

## IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2024] NZIACDT 10

Reference No: IACDT 004/23

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

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

**BETWEEN** **MM**  
Complainant

**AND** **TZU-TONG JANE MA**  
Adviser

Decision on the papers

---

**DECISION  
(Sanctions)**  
**Dated 12 March 2024**

---

### REPRESENTATION:

Registrar: Self-represented  
Complainant: Self-represented  
Adviser: Self-represented

## INTRODUCTION

[1] The adviser was engaged by the complainant to seek a job and a work visa for a substantial fee. She arranged employment with her husband's company, but did not inform the complainant of the relationship. The visa application was successful.

[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 30 January 2024 in *MM v Ma*.<sup>1</sup> Ms Ma 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] Tzu-Tong Jane Ma is a self-employed licensed immigration adviser, trading as both Colab Ltd and New Zealand Immigration Concepts, based in Auckland.

[6] The complainant, a national of China and a carpenter, made contact with Ms Ma on 14 September 2022. He asked her to find him a job in New Zealand and to obtain a work visa. On about 30 October, the complainant was interviewed by a director of a building company (the employer). The complainant was not informed that the director was the husband of Ms Ma. The interview was successful and she sent him the employment agreement which he duly signed. He signed Ms Ma's immigration advice services agreement on 7 November.

[7] Ms Ma filed the work visa application on 8 November 2022 and it was approved on 26 November. The complainant arrived in New Zealand on 4 December. He commenced work for the employer on 10 January 2023 but was dismissed two months later.

[8] A complaint against Ms Ma was made to the Authority on 13 April 2023. He alleged she had lied to him about the fee and had not informed him of her relationship with the employer.

---

<sup>1</sup> *MM v Ma* [2024] NZIACDT 7.

*Decision of the Tribunal*

[9] It was found by the Tribunal that Ms Ma had:

- (1) Provided advice to the complainant which was misleading and therefore not professional or diligent, in breach of cl 1 of the Code.
- (2) Failed to be professional and respectful by refusing to respond to the complainant's concerns, in breach of cl 1.
- (3) Failed to disclose the conflict of interest to the complainant and obtain his written consent to continuing to represent him, in breach of cls 5 and 6.
- (4) Charged an unfair and unreasonable fee, in breach of cl 20(a).
- (5)(i) Failed to provide the complainant with a full description of the services undertaken, in breach of cl 19(e).
- (ii) Failed to specify the full fee, in breach of cl 19(f).
- (iii) Failed to send an invoice with a description of the service to which it related for each instalment, in breach of cl 22.
- (6) Failed to provide the complainant with her internal complaints procedure, in breach of cl 17(c).

## **SUBMISSIONS**

*From the Registrar*

[10] There are submissions (23 February 2024) from Ms Issar of the Registrar's office. It is noted Ms Ma breached the Code in numerous respects.

[11] The Registrar emphasises the particular importance of the obligations relating to conflicts of interest. They are the lead misconduct offences. It is submitted that the absence of a conflict or its proper handling when present, is a cornerstone of achieving the purpose of the Act, the protection of consumers. There are exacting conflict requirements for advisers. The Code is robust and prescriptive. It requires a potential conflict to be identified and the client to be not only made aware, but to give written consent. This is so an informed and fair decision can be made by the client.

[12] In the present matter, the client was not made aware and no consent was obtained. While Ms Ma has admitted non-disclosure and expressed regret, the Registrar is concerned she simultaneously views the issue as minor and was not aware it had anything to do with her work. It is disquieting that Ms Ma, despite saying she was remorseful, later suggests there was no conflict of interest.

[13] In terms of the remaining breaches, the Tribunal is invited to take into account their number and their reach to multiple areas of the Code. Ms Ma's conduct may be seen as indicative of a significant disregard, or disconcerting inattention, towards adhering to the basic professional standards in the Code.

[14] The overall gravity of the misconduct is significant. It falls towards the higher end of moderate level misconduct.

[15] Ms Ma's response to the complaint appears to suggest an absence of an appreciation of the seriousness of the misconduct.

[16] Ms Ma has held a full licence since 18 January 2016. She completed the Graduate Certificate in New Zealand Immigration Advice in 2015. This is her first appearance before the Tribunal.

[17] It is submitted that the fundamental failures warrant a strong and clear penalty. The Tribunal may conclude that Ms Ma lacks sufficient knowledge, especially understanding conflicts and their significance.

[18] The Registrar contends that the appropriate sanctions would be:

- (1) Censure.
- (2) An order that Ms Ma complete the LAWS 7015 professional practice paper at Toi Ohomai Institute of Technology.
- (3) An order for payment of a penalty in the region of \$5,000 to \$8,000.
- (4) An order for the payment of fees, expenses and/or compensation as deemed reasonable.

*From the complainant*

[19] An employment advocate for the complainant advised the Tribunal on 30 January 2024 that she was representing several migrant workers employed by the employer. She attached a Statement of Problem (20 April 2023) filed on behalf of the complainant in the Employment Relations Authority.

*From the adviser*

[20] There are submissions (23 February 2024) from Ms Ma. According to her, the complainant lost his job because he talked to a buyer and ruined the employer's reputation.

[21] As for the conflict, it should have been raised by the complainant right at the beginning of the engagement or when he started working. He did not raise that as a concern. Ms Ma admits that the conflict is serious misconduct, but the complainant did not come to her when he realised there was one. It was not hidden as both the employment agreement and the visa application used the same address. Since she did not put the conflict in writing, she is willing to be punished. She had learned a lesson about engaging with offshore clients and in future will put everything in a detailed contract. Ms Ma sincerely apologises for her wrongdoing. She should have spent more time on the paperwork.

[22] As for the fee of RMB 85,000, the complainant should have complained about it at the beginning. It was a fixed price agreed to upfront. If his visa had been declined, the fee would have been refunded.

[23] The complainant approached reporters to spread rumours. This resulted in reporters tracking her down in a park when she was with her children and taking photos. One reporter showed up at her house and threatened to publish a story. The complainant has abused the New Zealand legal system and plays the victim.

[24] Ms Ma says she worked 100 per cent for the complainant, helping him to find interviews and accommodation, yet he makes a complaint and threatens her. She had no intention to hurt or mislead him.

[25] Ms Ma asks the Tribunal to note:

- (1) It is her first appearance before the Tribunal.
- (2) The accredited employer policy had changed and there was stress in the market after COVID-19.
- (3) She was dealing with a murder trial investigation.
- (4) Her three toddlers take up a lot of her time and patience.
- (5) She has mental health issues and is on medication.

[26] It would be appreciated by Ms Ma if the Tribunal was not harsh. She will be a better adviser in the future.

[27] Attached to Ms Ma's submissions are photographs and documents showing her medication and unfitness for work (the latter in May 2022), miscellaneous photographs, a letter from a legal aid grants officer (23 April 2020) showing a person at the same residential address as Ms Ma was granted legal aid for a murder case and a letter from a solicitor (28 April 2023) to a reporter putting him on notice that he should cease and desist from approaching Ms Ma.

## **JURISDICTION**

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

[29] 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:

---

<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.

[30] 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.

[31] 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 *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.

[32] 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>

---

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

<sup>4</sup> *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].

[33] 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>

[34] 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

[35] The misconduct is detailed above. The Tribunal has found eight breaches by Ms Ma of eight provisions of the Code.

[36] The most serious breach is Ms Ma's failure to disclose to the complainant a clear and significant conflict of interest, let alone obtain his written consent to her acting for him notwithstanding the conflict. He was not informed until after his arrival in New Zealand that Ms Ma's husband was effectively the employer. She had a hidden financial interest in the employment she arranged for him. While Ms Ma says she now recognises this wrong, she undermines that acknowledgement by criticising the complainant for not raising a concern as soon as he knew. It is irrelevant that the complainant, who may not have known it was wrong, did not raise a concern earlier. It does not reduce the gravity of Ms Ma's wrongdoing. Coupled with Ms Ma's earlier explanation to the Authority and the Tribunal which indicated she did not even recognise an issue, the Tribunal is not

---

<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].

confident she has a full appreciation of the nature of conflicts or why they must be disclosed.<sup>7</sup>

[37] Ms Ma says she did not hide the relationship as the addresses used on the immigration and employment documents were the same. This is not disclosure of the relationship for the reasons given by the Tribunal in the earlier decision.<sup>8</sup> Again, this undermines any confidence that Ms Ma truly understands conflicts.

[38] As for the fee of RMB 85,000, grossly excessive for the services disclosed in the services agreement, this is another noteworthy breach of Ms Ma's obligations. While the complainant may have known this would be the fee, it was not disclosed in the written agreement.

[39] The Tribunal acknowledges that this is Ms Ma's first appearance before it. It is also to her credit that she accepts the Tribunal's decision, apologises and states she will put everything in a detailed contract in the future. It is apparent from Ms Ma's submissions to the Tribunal that the apology is offered to the Tribunal and the Authority only, not the complainant. She expresses no remorse to the complainant for failing to disclose the conflict or charging a grossly excessive fee.

[40] The evidence concerning Ms Ma's mental health does not establish that it is an explanation for her wrongdoing or a material factor in her current circumstances.

#### *Caution or censure*

[41] Given the serious nature of the wrongdoing, only censure would mark the Tribunal's disapproval.

#### *Training*

[42] The Tribunal found that Ms Ma has a general lack of understanding of her obligations.<sup>9</sup> In light of the number and breadth of the professional breaches as well as Ms Ma's limited understanding of conflicts and her less than full acceptance of her wrongdoing, the Tribunal agrees with the Registrar that Ms Ma would benefit from undertaking the LAWS 7015 professional practice paper.

---

<sup>7</sup> *MM v Ma*, above n 1, at [63].

<sup>8</sup> At [62].

<sup>9</sup> At [52]–[53].

### *Financial penalty*

[43] The Registrar submits that a fine in the order of \$5,000 to \$8,000 would be appropriate. The Tribunal agrees with the Registrar that the overall gravity of the wrongdoing is at the higher end of medium or moderate level misconduct. Having regard to the breadth and gravity of the wrongdoing, but acknowledging Ms Ma's general acceptance and apology as well as her clear disciplinary record, the financial penalty will be \$5,000.

### *Refund and compensation*

[44] In his complaints to Ms Ma and the Authority (6 and 13 April 2023), the complainant sought a refund of the excessive fee, being the sum of RMB 85,000 minus NZD 488.75 disclosed in the service contract. The Registrar submits the Tribunal should make an order for the repayment of fees, as deemed reasonable. Ms Ma has made no submissions on any refund or compensation, though repeats that the complainant agreed to RMB 85,000. The disclosed sum was the only fee Ms Ma could charge. It was reasonable, albeit low, for a straight-forward work visa application, which was the only service set out in the contract. There is evidence that the complainant did pay RMB 85,000 to Ms Ma.<sup>10</sup> It is reasonable that Ms Ma refund the difference, being RMB 85,000 (NZD 19,550) minus NZD 489, which is NZD 19,061.<sup>11</sup>

## **OUTCOME**

[45] Ms Ma is:

- (1) Censured.
- (2) Ordered to complete the LAWS 7015 paper at Toi Ohomai Institute of Technology at its next intake.
- (3) Ordered to pay \$5,000 to the Registrar within one month of this decision.
- (4) Ordered to pay to the complainant NZD 19,061 within one month of this decision.

---

D J Plunkett  
Chair

---

<sup>10</sup> The Registrar's bundle of supporting documents at 9–11, 34, 36, 62, 83, 103–107, 113 and 115–117.

<sup>11</sup> The Tribunal used the exchange rate on 12 March 2024.