

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2023] NZIACDT 6

Reference No: IACDT 023/21

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

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

**BETWEEN** **NI**  
Complainant

**AND** **CLEMENT CHUN WANG  
CHAK**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION  
(Sanctions)  
Dated 1 March 2023**

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**REPRESENTATION:**

Registrar: Self-represented  
Complainant: Self-represented  
Adviser: J Wedlake, counsel

## INTRODUCTION

[1] The complainant, NI, engaged Clement Chun Wang Chak, a licensed immigration adviser, to seek residence. Residence was declined and a reconsideration of the decline was also unsuccessful.

[2] A complaint against Mr Chak to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It was partially upheld in a decision issued on 5 January 2023 in *NI v Chak*.<sup>1</sup> While the Tribunal substantially dismissed the complaint, it found that Mr Chak had not sent invoices to the complainant at the time he requested payment of his fee instalments. Mr Chak was found to have breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code), which is a ground for 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 Chak is a director of CWC Migration & Education Ltd, of Auckland.

[6] From about 16 August 2016, Mr Chak communicated with the complainant's husband through the WeChat messaging service. The husband enquired about immigration requirements in relation to setting up a business in New Zealand sending students from China to New Zealand for short-term study at schools. While in China, Mr Chak met the complainant and her husband on 26 September 2016.

[7] The complainant and Mr Chak signed the latter's service contract on 27 and 28 September 2016 respectively. He agreed to prepare and file work visa and residence visa applications in the entrepreneur category. The fee was \$60,000, payable in three instalments of \$20,000.

[8] Mr Chak requested payment of the first instalment of his fee on 27 September 2016. The complainant duly paid him about one day later the amounts of RMB 97,182 (\$20,000) and the cost of a domestic flight in China, a total of RMB 97,919. Mr Chak confirmed its receipt by text on 30 September.

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<sup>1</sup> *NI v Chak* [2023] NZIACDT 1.

[9] The Chinese Yuan equivalent of the second instalment of \$20,000, together with the fee of Immigration New Zealand (Immigration NZ) and a small courier fee, a total of \$23,389.50 (RMB 114,368), was paid by the complainant to Mr Chak on 7 December 2016. It had been requested by Mr Chak on 29 November 2016. He confirmed receipt on 9 December 2016.

[10] The complainant and her husband arrived in New Zealand on 11 January 2017.

[11] The application for a work visa and work to residence visa in the entrepreneur category was filed by Mr Chak with Immigration NZ on 2 February 2017. It included the complainant and her young son.

[12] Immigration NZ declined the application on 8 January 2018. A request for reconsideration was lodged by Mr Chak on 23 January 2018. It was declined by Immigration NZ on 24 March 2018.

[13] On 31 January 2020, the complainant's then solicitor wrote to Mr Chak raising a complaint and demanding a refund. The solicitor stated, amongst other things, that no invoices had been provided for the fees paid. A formal complaint was filed on 11 February 2020 in the Authority. On 6 April 2020, Mr Chak's counsel sent a retrospective "Tax Invoice/Receipt" to the complainant's solicitor for each of the two fee instalments paid in 2016.

#### *Decision of the Tribunal*

[14] The Tribunal partially upheld the complaint. It was found that Mr Chak had not sent invoices to the complainant for the two fee instalments paid at the time they were requested, in breach of cl 22 of the Code.

### **SUBMISSIONS**

#### *Submissions from the Registrar*

[15] In submissions (3 February 2023) from Ms Issar, of the Registrar's office, it is said that Mr Chak's conduct shows an oversight in maintaining professional standards which could be considered moderate in terms of the seriousness due to:

- (1) The significant and remarkable delay in ultimately providing an invoice, which was only given after a complaint had been made to the Authority.

(2) The apparent lack of acknowledgement of misconduct by Mr Chak and his continued denial of any wrongdoing.

(3) The Tribunal having observed that the breaches were not a trivial matter.

[16] It is acknowledged that this is Mr Chak's first appearance before the Tribunal.

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

(1) Caution.

(2) An order for payment to the Registrar of a penalty in the vicinity of \$750 to \$1,500.

#### *Submissions from the complainant*

[18] There are no submissions from the complainant.

#### *Submissions from Mr Chak*

[19] In her submissions (3 February 2023), counsel records Mr Chak's acceptance that cl 22 requires a formal invoice to be issued for the payment. He recognises the purpose as stated by the Tribunal, which is to ensure the client can see unequivocally in one document how much to pay, what it is for and when to pay. It is accepted that it provides a paper trail for the Authority's investigator concerning payment when a complaint is made.

[20] Counsel reviews a number of decisions of the Tribunal involving the breach of cl 22 and other decisions. She also refers to the case of *ZK v Li* where the adviser breached only one clause (cl 26(c) – the requirement to confirm material discussions in writing).<sup>2</sup> The adviser in that case received a caution only as his breach would not have affected the outcome of the client's visa application.

[21] It is submitted that a caution and nothing more would be fair, reasonable and proportionate in the circumstances.

[22] There are submissions from Mr Chak's counsel (17 February 2023) in reply to those of the Registrar. Counsel is opposed to the imposition of a monetary penalty and maintains that the sanctions should be limited to a caution. It is denied that the delay in providing an invoice was significant and remarkable. The complainant knew what she

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<sup>2</sup> *ZK v Li* [2022] NZIACDT 27, *ZK v Li* [2022] NZIACDT 30.

was paying for. The only reason it was delayed was that it was not raised as an issue until four years after the fact.

[23] It is relevant to note that this is Mr Chak's first complaint, that he accepts the breaches and that he rectified them as far as practical as soon as the complainant brought the matter to his attention through her lawyer (by issuing retrospective invoices).

[24] Counsel observes that Mr Chak has also had to incur substantial legal fees in defending three heads of complaint which were dismissed, including an allegation of dishonest or misleading behaviour.

## **JURISDICTION**

[25] 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.

[26] 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:

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

- (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.

[27] 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.

[28] 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.

...

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.

[29] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public

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

good, but also to protect the collective reputation and public confidence in the profession itself.<sup>5</sup>

[30] 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>

[31] 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.

## DISCUSSION

[32] Mr Chak has been a licensed adviser for almost 14 years and this is his first appearance before the Tribunal. The only aspect of the complaint upheld is that he failed to provide invoices on two occasions when instalment payments of his fee were requested. As the Tribunal pointed out, the obligation to provide invoices is an important form of record-keeping and transparency in the use of other people's money.<sup>8</sup> The breach is not trivial.

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<sup>5</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 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].

<sup>8</sup> *NI v Chak* [2023] NZIACDT 1 at [88].

[33] In stating that the breach is not trivial, the Tribunal was expressing a finding that it met the threshold justifying a disciplinary process and a public decision naming Mr Chak. Had it been trivial, the Tribunal would have dismissed the complaint notwithstanding the breach of the Code. In terms of the gravity of the wrongdoing (the spectrum of seriousness), the Tribunal would not classify it as moderate. It is towards the lower end of the spectrum.

[34] The Tribunal agrees with Ms Wedlake that a caution only is warranted. Neither censure nor a monetary penalty would be justified. It is noted that Mr Chak accepts the Tribunal's decision and the requirement for invoices when payment is requested.

## **OUTCOME**

[35] Mr Chak is cautioned.

## **ORDER FOR SUPPRESSION**

[36] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>9</sup>

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

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

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D J Plunkett  
Chair

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<sup>9</sup> Immigration Advisers Licensing Act 2007, s 50A.