

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2024] NZIACDT 09

Reference No: IACDT 10/23

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **ZR**
Complainant

AND **DAVID KIM**
Adviser

Decision on the papers

**DECISION
(Sanctions)**
Dated 04 March 2024

REPRESENTATION:

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

INTRODUCTION

[1] The complainant instructed the adviser to seek a work visa. The application was successful, but the adviser had minimal engagement with the complainant.

[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 23 January 2024 in *ZR v Kim*.¹ Mr Kim was found to have breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code), 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 and will only be briefly summarised here.

[5] David Kim, a licensed immigration adviser, is a director of Wealand International (NZ) Ltd (Wealand International), of Auckland.

[6] The complainant is a national of China.

[7] Ms Z is an agent in China. Commencing on 15 March 2023, she communicated with Mr Kim concerning her client, the complainant, who already had a job arranged in New Zealand and wanted a work visa. Mr Kim sent his client agreement and the relevant forms and documents to Ms Z, so she could arrange for the complainant's signature and the required information to be obtained from him. Mr Kim lodged the visa application on 23 March 2023. It was approved by Immigration New Zealand on 28 April 2023. The complainant arrived in New Zealand on 20 May 2023 and started work, but he departed on 16 July 2023.

Decision of the Tribunal

[8] It was found by the Tribunal that Mr Kim:

- (1) Failed to engage directly with the complainant before the latter signed the client agreement by explaining the summary of professional responsibilities and how to access the Code, in breach of cl 17(b) of the Code.

¹ *ZR v Kim* [2024] NZIACDT 6.

- (2) Failed to directly explain to the complainant all significant matters in the client agreement before it was signed, in breach of cl 18(b).
- (3) Failed to engage directly with the complainant by obtaining his instructions, in breach of cl 2(e).

SUBMISSIONS

Submissions from the Registrar

[9] In submissions (13 February 2024) from Ms Issar of the Registrar's office, she describes Mr Kim's wrongdoing as a failure to comply with rudimentary, but important, areas of the Code. The applicable requirements are needed to protect and benefit the consumer of immigration advice services. There was a failure by him to sufficiently engage personally and directly with his client. The wrongdoing can be categorised as towards the higher end of lower level offending.

[10] The Registrar notes that this marks Mr Kim's second appearance before the Tribunal which may be indicative of ongoing inattention or a lack of understanding of important provisions of the Code. The Tribunal will need to consider whether further training is necessary.

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

- (1) Censure.
- (2) An order to complete the LAWS 7015 Professional Practice paper at Toi Ohomai Institute of Technology.
- (3) A penalty in the range of \$750 to \$1,000.

From the complainant

[12] There are no submissions from the complainant.

From the adviser

[13] In his submissions (13 February 2024), Mr Kim says he sincerely respects the Tribunal's decision. He had not realised that the explanations had to be oral. He notes that the complainant had his contact details and could have contacted him about any

questions. This is a lesson he has learned for his future work. Mr Kim confirms he will accept the sanctions imposed.

JURISDICTION

[14] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following actions:²

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.

[15] 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:

² Immigration Advisers Licensing Act 2007.

- (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[16] 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.

[17] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:³

...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 *Zideman 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.

[18] 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.⁴

[19] 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.⁵

³ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] and [151].

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 and 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; and *Z*, above n 3, at [151].

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

[20] The most appropriate penalty is that which:⁶

- (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.

DECISION

[21] The misconduct here concerns a lack of communication by Mr Kim directly with his client. He is required to personally undertake and control client engagement. Such an engagement is critical, not just to establish trust and confidence in the relationship, but also to ensure that the client is properly advised, understands the advice and therefore that the instructions from the client are "informed".⁷ Given the breach of cl 2(e) of the Code, the Tribunal would categorise the offending as at the lower level of medium in terms of its gravity.

[22] This is the second complaint against Mr Kim upheld by the Tribunal. In a decision issued on 15 February 2023,⁸ it was found that Mr Kim had:

- (1) Failed to provide a written agreement for an additional service, in breach of cl 19(e) of the Code.
- (2) Failed to set out in the agreement the fee for the additional service, in breach of cl 19(f).

⁶ *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].

⁷ Licensed Immigration Advisers Code of Conduct 2014, cl 2(e).

⁸ *SM v Kim* [2023] NZIACDT 5.

[23] In the sanctions decision of 6 April 2023, the Tribunal censured Mr Kim and ordered him to pay a financial penalty of \$500.⁹

[24] It is to Mr Kim's credit that he accepts the Tribunal's decision and has learned a lesson for future work.

[25] It is appropriate to censure Mr Kim as the obligation to communicate directly with the client is important. Furthermore, this is the second complaint upheld.

[26] The Tribunal agrees with the Registrar that Mr Kim would benefit from some further training. The multiple breaches evident in the two complaints show a lack of understanding of client engagement, particularly early in the relationship. The LAWS 7015 paper will remedy that.

[27] As for the financial penalty, the Registrar submits that \$750 to \$1,000 would be appropriate. Mr Kim has made no submissions on the penalty. This is the second complaint upheld with a penalty of \$500 imposed on the first complaint. Having regard to the gravity of the failure to engage directly in obtaining instructions but acknowledging Mr Kim's acceptance of the Tribunal's decision, the penalty will be \$1,500.

OUTCOME

[28] Mr Kim is:

- (1) Censured.
- (2) Ordered to complete the LAWS 7015 paper at Toi Ohomai at the next intake.
- (3) Ordered to pay \$1,500 to the Registrar within one month.

D J Plunkett
Chair

⁹ *SM v Kim* [2023] NZIACDT 11.