

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2024] NZIACDT 12

Reference No: IACDT 013/19

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **RN**
Complainant

AND **JIAYU LI**
Adviser

Decision on the papers

**DECISION
(Sanctions)
Dated 14 March 2024**

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: S Laurent, counsel

INTRODUCTION

[1] The adviser, Jiayu Li, was engaged by the complainant to obtain a work visa. It was eventually granted. During the course of the engagement, the adviser failed to confirm in writing oral advice.

[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 partially upheld in a decision issued on 8 January 2024 in *RN v Li*.¹ Mr Li 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] Mr Li was at the relevant time a provisionally licensed immigration adviser. He was a shareholder and director of Apec Immigration Group Limited (Apec Immigration). His licence has expired.

[6] The complainant, a national of China, engaged Mr Li while working in Singapore as a tiler, blocklayer and concrete worker. He entered into an employment agreement with a New Zealand stone company on 11 June 2017. He then entered into a client agreement with Apec Immigration on 26 June 2017. A work visa application was initially filed by Mr Li on 15 July 2017, re-filed on 19 September 2017 and granted on 10 October 2017. The complainant arrived in New Zealand on 30 November 2017 and duly went to work with the stone company.

[7] A complaint against Mr Li was made to the Authority on 14 August 2018 and was referred to the Tribunal.

Decision of the Tribunal

[8] It was found by the Tribunal that Mr Li had failed to confirm in writing the details of material oral discussions with the complainant, in breach of cl 26(c) of the Code.

¹ *RN v Li* [2024] NZIACDT 1.

SUBMISSIONS

From the Registrar

[9] In her submissions (30 January 2024), Ms Issar of the Registrar's office notes that the Tribunal found there was no written confirmation by Mr Li of the details of at least 11 instances of direct contact, much of which would have been plainly material. Mr Li's conduct shows a disregard of the importance of professional standards. The breach can be considered to be of low-moderate gravity because Mr Li:

- (1) Was aware the complainant came from offshore which meant he was vulnerable in terms of understanding the visa process, nor did he speak English.
- (2) Was aware of the involvement of Mr X and needed to avoid the complainant relying on any guidance from him in relation to immigration.
- (3) Would have been aware, as a provisional licence holder, of the need to record his advice in writing so he could receive guidance from his supervisor.

[10] In mitigation, this is Mr Li's first appearance before the Tribunal and he has only ever held a provisional licence.

[11] While the breach was of low-moderate gravity, it was not a trivial matter and a penalty is warranted to hold Mr Li accountable for his actions and to deter other advisers from engaging in similar behaviour in the future.

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

- (1) Censure.
- (2) A fine in the vicinity of \$1,000.

From the complainant

[13] Ms Tagg, on behalf of the complainant, filed an undated request for the repayment of expenses and for compensation, amounting to \$190,911.

From the adviser

[14] There are no submissions from the adviser.

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 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.

[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:
- (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.

² Immigration Advisers Licensing Act 2007.

[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: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 *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.⁴

[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.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].

[21] 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.

DISCUSSION

[22] The Tribunal has found Mr Li failed to confirm in writing numerous claimed verbal discussions with the complainant. It agrees with the Registrar that this is not trivial. It is not merely a matter of record keeping (a paper trail for the supervisor and the regulator), though there is an element of that. More importantly, it greatly assists clients in their fuller understanding of verbal advice.

[23] The Tribunal would characterise the wrongdoing at the higher end of low in the spectrum, rather than low-moderate, though the difference between them is marginal.

[24] Mr Li is entitled to credit for his clean disciplinary history. While he cooperated in the Tribunal's earlier process and admitted the wrongdoing upheld, he has not engaged in respect of sanctions. He has shown no remorse and made no apology. Mr Li will therefore be censured.

[25] The Registrar submits a financial penalty of about \$1,000 would be appropriate. Mr Li does not contend otherwise. The Tribunal will impose a penalty of \$1,000.

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].

[26] No compensation will be awarded as none of the expenses or losses arose from the wrongdoing of Mr Li upheld by the Tribunal. There is no evidence that the failure to confirm any oral advice in writing caused any financial loss.

OUTCOME

[27] Mr Li is:

- (1) Censured.
- (2) Ordered to pay \$1,000 to the Registrar within one month of this decision.

D J Plunkett
Chair