

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2021] NZIACDT 15

Reference No: IACDT 02/21

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **YC**
Complainant

AND **YUJUAN JANELLE HAN**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 29 June 2021**

REPRESENTATION:

Registrar: Self-represented
Complainant: H Gu, immigration adviser
Adviser: Self-represented

INTRODUCTION

[1] Ms Yujuan Janelle Han, the adviser, advised YC, the complainant, who was seeking a work visa. However, Ms Han was not named as an adviser in the client agreement. At the time, she held a provisional licence and was supervised by Mr Jiale William Wan. Due to the failure of Mr Wan to reply to a letter from Immigration New Zealand, the complainant's visa application was unsuccessful.

[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 19 May 2021 in *YC v Han*.¹ Ms Han was found to have breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code). Mr Wan was also found to have breached the Code in a separate decision.²

[3] It is now for the Tribunal to determine the appropriate sanctions. A separate sanctions decision concerning Mr Wan will be issued at the same time as this decision.

BACKGROUND

[4] Ms Han is employed by PJ Education & Immigration Services Ltd (the consultancy), of Auckland. At the relevant time she was provisionally licensed, but now she holds a full licence.

[5] The narrative is more fully set out in the Tribunal's earlier decision concerning Ms Han and will only be briefly summarised here.

[6] The complainant, a national of China, contacted Ms Han in June 2019. She wanted an essential skills work visa. A client services agreement was entered into between Mr Wan and the complainant on 10 June 2019. It did not name Ms Han as an adviser. However, it was Ms Han who worked exclusively with the complainant to prepare the visa application which was filed by Ms Han on 28 June 2019.

[7] On 31 July 2019, Immigration New Zealand wrote to Ms Han identifying a number of issues which could have a negative impact on the outcome of the application. No reply to this letter was sent to Immigration New Zealand by the extended deadline of 15 August 2019. By this stage, Ms Han had gone on maternity leave and had handed the file over to Mr Wan. Immigration New Zealand declined the visa application on 21 August 2019.

¹ *YC v Han* [2021] NZIACDT 11.

² *YC v Wan* [2021] NZIACDT 10.

[8] On 7 November 2019, Mr Gu, another licensed adviser by then instructed by the complainant, made a complaint against Ms Han and Mr Wan to the Authority.

[9] On 27 November 2019, Mr Gu lodged a s 61 request with Immigration New Zealand, blaming the complainant's unlawful status on Ms Han who had failed to respond to Immigration New Zealand's letter of 31 July 2019. This request was successful and on 7 January 2020, Immigration New Zealand granted the complainant a work visa valid for one year.

Decision of the Tribunal

[10] It was found that Ms Han had failed:

- (1) to ensure that the client agreement contained the relevant details required for a provisional licence holder, in breach of cl 19(c) of the Code; and
- (2) to update the complainant in writing when Immigration New Zealand sent the letter of 31 July 2019 and when the request for an extension was made, in breach of cl 26(b).

SUBMISSIONS

Submissions from the Registrar

[11] The Registrar, Mr Connor, in his submissions of 10 June 2021 notes that this is Ms Han's first appearance before the Tribunal. It should be acknowledged that at the time of her professional misconduct, she was a provisional licence holder. She was upgraded to a full licence on 19 October 2020. The Registrar also acknowledges that Ms Han has accepted and apologised for her wrongdoing.

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

- (1) caution; and
- (2) an order for payment to the Registrar of a penalty in the vicinity of \$500.

Submissions from the complainant

[13] In his submissions of 8 June 2021, Mr Gu accepts that there could be no substantive claim for compensation arising out of Ms Han's breaches of the Code.

Submissions from Ms Han

[14] In their submissions of 8 June 2021, Ms Han and Mr Wan jointly apologise sincerely for the breaches of the Code. They agree with the outcome of the Tribunal's decision. They note the improvements to their business process to avoid similar breaches. The breaches of the Code were not deliberate, but they acknowledge their responsibility (largely that of Mr Wan) for causing the complainant's visa to be declined.

JURISDICTION

[15] 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:³

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.

[16] 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:

³ 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.

[17] 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.

[18] 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.

[19] 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 collective reputation and public confidence in the profession itself.⁵

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

⁵ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) 492; *Z v Dental Complaints Assessment Committee*, above n 4, at [151].

[20] 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

[21] 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;
- (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

[22] While it was Mr Wan who entered into the client agreement without naming Ms Han as the adviser who would conduct the work, I regard it as much Ms Han's responsibility as that of Mr Wan to ensure that she was covered by a written agreement which complied with the Code. A provisional licence holder bears an obligation to ensure there is a written agreement naming him or her and therefore covering their work. Indeed, it is a fundamental obligation of advisers, provisional or full, to have a written agreement. On the other hand, I acknowledge that the situation here is not as serious as one where there is no written agreement whatsoever with the client.

[23] To this professional breach must be added Ms Han's failure to notify the complainant immediately in writing of Immigration New Zealand's letter of 31 July 2019 and the application for an extension of time.

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].

[24] Ms Han, together with Mr Wan, have taken a responsible approach to their mistakes and to these disciplinary proceedings. Furthermore, Ms Han's promising career should not be blighted by a heavy-handed sanctions decision.

[25] I accept that the Registrar's recommended sanctions are sensible. Ms Han will be cautioned and ordered to pay a penalty of \$500.

OUTCOME

[26] Ms Han is:

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

ORDER FOR SUPPRESSION

[27] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.⁸

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

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

D J Plunkett
Chair

⁸ Immigration Advisers Licensing Act 2007, s 50A.