

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2020] NZIACDT 50

Reference No: IACDT 023/19

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **KX**
Complainant

AND **YAN RYAN JI**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 2 December 2020**

REPRESENTATION:

Registrar: Self-represented

Complainant: No appearance

Adviser: Self-represented

INTRODUCTION

[1] Mr Yan Ryan Ji, the adviser, was instructed by KX, the complainant, to obtain a work visa. The application was unsuccessful, but he did not tell her that. Nor did he obtain instructions or advise her of the outcome of two requests he subsequently filed for discretionary visas. When she enquired from time to time about progress of the initial work visa application, he lied to her.

[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 5 October 2020 in *KX v Ji*.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 earlier decision of the Tribunal and will only be briefly summarised here.

[5] Mr Ji is a licensed immigration adviser and partner in NZ Immigration Consulting, of Auckland.²

[6] The complainant, a national of China, engaged Mr Ji to apply for a work visa. That application was filed with Immigration New Zealand on 17 November 2017. It was declined on 7 December 2017.

[7] Mr Ji did not inform the complainant of the decline and did not obtain her instructions for the remedial action he subsequently unsuccessfully undertook. He filed two requests for discretionary visas under s 61 of the Immigration Act 2009. He did not tell her of the decline of these applications on 5 January and 5 February 2018.

[8] The complainant asked Mr Ji on numerous occasions from 14 December 2017 until early May 2019 about the progress of the initial work visa application. He either did not reply to her messages or invented reasons, such as Immigration New Zealand had not responded or more information was being provided to it. Mr Ji pretended that the application remained alive by seeking further information from her. He also invented a story about her partner being investigated by Immigration New Zealand.

¹ *KX v Ji* [2020] NZIACDT 43.

² So far as the Tribunal is aware, this is not NZ Immigration Consulting Ltd, also of Auckland.

[9] In May 2019, Mr Ji drafted a statutory declaration to be signed by the parents of the complainant's partner, in support of her visa application. The complainant read there, for the first time, that her visa application had been declined in December 2017. Mr Ji confirmed to her on 9 May 2019 that the application had been refused and her visa had expired.

[10] The complainant instructed a solicitor in about June 2019 and found out her true immigration situation.

Decision of the Tribunal

[11] The Tribunal found that Mr Ji had been dishonest in his communications with the complainant concerning the status of her visa application. His conduct was deliberately deceptive. As part of this charade, he concealed two s 61 requests and their outcome.

[12] It was found that the statutory ground of complaint of dishonest or misleading behaviour was satisfied. Mr Ji had also breached the obligation in cl 1 of the Code of Conduct 2014 (the Code) to be honest and professional. His failure to engage with the complainant and take her instructions was a breach of cl 2(e) of the Code. Similarly, Mr Ji had failed to update the complainant on the outcome of the visa application, as well as the lodgement and outcome of the s 61 requests. These were breaches of cl 26(b) of the Code. The infringements of the Code overlap with the statutory ground of dishonesty upheld, so they do not add to the sanctions.

[13] In its decision, Mr Ji was warned that in determining the sanctions, the Tribunal would take into account two previous complaints upheld against him and would consider either removing him from the profession or depriving him of a full licence.

SUBMISSIONS

Submissions from the Registrar

[14] In his submissions of 28 October 2020, the Registrar advises that Mr Ji's licence expired on 17 August 2020, but remains in force while a renewal application is in progress.

[15] The Registrar notes the finding that Mr Ji was deliberately deceptive. It is submitted that his dishonesty was at a moderately serious level in that it involved a series of untruths, omissions and acts of concealment in his dealings with the complainant over a period of 19 months. It was sustained, serious and systemic dishonesty. It is serious for an adviser to dishonestly mislead a client, to whom an adviser owes fiduciary duties,

in a manner that causes the client to remain unlawfully in New Zealand over such a period.

[16] According to the Registrar, dishonest conduct “inevitably, although not always, may lead to striking off”.³ In the case of Mr Ji, he had (at the time of the Registrar’s submissions) not engaged in the Tribunal’s inquiry and disciplinary process, so it was not possible to address his prospects of rehabilitation or the sufficiency of disciplinary sanctions as an alternative to removing him from the profession. Mr Ji had chosen not to provide an explanation to either the Authority or the Tribunal in relation to his dishonesty, so the Tribunal is entitled to draw an adverse inference from his refusal to explain his conduct.

[17] While the Registrar acknowledges that depriving a person of his or her livelihood is a sanction of last resort, the public should be protected from a dishonest adviser who does not admit wrongdoing, provide an explanation or show remorse.

[18] It is submitted by the Registrar that the appropriate sanctions would be:

- (1) censure;
- (2) suspension for up to one year; and
- (3) an order for payment to the Registrar of a penalty in the vicinity of \$4,000.

[19] At the request of the Tribunal, the Registrar provided further information on 25 November 2020.

Submissions from the complainant

[20] There are no submissions from the complainant.

Submissions from Mr Ji

[21] Having failed to engage with either the Authority or the Tribunal throughout the disciplinary process beyond telling the Authority that he had nothing to say, Mr Ji produced submissions on sanctions dated 2 November 2020.

[22] Mr Ji accepts the Tribunal’s findings as to his dishonesty. He agrees he should have notified the complainant of the outcome of her application and of the remedial action undertaken. It is accepted that she would have had a better immigration solution had

³ *Shahadat v Westland District Law Society* [2009] NZAR 661 at [29].

she been told. He acknowledges that his dishonesty is serious. Mr Ji apologises to the complainant, the Registrar and the Tribunal.

[23] According to Mr Ji, he deceived the complainant regarding the outcome as he thought he could fix the visa by himself. He had been good friends with her. The outcome of the application had shocked him. He considered that informing her would have unnecessarily increased her concern and anxiety. If the complainant had not been a friend, Mr Ji says he would have told her.

[24] Mr Ji regrets his conduct and would describe it as “idiotic”. His wrongdoing had led the complainant and her family to suffer anxiety for almost two years. He understood that he had severely damaged not just his own reputation but that of the industry. It was acknowledged that his conduct had a bad effect on the public’s confidence in immigration advisers generally.

[25] Mr Ji states that once the complainant realised she had been deceived, he advised her to file a complaint against him to give her an advantage in any further visa application. In addition, he had tried to contact her directly after she did file the complaint, to apologise and discuss a remedial plan, but he could not reach her.

[26] In his submissions, Mr Ji states that he has been practising for nine years and has a high level of customer service. This could be demonstrated from online reviews (copies attached). This incident is an isolated one, as it is not in his character to be dishonest. He noted that his dishonesty was not fraudulent in the sense of financial benefit.

[27] It is pointed out by Mr Ji that he is a busy, reputable practitioner. He presently has about 50 clients. Depriving him of a licence could disrupt these applications and harm the clients. On the other hand, he recognises that the Tribunal has to uphold professional standards and protect the public interest.

[28] According to Mr Ji, the two previous complaints upheld against him occurred while he was working at NZ Business Migration. He noted that the director had recently been convicted and sentenced. The Tribunal should not link his previous record to the current complaint. Mr Ji pledges to the Registrar and the Tribunal that he will be honest with his clients and the public.

[29] Mr Ji submits that the appropriate sanctions would be:

- (1) censure;

- (2) undertaking the refresher course at Toi-Ohomai Institute of Technology (comprising most of the content of LAWS6015 according to Mr Ji);
- (3) supervision as a provisional licence holder until he has completed the training, if the Tribunal is not confident he can practise independently; and
- (4) refunding the fees paid by the complainant (\$2,000) and reimbursing her legal expenses.

JURISDICTION

[30] 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.

[31] 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:

⁴ Immigration Advisers Licensing Act 2007.

- (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.

[32] 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.

[33] 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.

[34] 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

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

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].

[35] 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

[36] 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

[37] This is the third time that the Tribunal has recently upheld a complaint against Mr Ji for unprofessional conduct.

[38] In *XN v Ji*,⁹ decisions issued by the Tribunal on 19 July and 1 October 2019, Mr Ji was found to have engaged in the practice known as rubber stamping. He had permitted unlicensed employees to undertake work falling within the statutory definition of immigration work. Furthermore, he had failed to directly obtain instructions from his client. He had breached cls 1, 2(e) and 3(c) of the Code. That conduct occurred between about October 2014 and July 2016. The sanctions imposed by the Tribunal were censure and a financial penalty of \$3,000.

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].

⁹ *XN v Ji* [2019] NZIACDT 49 & 67.

[39] In *Immigration New Zealand (Calder) v Ji*,¹⁰ also being decisions issued on 19 July and 1 October 2019, Mr Ji was again found to have engaged in rubber stamping. He had permitted unlicensed people to provide services exclusively reserved under the Act to him as the licensed adviser. He had also failed to personally obtain instructions from his client. He had therefore breached cls 1, 2(e) and 3(c) of the Code.

[40] Mr Ji was further found to have worked within a business structure which was neither professional nor diligent and nor had he conducted himself with due care. He had been negligent in the way that certain documents, which unbeknown to him were false, had been provided to Immigration New Zealand. His mode of conducting his practice had significantly elevated the risk of fraud. This was a breach of cls 1 and 31(a) of the Code.

[41] The conduct in the *Calder* decisions had occurred between about May 2015 and June 2016. Mr Ji was again censured and ordered to pay a financial penalty of \$7,000.

[42] Mr Ji's conduct in the current complaint is, as he acknowledges, serious. He was dishonest in that he deceived his client on numerous occasions over a period of about 18 months as to the negative outcome of her immigration application. He did not tell her about the outcome or her consequential unlawful status. He did not inform her of the remedial action he undertook, nor its outcome. Indeed, the dishonesty was more than just failing to keep her informed. Mr Ji actively deceived the complainant about the status of the application and what Immigration New Zealand was doing.

[43] While there were multiple dishonest communications with the complainant, the wrongdoing was isolated in the sense that it involved only one client. There is no evidence of any pattern of dishonesty across his practice.

[44] There were also consequences for the complainant. As Mr Ji admits, she would have had a better remedial solution if she had been advised of her status earlier. The Tribunal is not aware of the complainant's current immigration status. She has not communicated with the Tribunal, so it has not been established that there has been any longer-term prejudice to her.

[45] It is not material that the complainant was Mr Ji's good friend. She was owed no less a professional standard than any other client.

[46] While Mr Ji did not engage in any meaningful way in the disciplinary process until now, it is never too late to express remorse, admit wrongdoing and apologise. There is no reason not to accept Mr Ji's recent acknowledgement of wrongdoing and apology as

¹⁰ *Immigration New Zealand (Calder) v Ji* [2019] NZIACDT 50 & 68.

sincere. I accept his pledge to be honest in the future. It is to his credit that he has learned a lesson from this complaint.

Caution or censure

[47] A caution would not, self-evidently, reflect the seriousness of the wrongdoing. Mr Ji is censured.

Training

[48] The Registrar advises that Mr Ji does not hold any immigration adviser qualifications. Mr Ji did not inform the Tribunal otherwise.

[49] Mr Ji accepts the need for professional development. He suggests Toi-Ohomai's refresher course, comprising he says much of the content of the LAWS6015 paper.

[50] The refresher course has no exam and would be inadequate in the case of Mr Ji, given the upholding of three complaints showing a range of serious wrongdoing. Furthermore, LAWS6015, on which the refresher course is apparently based, is merely introductory in nature.

[51] Nor do I accept Mr Ji's contention that the earlier complaints should be put to one side. They are recent. They reflect his personal wrongdoing, irrespective of the criminal conduct of others.

[52] The LAWS7015 Professional Practice paper at Toi-Ohomai is a broad and rigorous paper concerning professional responsibilities, including ethics and an adviser's personal obligation to provide immigration advice (the subject of the first two complaints).

[53] Mr Ji will be required to undertake the LAWS7015 paper. The Registrar has been informed by Toi-Ohomai that the next intake for this course will run from 22 February 2021 until 18 June 2021, with students expected to know their results by early July 2021.

Suspension, cancellation and/or prohibition

[54] Removing a practitioner from the profession is usually a sanction of last resort, though not necessarily where there has been dishonesty.¹¹ Indeed, in cases of dishonesty, it will often be the appropriate outcome.¹²

¹¹ *Patel v The Complaints Assessment Committee* HC Auckland, CIV 2007-404-1818, 13 August 2007 at [29].

¹² *Shahadat*, above n 3.

[55] As the wrongdoing concerned only one client, did not involve dishonest financial gain (his fee was unrelated to the dishonesty) and did not lead to any fraudulently obtained visa, the cancellation of Mr Ji's licence is not warranted. Given Mr Ji's recent acknowledgement of wrongdoing, the protection of the public does not require his complete suspension from the profession either.

[56] Mr Ji appears to practise without the collegial support of other licensed advisers. Whether or not that is the case, the three complaints recently upheld by the Tribunal show that he would benefit from the mentoring and supervision of an experienced practitioner. His submissions to the Tribunal realistically acknowledge this. I find that a period of supervision would be justified, in addition to the training he will be directed to undertake. While there might be some disruption to his clients' applications as a result of appointing a supervising adviser, the protection of the public requires supervision for a period. I doubt if there will be any material harm to his existing clients.

[57] Mr Ji's full licence will be suspended until he completes the LAWS7015 paper. To the extent necessary, this will be combined with an order preventing him from reapplying for a full licence until he completes the paper. This order does not prevent him from holding a provisional licence while studying.

Financial penalty

[58] The financial penalty must reflect the serious nature of lying to his client and failing to inform her that she was unlawfully in New Zealand. In setting the penalty, I will additionally take into account the fines imposed in the earlier complaints upheld against him. On the other hand, I will also have regard to the totality of these sanctions when assessing the financial penalty. Reducing Mr Ji's licence to a provisional one until he has completed the LAWS7015 paper will likely have an adverse effect on his income for that period.

[59] The Registrar submits that a penalty in the vicinity of \$4,000 would be appropriate. I note the discussion of financial penalties in dishonesty cases in *TTD v Zheng*.¹³

[60] The penalty will be \$4,000.

¹³ *TTD v Zheng* [2020] NZIACDT 45 at [45]–[49] & [52].

Refund and compensation

[61] The complainant has made no request for a refund or compensation and made no submissions. There will be no such order.

OUTCOME

[62] The sanctions are:

- (1) Mr Ji is censured;
- (2) Mr Ji is directed to complete the LAWS7015 Professional Practice paper at Toi-Ohomai Institute of Technology;
- (3) The full licence of Mr Ji is suspended with immediate effect until he has completed LAWS7015. This is coupled with an order preventing him from reapplying for a full licence until he has completed LAWS7015; and
- (4) Mr Ji is directed to immediately pay to the Registrar a penalty of \$4,000.

ORDER FOR SUPPRESSION

[63] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹⁴

[64] There is no public interest in knowing the name of Mr Ji's client, the complainant.

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

D J Plunkett
Chair

¹⁴ Immigration Advisers Licensing Act 2007, s 50A.