

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

Decision No: [2018] NZIACDT 24

Reference No: IACDT 013, 015–
022, 038/17

IN THE MATTER

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

BY

**The Registrar of Immigration
Advisers**

Registrar

BETWEEN

**Rowel Espedido Ramirez,
Vergelio Campos Bernalte,
Mark Amoyan Gojar,
Christopher Delim Carriedo,
Edwin Aquino, Larry Embiado
Elgario, Wilson Manaral De
Leon, Isidoro Dalubatan Loor,
Jumie Dacusay Celeste and
Marvin Isais**

Complainants

AND

Lindsay Charles Sparks

Adviser

**DECISION
(SANCTIONS)**

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: 18 June 2018

DECISION

Background

- [1] This decision follows a series of complaints against Mr Sparks, which he has admitted. The parties agree on the outcome, so I do not need to set out the complaints in detail. It is enough to note Mr Sparks did not comply with the Licensed Immigration Advisers Code of Conduct 2014 and the Immigration Advisers Licensing Act 2007 (the Act). Key features were that he did not personally establish a professional relationship with the complainants or provide the professional services required, and allowed unlicensed persons to provide professional services. He also misrepresented aspects of his professional service delivery. The complainants were seeking work in New Zealand and dealing with an offshore agent. Mr Sparks allowed the agents to do work he should have done.
- [2] Since Mr Sparks admitted the grounds of complaint, all parties, including the Registrar, have presented a joint memorandum in relation to sanctions. They say that these sanctions should be a full and final resolution:

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

The Adviser will pay to each of the complainants the sum of NZ\$ 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 NZ\$2,000 to the Registrar as a financial penalty in relation to the 10 complaints that are 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 admitted for all 10 complaints in issue.

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

The Adviser is to be prevented from reapplying for a license to be a licensed immigration adviser for a period of 2 years.

Other redress

At the complainants' request, the Adviser has also agreed to write to Immigration NZ in relation to the files it holds for each of the complainants, acknowledging that he erroneously checked the box on their work visa application 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 NZ.

- [3] The parties also agreed that because of Mr Sparks' circumstances, the refund offers and financial penalty should be paid over a 7-month period with consecutive monthly payments of \$1,750 per month (for the first six months) and \$1,500 (for the seventh month). Out of that money, the refund of fees will be paid first, then the financial penalty. The first monthly payment of \$1,750 is to be in April 2019. The delay is because Mr Sparks will be paying sanctions from the decision *Almirante v Sparks* [2018] NZIACDT 12 until then.

Discussion

- [4] The Registrar protects the public interest in relation to complaints. She has investigative powers to do that, and this Tribunal is limited to the Registrar's grounds of complaint.¹ As the Registrar accepts the proposed outcome, and the complainants have counsel representing them, this Tribunal should not exercise its inquisitorial powers. I am satisfied that it is appropriate to record the admissions and impose the sanctions all the parties accept.
- [5] The sanctions are set in the context of a large number of complaints upheld against Mr Sparks. This is the second series of complaints arising out of similar circumstances. Accordingly, questions of his ability to pay the penalties and the totality principle are relevant. Further, Mr Sparks has been removed from the profession for a significant period, which is extended to the maximum extent allowed in relation to these complaints. However, the sanctions should not be seen as a guide to the appropriate sanctions beyond unless all of the circumstances are looked at in this case.
- [6] I have not made final orders as the parties should have the opportunity to first look at the exact terms of the orders. Accordingly, I have attached an order I think accurately sets out the agreed outcome. If none of the parties object, the draft order will become a final order without further action. If any party opposes the terms of the order, they are to set out their concern in writing, file it with the Tribunal and circulate it among the other parties within five working days. The final order will be withheld until any concerns have been addressed. **I emphasise, the draft order becomes final after five working days if no steps are taken.**

DATED at WELLINGTON this 18th day of June 2018

G D Pearson
Chair

¹ *Mizoguchi v Shihaku* [2017] NZHC 3198 at [42]–[44].