

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 68

Reference No: IACDT 033/17

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **IMMIGRATION NEW ZEALAND
(DARREN CALDER)**
Complainant

AND **YAN (RYAN) JI**
Adviser

**DECISION
(Sanctions)
Dated 1 October 2019**

REPRESENTATION:

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

INTRODUCTION

[1] The complaint by Immigration New Zealand (Darren Calder) had been referred by the Immigration Advisers Authority (the Authority) to the Tribunal. It upheld this complaint against Mr Ji, the adviser, in a decision issued on 19 July 2019 in *Immigration New Zealand (Calder) v Ji*.¹

[2] The Tribunal found that Mr Ji had engaged in a practice known as rubber stamping. He permitted unlicensed staff to provide services which only a licensed adviser can undertake. He had also offloaded all client contact work to others. Nor had he been professional in working within a business structure which enhanced the risk of false documentation being provided to Immigration New Zealand, which had occurred. Mr Ji's conduct was found to be contrary to the Immigration Advisers Licensing Act 2007 (the Act) and the Licenced Immigration Advisers Code of Conduct 2014 (the Code).

[3] It is now for the Tribunal to determine the appropriate sanctions, if any.

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] Mr Yan (Ryan) Ji is a licensed immigration adviser. At the relevant time, he was an employee of NZ Business Migration based in Auckland. This company worked with an entity in China known as Globe Group or Globe Visa (Globe). Mr Ji is now a partner in his own firm, NZ Immigration Consulting and has no connection with Globe.

[6] The complaint concerns six clients of Mr Ji who made visa applications to Immigration New Zealand. They were all Chinese nationals residing in China.

[7] Mr Ji's employer, NZ Business Migration, had written agreements with each client. He had been unable to provide them to the Authority, but the Tribunal accepted in its decision that such agreements existed.

[8] Mr Ji had operated in a business structure, which it was accepted had not been set up by him, in which he had no direct contact at all with the clients in China. The communications between Mr Ji and the clients were done through multiple persons. If Mr Ji wanted information from a client or intended to give advice to them, he would communicate with the staff of NZ Business Migration who in turn communicated with the staff of Globe. The staff of Globe would then pass on the communication to the client.

¹ *INZ (Calder) v Ji* [2019] NZIACDT 50.

[9] In respect of a number of his clients, Mr Ji's relationship was even more remote since Globe had in turn dealt with a partner company in China in order to obtain documentation requested by Mr Ji. It was this documentation which had turned out to be false.

Decision of the Tribunal

[10] In its decision on 19 July 2019, the Tribunal found that Mr Ji had permitted unlicensed people to provide services exclusively reserved under the Act to him as the licensed adviser. He had also failed to personally obtain, as he was required to do, instructions from the client as he had left that role to the unlicensed staff. His conduct amounted to rubber stamping. It was a breach of cls 1, 2(e) and 3(c) of the Code.

[11] The Tribunal further found that an adviser would not work in the fashion that Mr Ji had done, communicating with the client through multiple entities, including a company in another country which was not part of Mr Ji's employer. Such a business structure meant that he had been neither professional nor diligent, had he conducted himself with due care. In respect of the provision of false documentation to Immigration New Zealand, while he did not know the documents were false, he had been negligent in the way the documents had been obtained and provided to the agency. His mode of conducting his practice significantly elevated the risk of fraud. This was a breach of cls 1 and 31(a) of the Code.

SUBMISSIONS

[12] Counsel for the Registrar of Immigration Advisers (the Registrar), Ms Pragji, in her submissions of 8 August 2019, contends that Mr Ji should be censured and ordered to pay a financial penalty.

[13] Mr Ji relies on the submissions he produced on 13 August 2019 in respect of another complaint against him. He accepts the Tribunal's findings of negligence and the breaches of the Code. He acknowledges that he should be censured.

[14] In his submissions, Mr Ji says he has recently attended a seminar where the Registrar made a presentation on rubber stamping and reviewed recent decisions of the Tribunal. He has now had the benefit of reading those decisions and fully understands the nature of the practice and the damage it causes clients. He has also read the content of Toi-Ohomai's LAWS6015 paper (immigration advisers' professional practice), which he found fantastic. As a board member of a professional body representing immigration

advisers, he is doing his best within the adviser community to expound on the dangers of rubber stamping.

[15] Mr Ji submits that he requires no formal training. He acknowledges that there will be a financial penalty to deter others from repeating his mistakes, but asks that it be minimised or even not imposed. This is because he is not in a good financial position, having recently established his own practice. He points out that he currently employs three New Zealanders and three work visa holders. He notes his co-operation in the Authority's investigation of him and also of the ongoing investigation of his former employer.

[16] As the practice of rubber stamping is common in China, Mr Ji asks that the Tribunal not order a financial penalty so that he can take steps to publicise the practice. He would like to turn his story into a video clip to put on Chinese social media, thereby promoting his story to the victims in the Chinese market. He would employ a marketing professional to influence the Chinese market. Mr Ji says he could also organise a seminar among Chinese licensed advisers to share his story. He hopes this form of "community service" will ensure that the Chinese consumer market is aware of the importance of the Code and of avoiding the use of intermediaries by engaging directly with licensed advisers. He is prepared to submit a detailed plan for carrying out his proposal.

[17] In conclusion, Mr Ji thanked the Authority and the Tribunal for its efforts in relation to the complaint against him.

JURISDICTION

[18] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following action:²

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.

² Immigration Advisers Licensing Act 2007.

[19] 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.

[20] 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.

[21] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:³

...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.

³ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

...

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.

[22] 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.⁴

[23] 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.⁵

[24] The most appropriate penalty is that which:⁶

- (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.

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee*, above n 3, at [151].

⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

⁶ *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].

DISCUSSION

[25] The starting point is the seriousness of the practice of rubber stamping. Mr Ji and the unlicensed staff who dealt with the clients have potentially committed criminal offences. While it is not my role to assess whether any conduct is criminal, this underlines the serious nature of Mr Ji's misconduct. Permitting unlicensed people to deal directly with the clients and prepare their applications robs the client of the protection to which he or she is entitled and would obtain, if dealing directly with a licensed and therefore knowledgeable adviser who is subject to professional standards and a disciplinary regime.

[26] Mr Ji's misconduct was not an isolated incident. An aggravating feature is that it concerned six clients. Furthermore, his mode of rubber stamping approaches the upper end of the spectrum. He had no contact whatsoever with the clients and communicated through a chain with multiple links before the client was reached. He was though actively involved in preparing the applications and corresponding with Immigration New Zealand.

[27] I also regard as aggravating that four of the six clients produced false documents to Immigration New Zealand. While Mr Ji did not do so knowingly, the business structure under which he was prepared to operate significantly enhanced the risk of that occurring. Immigration New Zealand and the integrity of the immigration system rely on the honesty of clients and the direct involvement with them of licensed advisers which reduces the risk of fraud.⁷

[28] I agree with Ms Pragji that the only appropriate sanctions are censure and a financial penalty.

Censure

[29] Mr Ji accepts Ms Pragji's submission that censure would be appropriate. I agree. Mr Ji is formally censured.

Financial penalty

[30] In setting the financial penalty, I note that Mr Ji is also being sanctioned today in another complaint involving the use of unlicensed advisers. I record that I do not consider it appropriate to reduce the penalty here to take account of the amount directed to be paid in that other case. This complaint relates to different clients. There is no overlap in

⁷ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [51] & [53].

that sense. However, in respect of each complaint, I will treat Mr Ji as a 'first offender', as he has not previously appeared before the Tribunal.

[31] More recent sanctions decisions concerning the unlawful delegation of immigration work are summarised in *Immigration New Zealand (Calder) v Shearer*.⁸ The number of clients involved and the penalty in each case are identified there. The penalty in *Shearer* itself was \$6,500 in respect of 22 clients. Ms Shearer was also prohibited from reapplying for any licence for a period of two years. Her licence did not need to be cancelled, as the Registrar had already refused a renewal.

[32] I recognise that other factors were also relevant to the level of penalty in those decisions. The conduct and the personal circumstances of each of those advisers were not identical to those of Mr Ji. In respect of Ms Shearer, I note both the aggravating features and the strong mitigation in her case.

[33] Mr Ji readily admitted the misconduct and promptly took steps to extricate himself from NZ Business Migration. He is also entitled to credit for educating himself about rubber stamping. I am confident there will be no repeat of the misconduct. He has assisted the Authority in its ongoing investigation of the company.

[34] Mr Ji has uniquely put forward a worthwhile proposal in the form of what he describes as community service. While I accept that the proposal is sincere, it is not possible for the Tribunal to direct he undertake such a project or to police compliance with any such direction. It is, of course, something he could do anyway. It would be applauded by the Tribunal and I am sure by the Authority and his fellow professionals.

[35] There is no evidence Mr Ji suffers financially straitened circumstances and I do not think he is contending this is the case. The number of employees of his company suggests a fairly successful business of some size, albeit a newly established one.

[36] The penalty is set at \$7,000.

OUTCOME

[37] Mr Ji is:

- (1) censured; and

⁸ *Immigration New Zealand (Calder) v Shearer* [2019] NZIACDT 52 at [50].

- (2) ordered to immediately pay to the Registrar a financial penalty of \$7,000.

D J Plunkett
Chair