

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

Decision No: [2018] NZIACDT 25

Reference No: IACDT 017/16

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

**BY** **The Registrar of Immigration  
Advisers**

Registrar

**BETWEEN** **Andrej Stanimirovic**

Complainant

**AND** **Howard Levarko**

Adviser

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**FINAL DECISION  
(SANCTIONS)**

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**REPRESENTATION:**

**Registrar:** Ms Jessica Ellison, lawyer, MBIE, Wellington

**Complainant:** In person

**Adviser:** Mr K Lakshman, Barrister, Wellington

Date Issued: 20 June 2018

## DECISION

### Preliminary

- [1] This complaint was upheld in the substantive decision *Stanimirovic v Levarko* [2018] NZIACDT 3, and an interim decision on sanctions issues in *Stanimirovic v Levarko* [2018] NZIACDT 8. Those decisions should be read with this decision.
- [2] The interim decision on sanctions requested that the Registrar clearly express her view on sanctions, particularly as she had moved from her initial position which would have resulted in at least the temporary exclusion of Mr Levarko from the profession. In addition, the Tribunal sought to clarify Mr Stanimirovic's evidence in respect of compensation.
- [3] It is sufficient to note that notwithstanding the gravity of the findings, the Registrar is satisfied this is an appropriate case for a restorative approach. The authorities indicate it is a "last resort" to deprive a person of the ability to work as a member of their profession. However, regard must be had to the public interest when considering whether a person should be excluded from a profession due to a professional disciplinary offence: *Complaints Committee of Waikato Bay of Plenty District Law Society v Osmond* [2003] NZAR 162 (HC) at 171-173.
- [4] Mr Levarko's future in the profession has been in the balance. I am satisfied the Registrar's restorative approach is appropriate and justified. A key element in that is Mr Levarko's commitment to maintaining high standards in the future. However, equally important is the need for him to recognise the consequences of his behaviour that led to the adverse findings, and be willing to address them.
- [5] The result of a further hearing has been substantial agreement on the proper outcome, including the compensation Mr Stanimirovic is entitled to receive.
- [6] I note Mr Levarko raised issues regarding his capacity to comply promptly with some of the obligations he agreed; it is sufficient to observe that he has now provided an assurance he can and will do so. Without that assurance, I would not have been satisfied continuing in practice was consistent with the objectives of the Act.

### The agreed outcome

#### *Overview*

- [7] The parties substantially agreed to the appropriate sanctions. The Tribunal, which is required to reach an independent view having regard to the public interest generally, agrees with the views of the parties.

*Mr Levarko's licence*

- [8] The first issue is Mr Levarko's licence. The Registrar is satisfied that a proper response in relation to Mr Levarko's licence is that if his full licence is cancelled, he can immediately apply for a provisional licence and continue practising. Mr Levarko accepts that outcome.

*Retraining*

- [9] The Registrar sought to require Mr Levarko to enrol in and complete the full graduate diploma that entrants to the profession must complete. He is willing to undertake that training.

*Compensation*

- [10] After some discussion, Mr Stanimirovic accepted that \$16,000 is an adequate measure of his loss. As Mr Levarko agreed, it was not necessary to determine the evidential issues relating to the claim. However, it is appropriate to observe that the quantum appears to be fully justified, and directly causally related to the findings against Mr Levarko. I have placed considerable weight on Mr Levarko's willingness to accept liability to pay compensation. As is evident in the previous two decisions, I have had considerable misgivings regarding Mr Levarko's insight. I have also been concerned as to whether the contrition Mr Levarko expressed was motivated by his current predicament or a genuine appreciation of the harm he caused by failing to comply with his professional obligations.
- [11] I rely on Mr Levarko's willingness to pay the compensation as tangible evidence of insight and a willingness to make amends. In the absence of that affirmation, suspension or loss of licence and prohibition on applying for another licence for an extended period would have been inevitable.

*Monetary penalty*

- [12] The only point of contention between the parties in relation to sanctions was the level of the monetary penalty. I indicated I had in mind that if Mr Levarko were to agree to the package of sanctions sought by the Registrar and Mr Stanimirovic, which were not specific as to the level of the monetary penalty, I would consider a substantial discount. For a serious breach of the kind in issue, the standard monetary penalty would be in the order of \$7,500. I had in mind \$2,500, Mr Levarko contended for \$500 as a nominal penalty and the Registrar suggested \$1,000 would better reflect the circumstances.
- [13] I have considered this issue carefully. My principal concern is that a monetary penalty of less than \$2,500 is not adequate to properly reflect the conduct. There is in fact a concern that imposition of a lesser amount, superficially at least, conveys a message that understates the gravity of the issues.

- [14] I have an obligation to ensure that deterrence is properly conveyed in this decision, accordingly I have looked at the overall package of sanctions. I have accepted Mr Levarko has shown contrition, and is willing to work to restore his status in the profession. However, that evaluation is not dependent on the uncertain assessment I can make as to Mr Levarko's attitudes now and in the future. I rely on the fact that this decision puts in place a regime that demands a serious commitment on Mr Levarko's part. He can only hold a provisional licence for an extended period, and during that period he will be supervised in an active mentoring process. He will only return to full membership of the profession and be entitled to practise without supervision when he has completed the full qualification for membership of the profession.
- [15] Aside from the commitment to a substantial body of study, and requirement to pass evaluations, the mentoring and training will be at Mr Levarko's expense. He will be put to an expense of some thousands of dollars to comply.
- [16] There will be an order of \$16,000 compensation and \$3,000 costs; in addition to the cost of retraining and contracting a mentor. Accordingly, regardless of a monetary penalty, there will be a cost of more than \$20,000 for Mr Levarko to comply with this decision. Significantly he has put himself in a position where he can immediately pay compensation.
- [17] In these circumstances, I consider that imposing a monetary penalty of the level proposed would involve an incremental adjustment that adds nothing of substance to the overall financial deterrence of the order made. It would undermine the effect of imposing a monetary penalty as it is well outside of the range that would be applied if the monetary penalty were intended to achieve deterrence. In these circumstances, I am satisfied that this is a case where the proper course of action is not to make any order for a monetary penalty.

#### *Costs*

- [18] The Registrar has sought nominal costs of \$3,000 and Mr Levarko agrees.
- [19] Mr Stanimirovic was self-represented, and the Tribunal will not recover its own costs.

#### *Caution or censure*

- [20] The Tribunal may caution or censure Mr Levarko under s 51 of the Act. The condemnation of the conduct in issue is adequately addressed in the previous decisions.
- [21] It is appropriate to issue a caution at this point. Mr Levarko's future in the profession has been the result of the Registrar's willingness to approach sanctions using a restorative approach. The availability of such an approach in the professional disciplinary area will usually turn on a consideration of prior

history, considered alongside a willingness to change. That gives confidence the approach is consistent with the scheme and purpose of the Act expressed in s 3 which is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination.

[22] When removal from the profession is justified by the professional offending, removal is an effective way of achieving the objects expressed as the scheme and purpose of the Act. It is important that Mr Levarko recognise he must both aspire to exemplary conduct in the future, and seek advice and professional support to ensure he achieves that standard. He could not expect a similar outcome to a further serious complaint upheld by the Tribunal, and remaining in the profession in this case was far from assured.

[23] In relation to the sanctions imposed, it is also important for Mr Levarko to recognise:

[23.1] The training requirements must be adhered to, as s 51(4) of the Act has the effect of cancelling his licence if he fails to demonstrate compliance to the satisfaction of the Registrar.

[23.2] If he fails to comply in a timely way with any aspect of the sanctions imposed, the Registrar is entitled to take that into account when considering whether he meets the fitness requirements on relicensing (ss 17(b), 19(1)(b), 24(2)).

## **Orders**

### *Licence*

[24] Any licence Mr Levarko holds under the Act is cancelled at 5:00 pm on the 20th working day after this decision is delivered.

[25] Mr Levarko is prevented from:

[25.1] Applying for any category of licence under the Act until he has paid the \$16,000 compensation ordered below at [27.2]. For the avoidance of doubt, the other financial penalties do not have to be discharged before he applies for a licence; however, the Registrar is of course free to have such regard as is appropriate to compliance in relation to licensing decisions; and further prevented from

[25.2] Applying for any licence under the Act, except for a provisional licence, until:

[25.2.1] He has both completed the requirements for the issue of the Graduate Diploma in New Zealand Immigration Advice (Level 7), and

[25.2.2] Maintained full compliance with any supervision regime approved by the Registrar during any time he has practised under a provisional licence.

[26] Mr Levarko is required to enrol in the Graduate Diploma in New Zealand Immigration Advice (Level 7) at the earliest opportunity.

[27] Mr Levarko is:

[27.1] Formally cautioned in the terms set out above.

[27.2] Ordered to pay \$16,000 in compensation to the Complainant.

[27.3] Ordered to pay \$3,000 in costs to the Registrar.

[28] The Tribunal reserves leave for the Registrar or Mr Levarko to apply to vary the orders relating to the cancellation of Mr Levarko's licence, his entitlement to apply for a licence, and the training requirements.

**Time for compliance with orders**

[29] The orders take immediate effect (except as specified), however the Tribunal records that the Registrar has consented to the monetary orders (except the compensation payment) being discharged allowing an appropriate period. As the Registrar may take account of compliance in relation to the issue of licenses and the renewal of licences, it is not necessary to seek to be more specific it will be a matter for the Registrar to determine when she chooses to enforce those orders.

**DATED** at Wellington this 20<sup>th</sup> day of June 2018

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**G D Pearson**  
Chair