IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 79

Reference No: IACDT 003/18

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar
BETWEEN	**IMMIGRATION NEW ZEALAND (JOCK GILRAY)** Complainant
AND	**PETER JOHN CROXSON** Adviser

DECISION
(Sanctions)
Dated 9 December 2019

REPRESENTATION:

Registrar:	J Perrott, counsel
Complainant:	Self-represented
Adviser:	S Laurent, counsel

INTRODUCTION

[1] The complaint by Immigration New Zealand (Jock Gilray) had been referred by the Immigration Advisers Authority (the Authority) to the Tribunal. It upheld this complaint against Mr Croxson, the adviser, in a decision issued on 18 October 2019 in *Immigration New Zealand (Gilray) v Croxson*.[1]

[2] The Tribunal found that Mr Croxson had no direct contact with two of his clients (identified as Messrs E and B), who were left to deal with a recruiting agency in their home country. He had delegated to unlicensed people immigration work which he had a statutory obligation to perform. In addition, he had failed to enter into written service agreements with the clients and to provide them with the required information concerning his professional obligations.

[3] Mr Croxson admits breaching the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[4] It is now for the Tribunal to determine the appropriate sanctions.

BACKGROUND

[5] 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.

[6] Mr Croxson is a director of M&C Consulting Limited, trading as e-Migration NZ (South Island) Limited. He is based in Christchurch.

[7] Messrs E and B, Filipino nationals, had been offered employment by the same New Zealand branch of an Australian company (the employer).

[8] In March 2016, Absolute Immigration Services (Absolute Immigration), an Australian based immigration consultancy, contacted Mr Croxson and asked him to act for four Filipino clients to be employed by one New Zealand employer. The staff of Absolute Immigration are not licensed for New Zealand immigration work. Mr Croxson purported to enter into an agreement, possibly invalid, with Absolute Immigration.

[9] On 3 May 2016, Mr Croxson filed essential skills work visa applications online with Immigration New Zealand, on behalf of Messrs E and B.

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[1] *Immigration New Zealand (Gilray) v Croxson* [2019] NZIACDT 72.

[10] Immigration New Zealand interviewed the two clients. They said they had dealt with a recruitment agency in the Philippines registered with the government there. The staff of that agency are also not licensed by the Authority for New Zealand immigration work. All of the documentation and information required for the work visa applications had been provided by or to the recruitment agency. The clients had no contact with Mr Croxson.

[11] Both clients were ultimately successful in obtaining work visas.

Decision of the Tribunal

[12] The Tribunal found that Mr Croxson had engaged in a practice known as "rubber stamping". This is where a licensed immigration adviser uses agents in another country to recruit the clients, prepare the immigration applications and send them to the licensed adviser to sign off and file with Immigration New Zealand. There is little, if any, direct contact between the licensed adviser and the client. It is a practice which is illegal under the Act.

[13] Mr Croxson had admitted having no direct communication with his clients. He had not even realised they were his clients, since he mistakenly believed the Australian immigration consultancy was his client as the consultancy paid his fee. The staff of a recruitment agency were found to be providing "immigration advice", as defined in the Act.[2] They were the only people informing the clients what supporting documents and information were required by Immigration New Zealand, beyond a standard checklist and guidance notes originating from Mr Croxson. They evaluated the documents and information provided by the clients against Immigration New Zealand's criteria.

[14] It was found to be a serious breach of an adviser's obligations to delegate immigration advice work. Mr Croxson had left the clients to deal with unlicensed people in the Philippines whom he did not know and with whom he had no working or legal relationship. They were not even employees of his company. However, while failing to engage with the clients, Mr Croxson had not failed to engage with their files. He had personally completed and filed the applications online, using the documents and information provided by the clients through the agency.

[15] Mr Croxson was therefore found to be in breach of the following provisions of the Code; cls 1 (being professional and diligent), 2(e) (obtaining the instructions of the client) and 3(c) (acting in accordance with New Zealand immigration legislation). Notwithstanding the breaches, it was accepted there was no lack of probity on his part

[2] Immigration Advisers Licensing Act 2007, s 7(1).

nor was the quality of his own work (finalising and filing the applications) substandard or lacking in care.

[16] Mr Croxson was also found to have failed to enter into written service agreements with the two clients and to have failed to personally provide and explain to them a summary of his responsibilities, the Code, his complaints procedure and all significant matters in the client agreements (which did not actually exist). This was a breach of cls 17(a)–(c) and 18(a)–(c) of the Code.

SUBMISSIONS

Registrar's submissions

[17] Counsel for the Registrar, Mr Perrott, in his submissions of 11 November 2019, submits that Mr Croxson should be cautioned or censured, and ordered to pay a penalty in the vicinity of $2,000.

Mr Croxson's submissions

[18] There is a memorandum from Mr Laurent, counsel for Mr Croxson, dated 12 November 2019. Mr Croxson admits all the breaches of his professional obligations. Indeed, he had freely acknowledged liability on almost all grounds at the earliest opportunity. The delegation of work to unlicensed people arose from misconstruing who his client was. He considered it to be the immigration consultancy in Australia. He accepts that is wrong and offers no excuse or justification, but points out to the Tribunal the reason for this misconduct.

[19] In the last two years, Mr Croxson and his company have not handled any visa applications through recruitment agencies in the Philippines or any other country. He and the other licensed advisers in the company now enter into separate agreements with each client (visa applicant), even when a third party pays their fee. He and his colleagues now ensure that they interact directly with the clients.

[20] It is submitted that this is not a case where cancellation or suspension of the licence is warranted, since Mr Croxson took action to amend his firm's practices as soon as he was aware of the complaint. This was his first complaint in 10 years of holding a full licence and remains his only complaint. His conduct since the complaint arose and his own expression of disappointment at his lapses permit the conclusion that the breaches of professional standards were not a deliberate design.

[21] The Tribunal can also derive confidence about Mr Croxson's general probity as a result of having worked for the New Zealand Police for 30 years until 2003. He has been providing immigration advice since then. He has collegial support from two licensed advisers in the same company.

[22] By reference to a number of earlier decisions of the Tribunal, Mr Laurent submits that a maximum reasonable financial penalty would be $3,000, but that Mr Croxson's actions to remedy the breach and his demeanour throughout the disciplinary process may invite some reduction.

[23] In support, there is an affirmation from Mr Croxson, affirmed on 8 November 2019. He admits the breaches of the Act and the Code. He says he takes the findings that he failed his professional obligations very seriously. The complaint had been a considerable setback and he wished to do everything to avoid it ever happening again. Mr Croxson sets out what he describes as the complete overhaul of the client engagement process, where a third-party corporate like Absolute Immigration is involved. He confirms Mr Laurent's submissions as to the changes to their practice.

[24] According to Mr Croxson, he has held a full adviser's licence since April 2009 and his most recent licence was issued in June 2019 by way of "Fast Track" renewal. He and his company maintain a high reputation for integrity and service to their clients. Mr Croxson points out that he has had no other complaints in the 10 years he has held a licence. He makes sure he is aware of all aspects of the Code.

[25] I record having read the very positive character reference from his colleague, Simon Moore, also a licensed immigration adviser.

JURISDICTION

[26] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following action:[3]

> **50 Determination of complaint by Tribunal**
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> After hearing a complaint, the Tribunal may—
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> (a) determine to dismiss the complaint:
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> (b) uphold the complaint but determine to take no further action:
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> (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.

[3] Immigration Advisers Licensing Act 2007.

[27] The sanctions that may be imposed are set out at s 51(1) of the Act:

> **51 Disciplinary sanctions**
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> (1) The sanctions that the Tribunal may impose are—
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> (a) caution or censure:
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> (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
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> (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
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> (d) cancellation of licence:
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> (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:
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> (f) an order for the payment of a penalty not exceeding $ 10,000:
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> (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:
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> (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:
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> (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[28] In determining the appropriate sanction, it is relevant to note the purpose of the Act:

> **3 Purpose and scheme of Act**
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> 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.

[29] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:[4]

> …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.

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

> …
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> 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.
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> …
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> 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.

[30] 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.[5]

[31] 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.[6]

[32] The most appropriate penalty is that which:[7]

(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.

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

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

[7] *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

[33] The breach of professional obligations in delegating immigration advice work to unlicensed people is regarded as a serious infringement of an adviser's statutory and professional obligations. An adviser is required by the Act and the Code to personally engage with the client (visa applicant) to advise him or her, receive the relevant information and documents and then submit the application in an appropriate form with supporting documents to Immigration New Zealand. It is the personal attention to such critical work by an adviser, who is knowledgeable and subject to a professional code, that produces the highest quality work.

[34] In this case, Mr Croxson had delegated to unlicensed people all of the client engagement and therefore advice on the documentation and information that was necessary. They were based in another country working for a different company and over which he had no control. He had no working or legal relationship with those dealing with the clients.

[35] I have already accepted that this is not the most egregious example of rubber stamping. The actual compiling of each application and its supporting documentation for filing with Immigration New Zealand had been done by Mr Croxson. The prompt and successful outcome of the applications shows there was no issue with their quality.

[36] To this misconduct must be added the failure to have a written agreement with his clients and to provide them with the required information. This is another important professional obligation of an adviser. The agreement and other information make clear to both the client and the adviser the obligations of each. They specify such critical matters as the precise services to be performed by the adviser, the fees and how complaints can be made. They are a protection, not just for the client, but for the adviser as well.

[37] I accept that Mr Croxson's behaviour was not a deliberate flouting of his statutory obligations. He mistakenly believed the Australian immigration consultancy, which was paying his fee, was his client. The point has already been made in the earlier decision that it may be a commercial client, but his clients for the purposes of his professional obligations were the visa applicants.

[38] Mr Croxson has readily accepted his wrongdoing, from the first opportunity. I am satisfied that he understands his obligations and has put in place new practices and arrangements which ensure that he and his colleagues comply with their obligations.

[39] I will now consider the potentially appropriate sanctions.

Caution or censure

[40] The only appropriate sanction for Mr Croxson's unlawful delegation of immigration advice work, a fundamental requirement of the Act and the Code, is censure. Such conduct is to be denounced.

Training

[41] Mr Perrott does not seek an order requiring further training. Mr Laurent contends it is not necessary. I agree with both counsel. I am satisfied as a result of Mr Croxson's admissions and the new practices he has put in place, no doubt as a result of advice from his experienced counsel, that he understands his obligations. He has collegial support in his company from two other experienced licensed advisers.

Suppression, cancellation or order preventing reapplication

[42] This was not sought by Mr Perrott. Mr Laurent contends it is not warranted. Again, I agree with them both. While the unlawful delegation of immigration advice work will usually result in the removal of the adviser from the profession for a period, that is not normally necessary where the wrongdoing has been admitted and new practices put in place.

Financial penalty

[43] Regrettably, there has been a long line of recent cases involving rubber stamping, much of it originating from the Philippines. I do not propose to review these cases in any detail. They provide some guidance in terms of penalty, but each turns on the specific circumstances of the wrongdoing, the totality of both the wrongdoing and all the sanctions, and the personal circumstances of the adviser. I merely note the most recent decision in *Chiv* referred to immediately above.[8] That decision refers to earlier decisions of the Tribunal.

[44] Mr Laurent relies on *GZ v Lu*, where Mr Lu was merely cautioned and ordered to undergo retraining.[9] That case was an isolated incident at the lower end of the rubber-stamping spectrum. Mr Croxson's wrongdoing involved two clients and financial reward. Furthermore, the visa applications were lodged under his name, unlike those concerning Mr Lu.

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[8] *Immigration New Zealand (Calder) v Chiv* [2019] NZIACDT 78 at [36] & [38].
[9] *GZ v Lu* [2019] NZIACDT 26.

[45] On the other hand, I accept that the circumstances here bear some relation to *Immigration New Zealand (Gilray) v Singh*, also relied on by counsel, where the penalty was $3,000 in relation to three clients.[10] I note that in that case the adviser had entered into agreements with the clients.

[46] The penalty will be $3,000.

OUTCOME

[47] Mr Croxson is:

(1) censured; and

(2) ordered to immediately pay to the Registrar the sum of $3,000.

D J Plunkett
Chair

[10] *Immigration New Zealand (Gilray) v Singh* [2019] NZIACDT 61.