

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2020] NZIACDT 53

Reference No: IACDT 010/19

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

**BY** **THE REGISTRAR OF  
IMMIGRATION ADVISERS**  
Registrar

**BETWEEN** **ZG**  
Complainant

**AND** **DAMON PARKER**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION  
(Sanctions)  
Dated 16 December 2020**

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**REPRESENTATION:**

Registrar: Self-represented  
Complainant: Self-represented  
Adviser: P Moses, counsel

## INTRODUCTION

[1] ZG, the complainant, engaged the services of Mr Damon Parker, the adviser. She was employed by a company (the employer) controlled by Mr Parker's father-in-law. Furthermore, Mr Parker is a former director of the employer and continued to undertake work for it.

[2] The complainant says that she largely dealt with Ms Jessie Cheng, Mr Parker's wife, and other unlicensed staff on her various immigration matters, rather than with Mr Parker. Her complaint to the Immigration Advisers Authority (the Authority) was referred to the Tribunal by the Registrar of Immigration Advisers (the Registrar) in accordance with the Immigration Advisers Licensing Act 2007 (the Act). It was upheld in a decision issued on 19 October 2020 in *ZG v Parker*.<sup>1</sup> Mr Parker was found to have breached 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 earlier decision of the Tribunal and will only be briefly summarised here.

[5] Mr Parker is a licensed immigration adviser based in Auckland. At the material time, he was a director and shareholder of Swiftvisa Limited (Swiftvisa). His wife, Ms Cheng, is a former director and shareholder of Swiftvisa. Ms Cheng has never been licensed. In addition to Ms Cheng, a number of other unlicensed employees of Swiftvisa worked on the complainant's immigration matters.

[6] On 16 March 2017, the complainant engaged Swiftvisa to file an application to vary the conditions of her work visa, to be followed by an expression of interest (EOI) and a residence application under the skilled migrant policy.

[7] On the following day, 17 March 2017, the complainant and Mr Parker signed a conflict of interest document, whereby Mr Parker formally declared his relationship with the employer.

[8] On 30 March 2017, Mr Parker filed an application to vary the complainant's work visa, so she could work as a manager at the employer. This was approved on 20 April 2017. The staff of Swiftvisa then went ahead with preparing the EOI application. It was

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<sup>1</sup> *ZG v Parker* [2020] NZIACDT 46.

filed by Mr Parker on 1 November 2017. An invitation to apply for residence was issued by Immigration New Zealand on 6 November 2017.

[9] Mr Parker then filed an essential skills work visa application for the complainant on 25 January 2018. It was based on her position as a business development manager at the employer. Immigration New Zealand raised certain issues with the application on 7 March 2018, to which the staff replied on 14 March. The work visa was declined on 16 March 2018.

[10] The complainant made a complaint to the Authority against Mr Parker on 3 July 2018, which was referred to the Tribunal.

#### *Decision of the Tribunal*

[11] The Tribunal found that while there was evidence of Mr Parker meeting or communicating with the complainant on certain occasions, there was no evidence of any engagement by him directly with her in the period during which the EOI was prepared and filed, from about 20 April to 1 November 2017. Mr Parker was found to be in breach of the obligation to be professional in cl 1 of the Code. He had also failed to personally obtain her instructions, in breach of cl 2(e).

[12] Mr Parker had a conflict of interest which he disclosed. But it was found that he should have declined to act, since he was not able to provide objective advice as to the sustainability of the complainant's employment, either at the time the complainant was offered the position or on receipt of Immigration New Zealand's letter of 7 March 2018. This was a breach of cls 2(a) and 7(a) of the Code.

## **SUBMISSIONS**

#### *Submissions from the Registrar*

[13] In his submissions of 11 November 2020, the Registrar advises that Mr Parker has held a full licence since 16 January 2013. It is noted that a previous complaint for using unlicensed staff to communicate had been upheld by the Tribunal. As the present conduct had occurred before the earlier disciplinary proceedings, it could not be said that Mr Parker had failed to reform in defiance of previous orders of the Tribunal.

[14] Nevertheless, the existence now of further breaches pointed to systemic deficiencies in Mr Parker's practice. It is therefore submitted that a more robust disciplinary process might be warranted. Accordingly, Mr Parker's continued practice

should be supplemented by further training. It is eight years since he completed the Graduate Certificate in New Zealand Immigration Advice, so the Tribunal is entitled to look afresh at his need for further education.

[15] The Registrar submits that the appropriate sanctions would be:

- (1) censure;
- (2) an order that Mr Parker completes the Professional Practice module LAWS7015 offered by Toi-Ohomai Institute of Technology; and
- (3) an order for payment of a penalty in the vicinity of \$4,000.

*Submissions from the complainant*

[16] The complainant's submissions are dated 26 November 2020. She is resident in China. She wishes to correct the statement in the Tribunal's earlier decision that she might be related to Ms Cheng or her father. That is not the case.

[17] The complainant states that Mr Parker's father-in-law had been the subject of an investigation by the authorities in China prior to his departure and settlement in New Zealand.<sup>2</sup> In her opinion, Mr Parker and his wife created a scheme that was designed to mislead vulnerable young graduates like herself into believing they could obtain residence in New Zealand. She sets out the details of the scheme. All the money she received in wages had to be paid back to the employer. Mr Parker is cheating the immigration system and making a lot of money out of it. A fine of \$4,000 would be nothing for him because he will make the money from new immigrants. The sanctions are too soft.

[18] After this scheme, the complainant says she had no visa, no job and no savings, her money having been used to stay in New Zealand and fight the case. She is a whistleblower, but this case has come at a great cost to her. She has lost trust in the New Zealand system. It is a great loss to her that she will never be able to live her dream in New Zealand and find happiness. Her recommendation is that Mr Parker should not be allowed to act as a licensed immigration adviser again. She does not seek compensation as the case is about justice, not money.

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<sup>2</sup> The complainant sent links to two online articles in Chinese. As no English translation was provided, they have not been read.

*Submissions from Mr Parker*

[19] In his submissions of 18 November 2020, Mr Moses, counsel for Mr Parker, states that Mr Parker accepts the Tribunal's decision that he breached the Code.

[20] In response to the Registrar's call for further training, this is contested by Mr Parker. He now fully understands that his clients should have direct access to their adviser and that this is essential for retaining the consumer protection objective at the heart of the Act.

[21] Mr Parker also understands the Tribunal's ruling on the conflict of interest. Indeed, he had initially recognised this, but simply failed to see its significance. Conflicts are a difficult area of professional practice. The error of judgement made by Mr Parker is not entirely unusual. It can be a trap for the unwary. The Tribunal can have comfort in knowing that as a result of the present complaint, he is now well aware of the potential issues that arise in this respect.

[22] Mr Moses submits that upholding the complaint and publishing the Tribunal's decision has already had a very significant punitive effect on Mr Parker and would inevitably affect his business interests. This is particularly so in the current environment in which the immigration industry is severely disrupted due to the COVID-19 border closure.

[23] There are mitigating factors, according to Mr Moses. In particular, the Tribunal found that the conflict did not cause the decline of the work visa, as the evidence of sustainability of the complainant's employment did not exist.

[24] It is submitted that a penalty in the vicinity of \$2,500 would be appropriate in all the circumstances.

[25] As for the Registrar's contention that Mr Parker should undertake further training, this is not needed. It cannot be said that he does not understand what went wrong. He regularly participates in continuing professional development. He has fully participated in the disciplinary process in a professional manner.

[26] In support, there is a statement from Mr Parker (16 November 2020). He agrees with the Tribunal's findings. As for the conflict, he accepts having made an error of judgement. As a result of the complaint, he has decided not to represent employees of companies associated with him or his family.

[27] Mr Parker expresses surprise at the Registrar's submission that there may be more systemic deficiencies in his practice. The submission does not fairly acknowledge the efforts he and his staff have made to change how his practice operates. Nor does it acknowledge the comments of the previous acting Registrar who had expressed satisfaction with his efforts to reform, given that a number of staff had become licensed advisers.

[28] Mr Parker notes that on 31 October 2018, he attended a workshop on risk management for licensed advisers.

[29] When the complaint was made, Mr Parker reviewed the correspondence staff had with the complainant and found it unacceptable. Because of the second complaint, more drastic steps were taken to change his practice. He advised the staff that it was necessary for them all to be licensed, which came at considerable expense. When staff undertook the LAWS7015 paper, he read the course materials, at the same time reviewing Swiftvisa's engagement process and considering whether any changes were necessary.

[30] According to Mr Parker, the licensing of other staff had significantly decreased his workload, allowing him more time to communicate with clients. Furthermore, he is intending to recommence legal studies at AUT in 2021, having completed two papers in 2012.

[31] Further information was sent to the Tribunal by Mr Moses on 15 December 2020.

## **JURISDICTION**

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

### **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.

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<sup>3</sup> Immigration Advisers Licensing Act 2007.

[33] 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.

[34] 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.

[35] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:<sup>4</sup>

...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.

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<sup>4</sup> *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.

[36] 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.<sup>5</sup>

[37] 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.<sup>6</sup>

[38] The most appropriate penalty is that which:<sup>7</sup>

- (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.

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<sup>5</sup> *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].

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

<sup>7</sup> *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

[39] The starting point is the seriousness of the complaint. The use by Mr Parker of his wife and other unlicensed staff to communicate with the complainant is a serious infringement of the Code. A client is entitled to expect the licensed adviser, who is therefore knowledgeable and bound by a professional code, to engage personally and continuously with him or her at all stages of the immigration process. However, Mr Parker did not completely abandon the complainant to his staff as there is evidence of about three meetings with him and other communications.

[40] In addition, Mr Parker had a conflict of interest. While he disclosed this to the complainant, he should have declined to act as he could not give her objective advice. Mr Moses is correct. This is a fraught area for professionals. This is why it is better to decline to act if there is any doubt about objectivity. I acknowledge though that this did not cause the decline of the complainant's visa.

[41] Mr Parker's conduct is aggravated by the earlier complaint upheld against him. In *NT v Parker*,<sup>8</sup> Mr Parker was found to have left it to the unlicensed staff, largely his wife, to communicate with the client about the information and documentation required to support the client's EOI and residence applications, in breach of cl 2(e) of the Code. This conduct had occurred between about February and August 2017. Furthermore, Mr Parker was found to have been unprofessional in failing to promptly provide the complainant with a copy of a letter from Immigration New Zealand, in breach of cl 1. The sanctions were censure, payment of a penalty of \$2,500 and compensation to his client of \$3,000.

[42] As the Registrar notes, the conduct complained of in the current complaint occurred before the Tribunal's decision in the *NT* complaint. It was even before he was formally notified by the Authority of that earlier complaint.

[43] Mr Parker accepts the Tribunal's decision upholding the complaint. He has fully co-operated in the disciplinary process. He has made changes to his practice as a result of this and the earlier complaint. Mr Parker is to be commended for encouraging his staff to become licensed advisers. According to the Authority's website, there are now two other licensed advisers at Swiftvisa.

[44] The complainant has made allegations against Mr Parker, his wife and his father-in-law. I do not know whether she made those allegations to the Authority, but they have

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<sup>8</sup> *NT v Parker* [2019] NZIACDT 62, 71.

not been referred by the Authority to the Tribunal. They are outside the scope of the Tribunal's jurisdiction on this complaint.

#### *Caution or censure*

[45] The Registrar seeks a censure. Mr Moses agrees this is appropriate. I find that censure is appropriate given the gravity of the breaches and the previous complaint upheld.

#### *Training*

[46] The Registrar submits that Mr Parker should be directed to undertake Toi-Ohomai's LAWS7015 Professional Practice paper. Mr Parker demurs, saying he reviewed his practice when the earlier complaint was made and has put in place changes. I had noted this in the earlier sanctions decision. He says he understands what was wrong about his conduct.

[47] There is a third complaint against Mr Parker before the Tribunal, also on the ground of 'rubber stamping' as this practice of using unlicensed staff is known. If that complaint is upheld, the training requirements will be clearer. While there is force in the Registrar's submission, I do not intend to impose any such requirement on this complaint.

#### *Financial penalty*

[48] The Registrar submits that \$4,000 would be an appropriate financial penalty, noting that Mr Parker was fined \$2,500 in the earlier complaint. Mr Moses submits that \$2,500 would be appropriate.

[49] I have already noted the gravity of both breaches, aggravated by an earlier complaint upheld. Mr Moses points to the punitive effect of publication of the Tribunal's decisions. I acknowledge this, though there is no evidence the earlier decision had any material impact on Mr Parker's business. Having regard to all the circumstances, the penalty should be \$4,500.

#### *Refund and compensation*

[50] The complainant says she paid Mr Parker \$2,500 as a deposit. She alleges that she paid more than this and was required to return the wages she was paid. There is no evidence regarding the other sums allegedly paid. The repaid wages are outside the scope of the Tribunal's jurisdiction.

[51] As for the \$2,500, Mr Parker says he transferred that amount to his client trust account pending a decision on whether a refund is required.<sup>9</sup> The complainant says she cannot reach the money as it has been frozen by the bank.<sup>10</sup> As the complainant received no real value from Mr Parker's services, I will direct him to refund that \$2,500 to her.

[52] The complainant seeks no compensation, so I will not consider it.

## **OUTCOME**

[53] Mr Parker is:

- (1) censured;
- (2) directed to immediately pay to the Registrar a penalty of \$4,500; and
- (3) directed to immediately pay to the complainant \$2,500.

## **ORDER FOR SUPPRESSION**

[54] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>11</sup>

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

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

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D J Plunkett  
Chair

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<sup>9</sup> Submissions to Authority (31 July 2018) at [15].

<sup>10</sup> Submissions to Tribunal (26 November 2020) at [10(f)(ii)].

<sup>11</sup> Immigration Advisers Licensing Act 2007, s 50A.