

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

Decision No: [2018] NZIACDT 10

Reference No: IACDT 025–031,  
033–035/15

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration  
Advisers**

Registrar

**BETWEEN**

**Lauro Almirante, Edwin  
Balatbat, Gerardo Bautista,  
Nicanor Corpuz, Christopher  
Hindap, Carlos Padilla, Jolma  
Palma, Joel Pangan, Raul Sta  
Rita, Ramil Rosi, Jonathan  
Villarama**

Complainants

**AND**

**Lindsay Charles Sparks**

Adviser

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**DECISION  
(SANCTIONS)**

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**REPRESENTATION:**

**Registrar:** Ms J Ongley, lawyer, MBIE, Wellington

**Complainant:** Ms R Burgess, lawyer, Lawhub Ltd, Christchurch for all complainants

**Adviser:** Mr M Smith, barrister Wellington, on instructions from Lane Neave,  
solicitors, Christchurch

Date Issued: 03 April 2018

## DECISION

### Background

- [1] This decision follows the Tribunal's findings in *Balatbat v Sparks* [2016] NZIACDT 27, the High Court's decision on the same matter in a judicial review proceeding reported as *Sparks v IACDT* [2017] NZHC 376, and admissions of liability in relation to other matters. The purpose of this decision is to impose sanctions for each of the complaints, based on the findings and admissions.
- [2] The findings in relation to Mr Balatbat's complaint are set out in the decisions referred to. The admissions in the remaining matters were set out in the following manner:

Mr Sparks admits breaching clauses 1.1(a), 1.1(b), 1.4(a), 1.5(a), 2.1(b), 2.1(f), 3, 9(b) and 9(c) of the 2010 Code of Conduct, on the basis that to comply with all of those clauses he was required to engage directly/personally with the above clients/complainants, at least by phone/Skype call, and that he did not engage with any of the above clients/complainants in that personal manner in providing the immigration advice services that he did.

Mr Sparks admits breaching clauses 8(b) and 8(d) of the 2010 Code of Conduct, on the basis that to comply with those clauses he was required to specify then current INZ fees in the written agreement, and did not.

Mr Sparks admits engaging in dishonest or misleading behaviour in breach of [section 44(2)(d)] of the 2007 Act, on the basis that he should not have checked the work visa application form box that he did, saying that immigration advice had not been provided to any of the above clients/complainants when in fact he had provided such advice.

#### *Denials*

Mr Sparks denies breaching s 44(2)(a) of the 2007 Act, on the basis that the approach he took to compliance with the relevant Code of Conduct obligations was deliberate but mistaken as to what was required.

Mr Sparks denies (i) that any unlicensed people, to his knowledge, in fact provided unlawful immigration advice to any of the above clients/complainants; (ii) that he was necessarily relying on unlicensed people to provide unlawful immigration advice to any of the above clients/complainants; and (iii) that he is or should be responsible for any separate fees charged by a Philippines manpower agency ("Agency") to any of the above clients/complainants for services separately provided by that Agency in the Philippines.

- [3] Since making those admissions, all parties, including the Registrar, have presented a joint memorandum in relation to sanctions, which states they contend the following sanctions should be a full and final resolution of these complaints:

#### *Refund of fees (s 51(1)(h) of the Act)*

The Adviser will pay to each of the complainants the sum of New Zealand \$1,000 as a partial refund of fees paid for the services in issue;

*Financial penalty (s 51(1)(f) of the Act)*

The Adviser will pay the sum of New Zealand \$10,000 to the Registrar as a financial penalty in relation to the 11 complainants in issue;

*Censure (s 51(1)(a) of the Act)*

The Adviser is to be censured in respect of the breaches of the Code of Conduct that have been proven (in the case of Mr Balatbat's complaint) and are admitted (in the case of the other 10 complainants in issue);

*Re-licensing (s 51(1)(e) of the Act)*

The Adviser is to be prevented from reapplying for a licence to be a licensed immigration adviser for a period of two years.

*Other redress*

As the complainants' request, the Adviser has also agreed to write to Immigration New Zealand in relation to the files it holds for each of the complainants, acknowledging that he erroneously checked the box on their work visa applications forms saying that immigration advice had not been provided by the Adviser when it had been provided. The Adviser will further acknowledge, in the same letters, that he did not directly/personally speak with any of the complainants before he submitted their work visa application forms to Immigration New Zealand.

- [4] The parties also agree the fees and financial penalty will be paid over a 12-month period through consecutive monthly payments of \$1,750, with the refund of fees to be paid first out of those monies, followed by the financial penalty.

**Discussion**

- [5] The Registrar has a duty to protect the public interest in relation to complaints she submits to the Tribunal. She has the relevant investigative powers to achieve that objective, and this Tribunal is limited by the Registrar's decision as to the grounds presented to it; it cannot uphold grounds of complaint other than those the Registrar submits to it.<sup>1</sup> Given the Registrar's agreement with the extent of the admissions and sanctions to be imposed, it is not appropriate for this Tribunal to exercise its inquisitorial powers. Further, the victims of Mr Spark's professional offending have had the benefit of representation by counsel. Accordingly, I am satisfied that it is appropriate to record the admissions and impose the agreed sanctions, and in other respects dismiss the complaints.
- [6] However, rather than make final orders, the Tribunal will draft a proposed order and circulate it. The intituling of the joint memorandum sets out the names of 12 complainants. It appears that Mr Lacson's name was included in error. The Tribunal requests that the parties ensure that the names in the intituling of this decision accurately record the complaints that are subject to this decision.

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<sup>1</sup> *Mizoguchi v Shihaku* [2017] NZHC 3198 at [42]–[44].

- [7] The terms of the draft order appear as a schedule to this decision, and the parties are requested to confer if any changes are required but otherwise may confirm the terms of the order by sending an email to the Case Manager. If necessary, the Tribunal will convene a telephone conference to resolve any contentious points.

**DATED** at WELLINGTON this 3rd day of April 2018

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**G D Pearson**  
Chair