

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2020] NZIACDT 40

Reference No: IACDT 019/19

**IN THE
MATTER**

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

BY

**THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN

**THE NEW ZEALAND
QUALIFICATIONS AUTHORITY
(HELEN SEAVOR-CROSS)**
Complainant

AND

OULU JIN
Adviser

**DECISION
(Sanctions)
Dated 25 September 2020**

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: Self-represented

INTRODUCTION

[1] Mr Oulu Jin (the adviser) acted for a client (the client) who wished to obtain an international qualifications assessment from the New Zealand Qualifications Authority (NZQA). Ms Helen Seavor-Cross (the complainant) is an NZQA evaluator. The client had a genuine qualification, but Mr Jin fabricated an academic transcript. The forgery was discovered by the complainant.

[2] A complaint to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It was upheld in a decision issued on 7 August 2020 in *NZQA (Seavor-Cross) v Jin*.¹

[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] Mr Oulu Jin is a licensed immigration adviser and director of Oulu's Immigration Firm Limited, of Shanghai. At the material time, he was provisionally licensed but since May 2020, he has held a full licence.

[6] The client, a national of China, was living in New Zealand. He intended to make an Essential Skills work visa application and required an assessment by NZQA of his overseas qualification.

[7] On 16 November 2018, Mr Jin sought an assessment of the client's qualification by NZQA. He sent a copy of a certificate in commercial cookery from a recognised Australian school, together with a "course content". The content document appeared on its face to be an academic transcript of the units achieved in obtaining the qualification. He inserted the school's logo and also a footer, "The qualification is recognised within the Australian qualifications framework".

[8] The school advised the complainant that the client achieved the qualification, but the content document was not an official school document. The complainant contacted Mr Jin on 28 November 2018 seeking an explanation.

[9] Mr Jin immediately apologised and accepted it was his fault. He said that he only had a digital copy of the certificate as the paper copy had not arrived. He went to the

¹ *NZQA (Seavor-Cross) v Jin* [2020] NZIACDT 35.

school website and found all the subject names, so listed them down in a course content document to support the assessment. The school logo was then placed on it. There was no benefit or motivation for him or the student to alter a genuine qualification.

[10] The complainant sent an email to Mr Jin summarising their conversation. She recorded that Mr Jin had received the results document but had lost it. Since NZQA's process did not allow applications without complete documentation, he went on to the school's website and created the course content document. This included the school's logo to make it appear to be an official document. He had done this because his client had an immigration deadline and the application to NZQA needed to be made urgently.

[11] Mr Jin confirmed the complainant's understanding of his explanation in a reply email on 28 November 2018. The purpose of the content document was to "fill the column of transcript" so the application process could start. This would usually take two to three weeks and by then the paper transcript would have arrived. There was no specific purpose for the logo to be placed there and it was ridiculously stupid for him to do so. The client had wanted to urgently apply for a new visa.

[12] The complainant sent an email to the client on 3 December 2018 stating that his qualification was authentic, but the course content document was not from the school. Mr Jin had confessed that he had created it and included the logo to make it appear to be an official document.

Decision of the Tribunal

[13] The Tribunal found that Mr Jin's behaviour was dishonest and misleading, in that he had created a false document and filed it with the NZQA. The form was false, but not the contents. Mr Jin had admitted that the document was false. It had been designed to hoodwink NZQA into believing that it was an official document issued by the school.

SUBMISSIONS

Submissions from the Registrar

[14] The Registrar noted the Tribunal's finding that the document was false and had been designed to hoodwink NZQA into believing that it was an official school document. While the Tribunal concluded that Mr Jin's behaviour was dishonest and misleading, it accepted that he had not been motivated by greed or benefit since he had fabricated the document to speed up the process for his client. The Tribunal noted that while his

motivation was not a defence or an excuse for his unprofessional conduct, it was a relevant mitigating factor in assessing sanctions.

[15] This is Mr Jin's first appearance before the Tribunal. Furthermore, his action was an isolated instance of wrongdoing. Although there was dishonesty in his conduct, a suspension was a severe sanction of last resort and might not be warranted in this instance.

[16] The Registrar submitted that the appropriate sanctions would be:

- (1) censure; and
- (2) an order for payment in the vicinity of \$2,000.

Submissions from the complainant

[17] There are no submissions from the complainant.

Submissions from the adviser

[18] Mr Jin confirms he had received the Registrar's submission and expressed his sincere appreciation for the consideration given by the Registrar and the suggested sanctions. He had learned a lesson and was willing to accept the Tribunal's sanctions. He advised that he had been awarded the Graduate Diploma in New Zealand Immigration Advice by Toi-Ohomai Institute of Technology on 18 July 2019.

JURISDICTION

[19] 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:²

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.

² Immigration Advisers Licensing Act 2007.

[20] 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.

[21] 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.

[22] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:³

...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.

³ *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.

[23] 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.⁴

[24] 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.⁵

[25] The most appropriate penalty is that which:⁶

- (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.

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee*, above n 3, at [151].

⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

⁶ *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].

DISCUSSION

[26] Mr Jin has been found to have been dishonest in creating a false certificate and filing it on behalf of his client with NZQA. The content of the document was not actually false, but only the form in which the information had been presented. Mr Jin did not do that out of greed or to benefit himself in any way, but in a misguided attempt to help his client by speeding up NZQA's evaluation and ultimately the processing of his client's visa by Immigration New Zealand.

[27] Dishonesty is serious professional misconduct. Honesty and integrity lie at the heart of being a professional. Immigration New Zealand, clients and third parties such as NZQA are entitled to expect that a licensed adviser will be honest.

[28] In assessing the appropriate sanctions, I acknowledge Mr Jin's motivation as a mitigating factor. I note also that he was prompt in admitting to NZQA what he had done. Furthermore, it was an isolated act of wrongdoing.

[29] As Mr Jin graduated only one year ago with the full Graduate Diploma, I agree with the Registrar that it is not necessary to require any form of retraining. I note that his misconduct occurred prior to being awarded the qualification. I accept from his brief submission to the Tribunal that he has learned his lesson.

[30] As to whether Mr Jin should be cautioned or censured, I accept the Registrar's submission that he should be censured. A caution would not reflect the seriousness of dishonesty conduct.

[31] I further agree with the Registrar that there should be a financial penalty. It must reflect the seriousness of dishonesty, but recognise that it was an isolated act of wrongdoing which was not done to personally benefit himself. It will be \$2,500.

OUTCOME

[32] Mr Jin is:

- (1) censured; and
- (2) ordered to immediately pay to the Registrar \$2,500.