

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 77

Reference No: IACDT 018/18

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **FBN**
Complainant

AND **VICTORIA ADELE
BROADWAY**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 28 November 2019**

REPRESENTATION:

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

INTRODUCTION

[1] The complaint by Ms FBN, Ms Broadway's client, had been referred by the Immigration Advisers Authority (the Authority) to the Tribunal. It upheld this complaint against Ms Broadway, the adviser, in a decision issued on 7 October 2019 in *FBN v Broadway*.¹

[2] The Tribunal found that Ms Broadway had engaged in dishonest or misleading behaviour, in that she had presented to the Authority a client services agreement purportedly signed by the complainant, but the signature had been forged by Ms Broadway. This satisfied a statutory ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act). The failure to have a client agreement was also a breach of the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[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 decision of the Tribunal upholding the complaint and will only be briefly summarised here.

[5] Ms Victoria Adele Broadway was a licensed immigration adviser based in Victoria, Australia. She was self-employed, trading under the name V Broadway. Her licence was cancelled by the Registrar of Immigration Advisers (the Registrar), the head of the Authority, on 30 July 2018.

[6] The complainant is a citizen of the United States who was living in New Zealand and had a work visa which was about to expire. She engaged the services of Ms Broadway to obtain a renewal of her visa. It was the complainant's employer who first contacted Ms Broadway asking her to help the complainant.

[7] A written agreement for immigration services was entered into by Ms Broadway and the employer. It was signed by Ms Broadway on 10 May 2017 and earlier by the employer on 3 May 2017. The total fee was \$500.

[8] On the same day, Ms Broadway filed a work visa application with Immigration New Zealand on behalf of the complainant.

¹ *FBN v Broadway* [2019] NZIACDT 70.

[9] The visa application failed because the employer was on a list of non-compliant employers maintained by the Labour Inspectorate of the Ministry of Business, Innovation and Employment.

[10] The complainant advised Ms Broadway on 9 July 2017 that she would return to the United States, rather than pursue a new job offer.

[11] When Ms Broadway applied to the Authority on 10 October 2017 to renew her immigration adviser's licence, she was informed that the Authority would review her file in respect of the complainant.

[12] Ms Broadway then sent a number of emails to the complainant requesting her to sign an undated standard services agreement between Ms Broadway and the complainant, which she also sent to the complainant. The complainant declined to sign the agreement.

[13] On 1 November 2017, Ms Broadway wrote to the Authority and sent a copy of a written agreement purportedly signed by the complainant. Ms Broadway had falsely inserted the complainant's signature though had not dated it. She signed it herself and dated her signature as 10 May 2017.

[14] On the same day, the complainant lodged a complaint with the Authority against Ms Broadway. Part of the complaint concerned an email which Ms Broadway had sent to the complainant asking her to sign a contract which she had never seen before. The complainant said she was confused as it was a contract to be signed before they worked together. She did not feel comfortable signing the document, which had errors and was a contract for something that had already occurred.

Decision of the Tribunal

[15] The Tribunal noted that it was a fundamental obligation of an adviser to have a written agreement with the visa applicant prior to engagement. The Tribunal expressed some scepticism as to Ms Broadway's explanation that she was unfamiliar with the need to establish a professional relationship with all the parties, as she had thought her relationship was with the employer. In any event, it was found to be no defence that an adviser misunderstood who the client was.

[16] While it was not dishonest or misleading to retrospectively seek a client's signature to an agreement for services that had in fact already been performed, it was dishonest or misleading to present that agreement to others as one signed prior to the performance of the services. It was found to be plainly dishonest or misleading to attach

the complainant's signature and then present the agreement to the Authority as one signed by the complainant before the services were entered into. Ms Broadway had not dated the complainant's signature, but she had dated her own signature with a date which was prior to performance of the services and was therefore leaving it to the Authority to infer that both of them had signed at the commencement of the engagement.

[17] Ms Broadway's conduct satisfied the statutory ground of complaint of dishonest or misleading behaviour. It was also a breach of cl 18(a) of the Code, which required an adviser to obtain a written agreement at the time of engagement.

SUBMISSIONS

Registrar's submissions

[18] Counsel for the Registrar, Ms Pragji, in her submissions of 29 October 2019 contends that Ms Broadway should be censured, ordered to pay a penalty in the vicinity of \$5,000 and prevented from reapplying for a licence for a period not exceeding two years. The starting point for dishonest or misleading conduct is a sanction that would affect the adviser's licence. Ms Pragji draws to the Tribunal's attention its decisions in *Chand v Shearer* and *Immigration New Zealand (Greathead) v Ortiz*.²

[19] As Ms Broadway's misconduct did not occur as a result of any lack of knowledge or experience, it was not necessary to order her to undergo training. It was pointed out, however, that since her licence was cancelled more than 12 months ago, she would have to undergo the refresher course at Toi-Ohomai Institute of Technology before she could re-apply for a licence.

The complainant's submissions

[20] The complainant, in her letter to the Tribunal of 28 October 2019, seeks reimbursement of \$4,579.54:

Fee paid to Ms Broadway	\$250
Immigration New Zealand fee	\$298
Medical fee	\$270
Compensation – one month's lost wages	\$3,761.54

² *Chand v Shearer* [2016] NZIACDT 57 and *Immigration New Zealand (Greathead) v Ortiz* [2019] NZIACDT 69.

[21] It is contended by the complainant that Ms Broadway's negligence was a major contributing factor in her visa delays. This resulted in one month's hardship while she was unable to work.

Ms Broadway's submissions

[22] There is a memorandum from Mr Laurent, counsel for Ms Broadway, dated 29 October 2019. He records that Ms Broadway accepts the Tribunal's findings. It is observed by Mr Laurent that, while serious, Ms Broadway's professional misconduct did not have a negative impact on the complainant herself.

[23] Counsel notes that Ms Broadway had explained in her letter to the Authority on 12 November 2017 that she had panicked in the face of the Authority's request for the complainant's file. She had reacted impulsively and without good judgement. Once she had received notification of the complaint, she had readily admitted what she had done. It was open to the Tribunal to view the incident as an aberration brought about by the perceived pressure of the situation, rather than as a general tendency to act deceptively. Mr Laurent also refers to Ms Broadway's personal and work situation at the time, as set out in her affirmation.

[24] According to Mr Laurent, Ms Broadway would like to be able to apply for a licence again. While the Tribunal can prevent any reapplication for a maximum of two years, Ms Broadway has already been without a licence for 15 months. A ban for the further two years, which would amount to a total of more than three years, would be disproportionate to the offending.

[25] The Tribunal could place a prohibition upon licencing until certain conditions had been met. The competency standards already require someone in her position to complete a refresher course. It would not be appropriate to require her to complete the full graduate diploma as she has held a licence for nine years and the present matter was the only complaint that had been raised against her. It might therefore be appropriate to require her to complete the module of Toi-Ohomai's Graduate Diploma addressing professional standards.

[26] As for the complainant's request for compensation, the grounds of complaint did not refer to matters which impacted on the provision of visa services to the complainant. The events giving rise to the complaint occurred several months after the adviser had completed her immigration services to the complainant. There appeared to be no basis for a refund of fees or an award of compensation.

[27] Counsel had advised Ms Broadway that a financial penalty, or an order to pay the cost of the investigation, was likely. She had set out a statement of means showing her financial position. While her salaried income met her monthly expenses, she had a debt which accounted for the remainder, so she did not have much to spare.

[28] Counsel acknowledges that the Tribunal may balance the level of financial penalty against the other sanctions. The fact that the matter had been dealt with on the papers often led to the conclusion that an order concerning the costs of an investigation was not warranted.

[29] It is noted by Mr Laurent there was an early admission of wrongdoing by Ms Broadway. Counsel submits that the adviser's unprofessionalism in the *Ortiz* decision relied on by the Registrar was higher and that Ms Broadway's conduct was not equivalent. He referred the Tribunal to *Immigration New Zealand (Calder) v Wong*.³ Unlike Mr Wong, Ms Broadway cooperated in the process throughout. It is submitted that a financial penalty in the order of \$1,000 to \$2,000 may be appropriate.

[30] Ms Broadway has provided an affirmation (affirmed 29 October 2019). She accepts the finding of the Tribunal that she was dishonest by falsifying the service agreement provided to the Authority. At the time, she was going through the breakup of a relationship which had lasted for four years. She sets out why this was stressful and difficult. She was not eating or sleeping well and this clouded her judgement.

[31] Ms Broadway says she works fulltime as a business development manager and it was likely that she was overcommitted when she carried out this New Zealand immigration work.

[32] It was acknowledged that these various factors did not excuse her conduct, but she asks the Tribunal to take them into account.

[33] Ms Broadway says she would like to have the opportunity to renew her licence in the future.

[34] As for her financial situation, Ms Broadway advises that she is currently in fulltime employment as an account manager for a photography company. While she does not seek to avoid a fine or costs, her present financial situation could make payment difficult for her. A statement of financial means was provided. It shows her net pay for two weeks to be A\$2,533.34 after deducting tax and superannuation. She says her total monthly expenses are A\$3,415 and her total monthly income is A\$5,066. In addition, she has total debts of A\$36,800 and monthly repayments of A\$1,440.

³ *Immigration New Zealand (Calder) v Wong* [2019] NZIACDT 55.

JURISDICTION

[35] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following action:⁴

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.

[36] 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.

⁴ Immigration Advisers Licensing Act 2007.

[37] 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.

[38] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:⁵

...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.

[39] 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 profession itself.⁶

[40] 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.⁷

⁵ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

⁶ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee*, above n 5, at [151].

⁷ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

[41] The most appropriate penalty is that which:⁸

- (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

[42] I will consider the potentially appropriate sanctions in the order in which they appear in s 51 of the Act.

Caution or censure

[43] The only appropriate sanction under this item would be censure to mark the Tribunal's denunciation of knowingly presenting a false document to the Authority.

Training

[44] Ms Pragji does not seek an order requiring further training. I agree. If Ms Broadway decides in the future to seek renewal of her licence, she will have to undergo Toi-Ohomai's refresher course. This will include professional conduct.

Order preventing re-application

[45] Both counsel accept such an order is inevitable. The issue is the appropriate period.

⁸ *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].

[46] Mr Laurent contends that it would be a disproportionately long period if the Tribunal was to add the maximum period of two years to the 16 months of cancellation Ms Broadway has already endured. I agree. While Ms Broadway's falsification of a document is serious misconduct and is to be denounced, I accept Mr Laurent's submission that it was an isolated occurrence and does not reflect any general lack of integrity. She made an error of judgement, albeit grave, on one occasion. It did not result in any harm to her client. It was not done for financial reward. She admitted her wrongdoing promptly and has cooperated in the disciplinary process.

[47] While preventing any renewal for the maximum period would be disproportionate, I intend to make such an order for a lesser period. The Tribunal cannot condone the forgery of the client's signature in any circumstances. Such conduct goes to Ms Broadway's honesty, which is at the very heart of being professional. The period will be eight months. This has been chosen, so that the total period is close to two years when added to the period since the Registrar's cancellation of her licence.

[48] Ms Broadway is notified that if she makes a future application after the expiry of the period of prohibition, her licence will not be automatically renewed. The Registrar has the discretion to take into account the conduct giving rise to this complaint.⁹ The expiry of a period of prohibition does not, of itself, mean that a person is fit to be licensed.

Financial penalty

[49] I do not consider the financial penalties in *Shearer*, *Ortiz* or *Wong* to be good guides here. The wrongdoing in each of those cases was graver and the personal circumstances (particularly for Ms Ortiz) were very different.

[50] The most serious misconduct of Ms Broadway was the presentation to the Authority of a false document. To this is added the failure to have a written agreement with her client, which is an important obligation of advisers. While serious, Ms Broadway's misconduct did not adversely affect the complainant, was an isolated incident and was promptly acknowledged. Inserting a signature on a document was not done to deceive Immigration New Zealand or to financially benefit Ms Broadway. I acknowledge that her financial means are limited, but she is in fulltime employment and has no dependents. I note the submissions of both counsel as to the appropriate penalty.

[51] The penalty will be \$3,500.

⁹ Immigration Advisers Licensing Act 2007, s 17(b).

Refund of fees or expenses/compensation

[52] As the Tribunal has said before, compensation to the client for any losses is only appropriate when the misconduct upheld caused or at least contributed to the loss. As Mr Laurent contends, Ms Broadway's wrongdoing (at least in terms of the forged signature) occurred after her services for the complainant had ceased. While Ms Broadway was unsuccessful in obtaining the work visa for the complainant, that was not her fault and had nothing to do with the false signature.

[53] As for the failure to have a written agreement with the client, that occurred at the commencement of the engagement but it did not contribute to the complainant's apparent losses.

[54] I appreciate that the complainant has other complaints about Ms Broadway's services, particularly their timeliness, but they were not the subject of the complaint referred to the Tribunal, let alone upheld by it. Ms Broadway's wrongdoing (as found by the Tribunal) did not affect the quality of her service to the complainant, so a refund is no more appropriate than compensation.

OUTCOME

[55] Ms Broadway is:

- (1) censured;
- (2) prevented from applying for a licence for eight months from today's date;
and
- (3) ordered to immediately pay to the Registrar a penalty of \$3,500.

ORDER FOR SUPPRESSION

[56] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹⁰

[57] There is no public interest in knowing the name of Ms Broadway's client.

¹⁰ Immigration Advisers Licensing Act 2007, s 50A.

[58] The Tribunal orders that no information identifying the complainant is to be published other than to Immigration New Zealand.

D J Plunkett
Chair