

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2018] NZIACDT 14

Reference No: IACDT 004/17

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

BY **The Registrar of Immigration
Advisers**

Registrar

BETWEEN **Darren Calder (Immigration New
Zealand)**

Complainant

AND **Gaurav Soni**

Adviser

**SUPPLEMENTARY DECISION
(SANCTIONS)**

REPRESENTATION:

Registrar: Ms F Mohammed, lawyer, MBIE, Auckland.

Complainant: Ms C English, lawyer, MBIE, Wellington.

Adviser: Mr S Laurent, lawyer, Laurent Law, Auckland.

Date Issued: 15 May 2018

DECISION

Preliminary

- [1] This complaint was upheld in the Tribunal's decision *Calder v Soni* [2018] NZIACDT 6, which was followed by a decision imposing sanctions in *Calder v Soni* [2018] NZIACDT 13. Those decisions should be read with the present decision.
- [2] Through my error, I did not see submissions submitted by the Registrar and accordingly understood that the Registrar did not wish to add to the Complainant's submissions.
- [3] As the Registrar's submissions were not taken into account, the decision issued is potentially not valid. The purpose of this decision is to consider the Registrar's submissions and, after doing so, finalise the decision to ensure that all parties have been given the opportunity to be heard, and their submissions reflected in the final decision.

The Registrar's position

- [4] The Registrar referred to the general principles relating to sanctions as well as the range of sanctions available and considered that a caution or censure was the appropriate response in this case. The submissions did not include reasoning as to why that was the appropriate response, and she did not consider there should be a financial penalty, training requirements or other sanctions.

Discussion

- [5] Given the Registrar's position, I must consider the significance of her view that only a censure or caution should be imposed. That must be given significant weight, given it is the Registrar that carries a duty to consider and raise public interest considerations.
- [6] However, the Registrar has not presented submissions that identify a starting point based on the significance of the disciplinary finding or any necessary adjustments that take account of the adviser's circumstances. The submissions made on her behalf simply express a view, without an analysis of the findings in this particular case.
- [7] I now reconsider the issue of whether there should have been a financial penalty. I am satisfied, for the reasons already expressed in the previous decision, that a financial penalty in the appropriate range was necessary and appropriate. That is primarily to recognise the significance of the failure to keep proper records. In this case, that failure led to many thousands of dollars being lost by Immigration New Zealand, the Authority, and this Tribunal. Had there been proper records, much of the investigative work and the hearing to

determine factual issues would have been unnecessary. The mandatory records would have clearly shown whether the adviser had complied with his professional obligations. It is the Adviser who possibly suffered the greatest financial loss. He had to instruct counsel to defend the complaint in difficult circumstances where he did not have the mandatory records and the grounds of complaint would have potentially ended or interrupted his career. It is important to distinguish between the gravity of the consequences and the gravity of a professional failing. Nevertheless, proper record keeping is a very important professional obligation. I therefore remain satisfied that a financial penalty was necessary to mark the gravity of this failure to keep adequate records.

[8] However, I also remain satisfied that it was appropriate to impose a financial penalty at the lowest end of the range, particularly considering the adviser's admission that he had breached his professional obligations in that respect.

[9] Accordingly, I affirm the decision issued and the sanctions imposed in it.

Decision

[10] The Tribunal confirms its decision that Mr Soni is:

[10.1] censured; and

[10.2] required to pay a penalty of \$1,000.

DATED at WELLINGTON this 15th day of May 2018

G D Pearson
Chair