SIEW HOON NG**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 24 June 2020**

REPRESENTATION:

Registrar: Self-represented
Complainant: No appearance
Adviser: S Laurent, counsel

INTRODUCTION

[1] Ms Sandra Siew Hoon Ng, the adviser, acted for Mr QM, the complainant, in regard to a number of immigration applications. In particular, she drafted a residence application, but then handed it over to an unlicensed person to file and to subsequently deal with the complainant.

[2] A complaint made by the complainant to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar), the head of the Authority, to the Tribunal. It was upheld in a decision issued on 14 May 2020 in *QM v Ng*.¹ Ms Ng was found to have committed multiple breaches of the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] It is now for the Tribunal to determine the appropriate sanctions.

BACKGROUND

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

[5] Ms Ng is a licensed immigration adviser and was the sole director of Hope Immigration Service Limited (Hope Immigration), of Auckland. At the relevant time she was licensed, but her licence expired on 15 December 2017.

[6] Ms Ng entered into an agreement with Mr Gregory Smith of Impact Migration Services Limited (Impact Migration) on 12 November 2015, whereby she became a contractor to his company.

[7] In June 2016, Mr Smith introduced the complainant and his partner to Ms Ng.

[8] In August and November 2016, Ms Ng filed visitor and work visa applications respectively for the complainant, but did not enter into any client agreement with him.

[9] In August 2017, the complainant signed a client agreement with Hope Immigration providing for Ms Ng to prepare and file a residence visa application, based on the complainant's partnership with a New Zealand citizen.

[10] The residence application was duly prepared by Ms Ng who handed it to Mr Smith to file and then to deal with the complainant. Mr Smith verbally told her on 8 November 2017 that he had filed it with Immigration New Zealand, but in fact he had not. In good

¹ *QM v Ng* [2020] NZIACDT 20.

faith, Ms Ng then sent an email to the complainant's partner on the same day informing her that the application had been filed.

[11] Ms Ng told Mr Smith on 15 November 2017 that she would not renew her adviser's licence, which was due to expire one month later, and he told her that he would advise the clients she was dealing with. Despite enquiring from him on a number of occasions as to whether he had advised the clients, Mr Smith did not tell the complainant. Nor did Ms Ng advise the complainant.

[12] The complainant enquired of Mr Smith a number of times as to whether the residence application had been filed, but he never did so. Eventually the complainant asked Immigration New Zealand and was told on 10 May 2018 that the application had not been filed.

Decision of the Tribunal

[13] The Tribunal found that Ms Ng had breached multiple obligations in the Code. In particular, she had:

- (1) failed to file the residence application herself, breaching her obligation to be professional, diligent and to conduct herself with due care;
- (2) failed to obtain the complainant's instruction to hand over the application to another person and also failed to carry out his instruction to file it herself;
- (3) failed to personally inform the complainant of her intention not to renew her licence, that she had given the completed application to Mr Smith to file and of the name of a qualified person who could assist him in the future with the application;
- (4) failed to enter into written agreements with the complainant for the visitor and work visa applications; and
- (5) failed to maintain and produce to the Authority on request a complete copy of the complainant's immigration file.

[14] Ms Ng had breached cls 1, 2(e), 3(c), 18(a), 26(b) and (e), and 28(c) of the Code.

SUBMISSIONS

Submissions from the Registrar

[15] The Registrar notes that this is Ms Ng's first appearance before the Tribunal and that she had admitted the breaches. He seeks:

- (1) censure;
- (2) an order preventing Ms Ng from reapplying for a licence for one year; and
- (3) an order for payment of a penalty in the vicinity of \$2,000.

Submissions from the complainant

[16] There are no submissions from the complainant.

Submissions from Ms Ng

[17] Mr Laurent, counsel for Ms Ng, accepts that a breach of cl 2(e) would normally justify a fine. He notes the case of *Ali v Wang*². Mr Wang was fined \$5,000, in addition to being struck off the register and relicensing being prohibited for two years. His circumstances were particularly egregious. By contrast, Ms Ng can point to her early acceptance of fault, no rubber stamping having actually taken place and her wrongdoing relating to only one client. In other cases involving a single instance of delegation to an unlicensed person, the Tribunal had imposed fines of the order of \$3,000 to \$3,500. In relation generally to sanctions, Mr Laurent refers to *XN v Ji*, *MG v Hu* and *TI(G)M v Hanning*.³

[18] According to Mr Laurent, Ms Ng has already refunded the fee of \$2,200 for the residence application. The complainant had originally sought a refund of \$3,600, but the other \$1,400 was the fee for the work visa of the complainant's brother which does not form part of the subject matter of the complaint. Despite this, Ms Ng had refunded the \$1,400 also.

[19] There is an affirmation from Ms Ng (29 May 2020). She accepts the findings of the Tribunal. She says she returned to her country of birth from October 2018 to

² *Ali v Wang* [2015] NZIACDT 50.

³ *XN v Ji* [2019] NZIACDT 67, *MG v Hu* [2019] NZIACDT 33, *TI(G)M v Hanning* [2020] NZIACDT 11.

December 2019 to look after her elderly father, but had since come back to Auckland as her husband and children are here.

[20] Ms Ng explains that she had allowed her licence to expire as she was suffering from an illness in November and December 2017 which impeded her ability to conduct her business. Her mother was also seriously ill then subsequently died in July 2018. It was possible that these difficulties impaired her judgement at the time she handed the complainant's file to Mr Smith and then failed to follow up on what happened to his residence application.

[21] Ms Ng advises that she does not intend to reapply for a new licence in the future, since she is now working in a different industry. She remains the sole provider for her family since her husband has retired, and is also the provider for her father in another country.

JURISDICTION

[22] 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:⁴

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.

[23] 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:

⁴ 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.

[24] 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.

[25] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:⁵

...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.

⁵ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

[26] 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.⁶

[27] 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.⁷

[28] The most appropriate penalty is that which:⁸

- (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

[29] Ms Ng served the complainant poorly. There was a catalogue of flaws in her professional service. She now says she was ill at the time, but that was not a reason advanced earlier. No medical evidence has been provided.

[30] The most serious wrongdoing was abandoning the complainant and his application to the unlicensed Mr Smith, who was not even employed by her. Mr Smith then appears to have lied to the complainant, as well as to Ms Ng. In the event, Mr Smith did nothing and the application was not filed.

⁶ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee*, above n 5, at [151].

⁷ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

⁸ *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].

Caution or censure

[31] I agree with the Registrar that Ms Ng should be censured. A caution would not reflect her abandoning of the complainant and his application to an unlicensed person.

Training and preventing reapplication

[32] Ms Ng holds the Graduate Certificate in New Zealand Immigration Advice from Toi-Ohomai Institute of Technology. However, given the multiple errors by her, it is appropriate that she undertake the full Graduate Diploma in New Zealand Immigration Advice offered by Toi-Ohomai, should she desire to return to the profession. This is the current standard for entry into the profession. Whether or not it would be a requirement anyway of her re-entry into the industry, I will ensure this by making the appropriate order. It will be a condition of any relicensing sought by Ms Ng.

Financial penalty

[33] I regard Ms Ng's handover of the application to the unlicensed Mr Smith, coupled with effectively walking away from the complainant, as serious misconduct. I have the same view of her failure to enter into written agreements for the earlier visa applications. Client agreements are an important protection, not just for the client, but for the adviser as well. On the other hand, this is Ms Ng's first appearance before the Tribunal and she admitted her wrongdoing at an early stage in the complaint process. She readily refunded the fees charged to the complainant.

[34] The Registrar seeks an order in the vicinity of \$2,000 and Mr Laurent accepts that a penalty of \$1,000 to \$3,000 would be appropriate. I agree with both of them. The penalty will be \$2,000.

OUTCOME

[35] Ms Ng is:

- (1) censured;
- (2) prevented from reapplying for a licence until she has completed the Graduate Diploma in New Zealand Immigration Advice; and
- (3) ordered to immediately pay to the Registrar \$2,000.

ORDER FOR SUPPRESSION

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

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

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

⁹ Immigration Advisers Licensing Act 2007, s 50A.