

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2023] NZIACDT 11

Reference No: IACDT 010/22

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

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

**BETWEEN** **SM**  
Complainant

**AND** **DAVID KIM**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION  
(Sanctions)  
Dated 6 April 2023**

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**REPRESENTATION:**

Registrar: Self-represented

Complainant: Self-represented

Adviser: Self-represented

## INTRODUCTION

[1] David Kim, the adviser, was engaged by SM the complainant, to obtain a job in New Zealand and a work visa. Mr Kim's employee duly found the complainant a job and Mr Kim obtained a visa for him. As Mr Kim bundled the recruiting and immigration services together, he was required to comply with his professional obligations in carrying out the recruiting services.

[2] A complaint against Mr Kim 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 15 February 2023 in *SM v Kim*.<sup>1</sup> Mr Kim was found to have breached a number of provisions of the Licensed Immigration Advisers Code of Conduct 2014 (the Code), which is a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act).

[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 Kim, a licensed immigration adviser, is a director of Wealand International (NZ) Ltd (Wealand International), of Auckland. Ms A is his employee. In addition to immigration services, Wealand International provides overseas recruitment and employment dispute advocacy.

[6] The complainant is a national of China. In July 2017, he approached Ms A to find a job for him in New Zealand and then to apply for a work visa. She successfully found him a job. By 5 February 2018, the complainant and his employer had signed an employment agreement.

[7] On 5 and 6 February 2018, the complainant and Mr Kim signed the latter's client agreement. It provided for Mr Kim to seek a work visa for the complainant. The fee was \$3,000.

[8] On 23 February 2018, Mr Kim filed a work visa application for the complainant with Immigration New Zealand (Immigration NZ). It was approved on 9 April 2018.

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<sup>1</sup> *SM v Kim* [2023] NZIACDT 5.

[9] On 19 April 2018, Ms A sent Wealand International's invoice to the employer. It was addressed to the employer and was for \$21,505, comprising an overseas recruitment fee (\$18,505) and a visa service fee (\$3,000). The employer paid the fees the same day.

[10] The complainant arrived in New Zealand on 18 May 2018 to work for the employer.

#### *Decision of the Tribunal*

[11] The Tribunal found that Mr Kim had not separated the recruiting and immigration services. From the complainant's point of view, they were bundled together. Mr Kim had therefore breached two provisions of the Code:

- (1) Failing to provide a written agreement for the recruitment services, in breach of cl 19(e).
- (2) Failing to set out in the agreement the recruitment fee of \$18,505, in breach of cl 19(f).

## **SUBMISSIONS**

#### *Submissions from the Registrar*

[12] In her submissions (31 March 2023), Ms Issar on behalf of the Registrar submits that Mr Kim's misconduct is towards the lower end of the spectrum. It can be seen as reflective of a misunderstanding of the applicability of the scope of the Code and the importance of including information in a written agreement for recordkeeping and transparency. However, the high value of the recruitment fee (\$18,505), which was not disclosed by Mr Kim in his client agreement, is an aggravating feature of his conduct. A censure, rather than a caution, may therefore be the more appropriate outcome.

#### *Submissions from the complainant*

[13] The complainant sent a brief email (29 March 2023) to the Tribunal repeating that Mr Kim should not charge him for a recruitment service that he did not provide.

#### *Submissions from the adviser*

[14] In his submission (8 March 2023), Mr Kim advises that he respects the decision of the Tribunal. He had thought the recruiting and immigration services were separate

from each other and did not include the recruiting service in the written client agreement. That has been a lesson for him to learn for his future practice. He will clearly separate services and set out a full description in the written client agreement, and will issue invoices with full details of the service. As this is the only complaint he has received in his professional career and his business was seriously affected by the pandemic over the last three years, he requests leniency.

## **JURISDICTION**

[15] 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>2</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.

[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:

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<sup>2</sup> 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:<sup>3</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.

...

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.<sup>4</sup>

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<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

<sup>4</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; *Z v Dental Complaints Assessment Committee*, above n 3, 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.<sup>5</sup>

[21] The most appropriate penalty is that which:<sup>6</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.

## DISCUSSION

[22] Mr Kim failed to appreciate that, as result of not clearly separating the recruiting and immigration services, the former was caught by his professional obligations under the Act and the Code. From his client's point of view, there was one service. Ms A and Mr Kim from Wealand International had been engaged to find him a job as a chef followed by a visa.

[23] Mr Kim misunderstood the scope of the work covered by his professional obligations, rather than deliberately set out to circumvent them.

[24] On the other hand, it is important that there is a written agreement covering the adviser's entire services. The extent of the services, the fee, the applicability of the Code and the like to the entire services, should all be clear to the client from the agreement. The failure to have a written agreement for an essential part of his overall service and to

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

<sup>6</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].

specify in that agreement the fee for the additional service, is not merely a bureaucratic or paper-shuffling matter.

[25] It is to Mr Kim's credit that he now acknowledges what he did was wrong and says he has learned a lesson.

[26] Mr Kim has been licensed for 13 years and this is his first appearance before the Tribunal.

#### *Caution or censure*

[27] While Mr Kim made an honest mistake and has acknowledged his wrongdoing, the obligation to have an agreement to cover all his services and to specify the total fee in that agreement is important. Whether or not the size of the fee (\$18,505) unspecified in the agreement is strictly an aggravating feature, it is certainly a material factor. It cannot though have been a surprise to the complainant, as he was told how the fee would be calculated by Ms A before he signed the client agreement. He was not ambushed by this high fee.

[28] The Tribunal accepts the Registrar's submission that a censure would be appropriate.

#### *Financial penalty*

[29] In view of the nature of the mistake, Mr Kim's acknowledgement and his clean disciplinary record, the financial penalty will be \$500.

### **OUTCOME**

[30] Mr Kim is:

- (1) Censured.
- (2) Directed to pay to the Registrar within 21 days the sum of \$500.

### **ORDER FOR SUPPRESSION**

[31] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>7</sup>

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<sup>7</sup> Immigration Advisers Licensing Act 2007, s 50A.

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

[33] The Tribunal orders that no information identifying the complainant is to be published other than to Immigration NZ.

D J Plunkett  
Chair