

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2020] NZIACDT 52

Reference No: IACDT 012/19

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **TBE**
Complainant

AND **SHANNON PROUDMAN**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 4 December 2020**

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: No appearance

INTRODUCTION

[1] Ms Shannon Proudman, the adviser, acted for TBE, the complainant, in seeking visas for him and his family. The student visa for the complainant's daughter was declined because, at 21 years of age, she was too old to be a dependent child under the immigration criteria. Ms Proudman did not advise the complainant of Immigration New Zealand's decision until two months later, instead giving him various false reasons for delays by the government agency. She then gave him a false reason for the decline.

[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 30 September 2020 in *TBE v Proudman*.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] At the relevant time, Ms Proudman was a provisionally licensed adviser. She was an employee of Fragomen Global Pty Limited (Fragomen), of Auckland. Her licence subsequently expired on 20 October 2019. She has not communicated with the Tribunal at all.

[6] The complainant, a national of South Africa, was offered a position in New Zealand while working in Australia. His prospective employer engaged Fragomen to assist with immigration to New Zealand. He was contacted by Ms Proudman in April 2018.

[7] On 10 July 2018, Ms Proudman filed with Immigration New Zealand work visa applications for the complainant and his wife, and dependent child student visa applications for their daughter and son.

[8] Immigration New Zealand approved visas for the complainant and his son on 18 July 2018. The wife's work visa was later granted on 27 August 2018.

¹ *TBE v Proudman* [2020] NZIACDT 41.

[9] In the meantime, on 19 July 2018, Immigration New Zealand declined the daughter's dependent student visa as she did not meet the age requirement of the instructions.²

[10] There followed numerous requests by the complainant for updates on the progress of his daughter's visa application. Ms Proudman did not advise him of the decision until 21 September 2018.

Decision of the Tribunal

[11] The Tribunal noted Ms Proudman's admission to the Authority that she had misinterpreted the immigration instructions. However, it was found that following Immigration New Zealand's decline decision on 19 July 2018, she had deceived the complainant for about two months by pretending there was no decision. She made no mention of the decision when updating him on 30, 31 July, 7, 15, 27 August, 10 and 18 September 2018. She knew the visa had been declined so her updates were false.

[12] Not only did Ms Proudman deliberately withhold the decline letter from the complainant, but when she did tell him on 21 September 2018, she dishonestly attributed the decline to a failure to prove dependency. He did not learn of the true reason for the decline, that his daughter was too old for the visa sought, until he contacted Immigration New Zealand himself two days later, on 23 September 2018.

[13] Ms Proudman's advice to the complainant concerning the eligibility of his daughter was found to have been neither diligent nor given with due care. Nor did she notify him of the decline of the visa application in a timely manner. Her updates were unprofessional and dishonest. These were breaches of cl 1 of the Licensed Immigration Advisers Code of Conduct 2014 (the Code). Furthermore, in falsely advising the complainant that the reason for the decline was insufficient evidence of financial dependency, her behaviour was dishonest, a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act).

[14] Ms Proudman was informed in the decision that the Tribunal would consider whether she should be prevented from holding a licence for a period. The parties were asked to address this possible sanction.

² Immigration New Zealand's letter of that date addressed to the daughter was immediately available to Ms Proudman as it was uploaded to the daughter's electronic file. The daughter never received the physical letter addressed to her.

SUBMISSIONS

Submissions from the Registrar

[15] The Registrar, in his submissions on 8 October 2020, observes that providing a process enabling complaints to be made and disciplinary action to be taken when necessary, is central to the integrity of an effective scheme intended to achieve the objectives of the Act. While the Registrar acknowledges that depriving a person of their 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.

[16] The Registrar advises that Ms Proudman has not applied to renew her licence which expired on 20 October 2019. It is the first complaint against her to reach the Tribunal.

[17] It is submitted that the appropriate sanctions would be:

- (1) censure;
- (2) an order to prevent Ms Proudman from reapplying for any licence for a period of up to 12 months from the date of the order; and
- (3) an order for the payment to the Registrar of a penalty in the vicinity of \$2,000.

Submissions from the complainant

[18] On 21 October 2020, the complainant made a claim for reimbursement of costs of \$36,480.72. Following a letter from the Tribunal on 2 November 2020, he advised on 26 November 2020 that he was not pursuing this.

Submissions from the adviser

[19] There are no submissions from Ms Proudman.

JURISDICTION

[20] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following action:³

³ Immigration Advisers Licensing Act 2007.

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.

[21] 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.

[22] 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.

[23] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:⁴

...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.

[24] 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.⁵

[25] 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.⁶

[26] The most appropriate penalty is that which:⁷

- (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;

⁴ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

⁵ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee*, above n 4, at [151].

⁶ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

⁷ *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].

- (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

[27] Ms Proudman's initial mistake was one of interpretation of the immigration instructions. While it could not be described as minor or simple human error, as the Tribunal pointed out in the substantive decision, Ms Proudman's subsequent conduct has significantly exacerbated her wrongdoing.⁸ She concealed Immigration New Zealand's decision from her client, falsely claiming a decision had not been made and then when disclosing the decision fabricated a reason for the decline. What started off as a lack of due care became the much graver misconduct of dishonesty.

[28] The honesty of a licensed adviser goes to the heart of being a professional person. It is a critical quality of a professional. Dishonest advisers harm not just themselves, but the profession as a whole.

[29] Ms Proudman has further aggravated her misconduct, not only by being dishonest, but also by her contempt for the full disciplinary process. I agree with the Registrar's observation that a complaints and disciplinary process is central to the integrity of an effective licensing regime. An adviser who refuses to engage with the Tribunal can expect a harsher sanction. It reflects a lack of respect for the rules governing professional practice, not just for the disciplinary process.

[30] This is Ms Proudman's first complaint before the Tribunal.

Caution or censure

[31] A caution would not reflect the seriousness of Ms Proudman's conduct. She is hereby censured.

Suspension, cancellation and prohibition

[32] Ms Proudman's licence has already expired. The Registrar submits that she should be prevented from reapplying for any licence for a period of up to 12 months.

⁸ *TBE v Proudman*, above n 1 at [57].

[33] The deprivation of a professional of his or her licence is usually a sanction of last resort, largely because it involves removing the means of livelihood. However, that is not necessarily the case where there has been dishonesty since it will then be an appropriate outcome.⁹ Furthermore, in the case of Ms Proudman, there is no evidence she needs the licence for her livelihood. Given her dishonesty and lack of any explanation, an order preventing her from holding a licence for a period is warranted. The public need protecting from advisers who are not honest with their clients.

[34] Had Ms Proudman engaged in the disciplinary process and apologised, I would have agreed with the Registrar that a prohibition order of 12 months or even less would have been appropriate. However, while her conduct is not the most egregious type of dishonesty seen by the Tribunal and there is no evidence of any pattern of such misconduct, it is concerning that Ms Proudman is dismissive of the disciplinary process.

[35] I give little weight to the acknowledgement of wrongdoing and expression of remorse made by the lawyer on her behalf to the Authority, given her failure to engage with the Tribunal. I note that her statement of 19 July 2019 produced to the Authority acknowledged no wrongdoing (as to her deception), expressed no remorse, made no apology to the complainant and offered no explanation. The apology made to the complainant on 3 October 2018 is acknowledged but is undermined by her failure to engage with the Tribunal.

[36] Ms Proudman was untruthful to her client on multiple occasions. She deceived him regarding the status of his daughter's visa application. There is no evidence from her of any lesson learned in regards to lying to her client. That being the case, Ms Proudman will be prevented from applying for any licence for the maximum period permitted, which is two years.

Financial penalty

[37] The Registrar submits that the financial penalty imposed against Ms Proudman should be in the vicinity of \$2,000.

[38] The most serious misconduct was the deception of the complainant for two months, which was followed by a false reason for the decline when she eventually disclosed it. There is no explanation from her. While she lied to the complainant on a number of occasions, this was an isolated incident in the sense that it involved only one client.

⁹ *Patel v The Complaints Assessment Committee* HC Auckland CIV 2007-404-1818, 13 August 2007 at [29].

[39] There is a discussion of sanctions for dishonesty, including a financial penalty, in *TTD v Zheng*.¹⁰ As I pointed out in *Zheng*, the circumstances in one case are never identical to another.

[40] The appropriate penalty here is \$3,500.

Refund and compensation

[41] A refund is not sought by the complainant as Fragomen's fees were paid by his prospective employer. The complainant no longer seeks compensation.

OUTCOME

[42] Ms Proudman is:

- (1) censured;
- (2) prevented from applying for any licence for two years from today's date;
and
- (3) ordered to immediately pay to the Registrar \$3,500.

ORDER FOR SUPPRESSION

[43] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹¹

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

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

D J Plunkett
Chair

¹⁰ *TTD v Zheng* [2020] NZIACDT 45 at [45]–[49], [52].

¹¹ Immigration Advisers Licensing Act 2007, s 50A.