

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2020] NZIACDT 22

Reference No: IACDT 028/18

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **NJUM**
Complainant

AND **TUIGAMALA (TUI)
LAUFOU TAAVAO VOLE**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 2 June 2020**

REPRESENTATION:

Registrar: M Denyer, counsel
Complainant: Self-represented
Adviser: M Logan, counsel

INTRODUCTION

[1] Mr Tuigamala (Tui) Laufou Taavao Vole, the adviser, acted for Ms NJUM, the complainant, in respect of partnership-based residence and other visa applications. For reasons which will become apparent, the complainant married her husband twice, first in Samoa and later in New Zealand. To Mr Vole's knowledge, the complainant failed to disclose to Immigration New Zealand the earlier marriage.

[2] The complaint was referred by the Immigration Advisers Authority (the Authority) to the Tribunal. It was upheld in a decision issued on 29 January 2020 in *NJUM v Vole*.¹ Mr Vole was found to have been dishonest, a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act). He was also found to have breached a number of professional obligations under 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] Mr Vole is a licensed immigration adviser and director of Telestial General Consultancy Services Ltd, of Auckland. He was first licensed on 20 January 2009.

[6] The complainant and her husband married in Samoa in 2011, but the marriage was not registered.

[7] The complainant's husband successfully registered with Immigration New Zealand in Samoa under the Samoan Quota in 2013, as a single person only.

[8] In August or September 2014, the complainant, who was by this time in New Zealand on a visitor visa, approached Mr Vole for immigration advice in order to obtain residence here. She told him that her husband had obtained residence under the Samoan Quota, but that Immigration New Zealand had not been notified of the marriage. Mr Vole advised her not to mention the relationship or marriage in Samoa in her application for residence. Instead, he suggested they get married in New Zealand and present the relationship as arising from then.

¹ *NJUM v Vole* [2020] NZIACDT 5.

[9] The complainant duly married her husband again in September 2014 in New Zealand.

[10] Immigration New Zealand advised Mr Vole on 25 September 2014 that an application made by him for a visitor visa for the complainant had not been accepted for processing because it was incomplete. A work visa application made by Mr Vole on her behalf in October 2014 was also declined. Another work visa application was granted on 19 December 2014.

[11] Mr Vole filed the complainant's application for residence with Immigration New Zealand on 19 October 2015, based on her New Zealand marriage. It was declined on 22 June 2016, as the agency was not satisfied the partnership was genuine and stable.

[12] An appeal to the Immigration and Protection Tribunal (IPT) was successful, with that tribunal finding that Immigration New Zealand had not undertaken a fair and proper assessment. The agency subsequently granted the complainant a work visa while her residence application was being considered.

[13] On 15 August 2017, Immigration New Zealand again declined the residence application as it was not satisfied the relationship was genuine and stable. An appeal filed with the IPT was successful, with the tribunal finding that the agency had not given the application proper consideration.

[14] Another application for a work visa made by Mr Vole on behalf of the complainant on 18 December 2017, was declined on 10 January 2018.

[15] The complainant then sought legal assistance from the Mangere Community Law Centre. The fate of her residence application has not been disclosed.

[16] A complaint against Mr Vole was made by the complainant to the Authority on 22 February 2018. It was alleged that he had charged her more than \$30,000 over four years for his services. He had also advised her not to declare the earlier marriage to her husband. She said that as a result of his advice, she was living in New Zealand unlawfully.

Decision of the Tribunal

[17] The Tribunal found that Mr Vole had been dishonest in two respects:

- (1) He was a party to concealing a marriage from Immigration New Zealand and misrepresenting a relationship as much shorter than it actually was. He coached them as to what to say to the agency; and

- (2) He presented a false document to Immigration New Zealand, being a certified true copy of a police certificate where the certifier (Mr Vole himself as a Justice of the Peace) had not actually sighted the original. This was not only dishonest, but also a breach of cl 1 of the Code (being professional) and of cl 31(a) (not providing false documentation to a visa officer).

[18] Furthermore, it was found that Mr Vole had breached a number of other Code obligations:

- (1) He lacked diligence and due care in filing applications without the necessary documents, in breach of cl 1;
- (2) He failed to provide to the complainant written confirmation of material discussions with her, in breach of cl 26(c); and
- (3) He failed to provide to the complainant timely updates of her immigration situation, in breach of cl 26(b).

SUBMISSIONS

Submissions from the Registrar

[19] Mr Denyer, counsel for the Registrar, provided submissions on 13 March 2020. He notes the Tribunal's observation that Mr Vole's dishonesty was serious misconduct. It is submitted that the appropriate sanctions would be:

- (1) censure;
- (2) suspension of Mr Vole's licence until he has completed the LAWS 7015 professional practice course through Toi-Ohomai Institute of Technology; and
- (3) an order for the payment of a penalty in the vicinity of \$7,000.

[20] According to Mr Denyer, Mr Vole has not completed the Graduate Diploma in New Zealand Immigration Advice as he was licensed prior to the qualification being implemented as a requirement to enter the profession. His misconduct involved both file management issues and ethical obligations, both of which are covered in the LAWS 7015 course. As that course can be undertaken in the second semester running from July to October 2020, Mr Vole would receive his results in November 2020. There would therefore be an effective suspension of at least eight months, which would be reasonable in light of the seriousness of the misconduct and the importance of Mr Vole undertaking

further training. It is appropriate that he has a period of time out of the industry while he upskills, with the ultimate opportunity to return.

Submissions from the complainant

[21] In her submissions of 13 and 16 March 2020, the complainant seeks a refund of fees and compensation in the sum of \$30,000, which is said to exclude Immigration New Zealand's visa application fees.

[22] The complainant has copied to the Tribunal receipts from Mr Vole's company which total \$13,329. There are also two Samoan government receipts for \$220 for passports, and two receipts from a New Zealand medical clinic for a total of \$332 for immigration medical testing. A breakdown of the balance of the claim of \$30,000 is not given, nor are there any documents in support of the balance.

[23] The complainant also sent extracts from various agreements with Mr Vole specifying the fees for the different visa applications he contracted to prepare on her behalf. These total \$16,330.

[24] The complainant also seeks the cancellation of Mr Vole's licence.

Submissions from Mr Vole

[25] Mr Logan, counsel for Mr Vole, provided submissions on 13 March 2020. Mr Vole accepts the findings against him and indeed acknowledged from the outset of the complaint his professional failings. The only excuse offered is that he was acting out of a misguided sense of obligation to his client to get the best immigration outcome for her.

[26] Mr Vole is 61 years old, and is married with 13 children. He is still financially responsible for four of his children. He suffers from poor health, as detailed in counsel's submissions. He is no longer able to drive. The extensive publicity surrounding the Tribunal's findings had caused him considerable distress which had impacted on his medical condition.

[27] Mr Vole migrated to New Zealand in 2001 and set up the business in 2004. Since 2008, the business has focused entirely on immigration advice. He and his wife are the sole directors, shareholders and employees. Mr Vole is the only immigration adviser. The business is a modest one, with the accounts showing that it operates at a loss, after paying the wages of Mr and Mrs Vole. The business also has significant debt. Furthermore, the Voles have a significant mortgage relative to the size of their income. The Vole family is entirely dependent on the income generated from the immigration

consultancy and he is not in a strong financial position. His options for alternative employment are very limited.

[28] According to Mr Logan, Mr Vole is clearly a man who gives to his local South Auckland community and cares about the community deeply. He is an active member of the church, a Justice of the Peace and provides significant assistance on immigration matters to the local Citizens Advice Bureau.

[29] Mr Vole is currently enrolled in the New Zealand Immigration Advice refresher course with Toi-Ohomai Institute of Technology. This includes modules on the regulatory framework for advisers, professional standards and responsibilities as well as immigration advice. He decided to undergo this additional training since the complaint had brought home to him that there are areas in his professional practice that need addressing.

[30] Mr Vole has held a licence for over 10 years and has been working fulltime in immigration for that period. He considers that the full diploma course would be of limited benefit to him, given his experience. He regularly attends immigration seminars and ensures that he meets his ongoing professional development obligations.

[31] Counsel notes that Mr Vole has responsibly taken legal advice from him, not just in regard to the complaint, but also more generally as to his obligations under the Code. He has made changes to his practice, particularly as to keeping proper records. He now ensures that in all cases a written record is kept of communications with clients and regular updates are provided to them.

[32] As to revoking Mr Vole's licence, it is submitted that this would be a most severe sanction and should be adopted only as a last resort. It is, however, appreciated that the Tribunal has to uphold professional standards and protect the public.

[33] It is submitted by Mr Logan that Mr Vole's admitted dishonesty does not come with the aggravating features present in other cases. There was no sustained pattern of dishonesty. It was an isolated incident and out of character.

[34] The most serious breach was advising the client to cover up the Samoan marriage. The subsequent conduct in certifying a copy of a police certificate is of lesser gravity, as the Tribunal acknowledged. Any personal advantage was not the primary motive for Mr Vole's dishonesty. He did receive a fee for his services, but this was not his primary motivation for his advice. Furthermore, this was not a situation where an innocent client was unaware of the adviser's dishonesty. The client was fully aware of what was happening and was not being exploited.

[35] Additionally, Mr Vole has freely acknowledged from the outset that his actions with regard to the Samoan marriage and police certificate were wrong and he is both embarrassed and contrite regarding his conduct. He has cooperated fully with the Registrar and the Tribunal.

[36] The Tribunal can accept that Mr Vole has been rehabilitated, noting that the dishonesty element had occurred in 2014. There will never be any repeat of the issues leading to the complaint.

[37] Counsel contends that it would be appropriate to sanction Mr Vole as follows:

- (1) censure;
- (2) ordered to pay a financial penalty in the order of \$2,000 – \$3,000; and
- (3) ordered to refund fees of \$1,600 for the two visa applications returned by Immigration New Zealand due to the failure to meet the lodgement requirements (filed 23 September 2014 and 18 December 2017).

[38] There is a statement from Mr Vole (26 February 2020) confirming his circumstances as stated by counsel. His financial situation is set out, showing modest remuneration from a business which has debts. It operates with an overdraft. Due to his medical condition, his wife or children have to drive him. Mr Vole says that the complaint caused him severe high blood pressure. He is remorseful and promises never to do it again.

[39] There are a number of supporting testimonials:

- (1) Mrs Lanuola Olevia Vole, the wife of Mr Vole, is the administrative and accounts officer at the consultancy. Most of her work is voluntary as she is only paid for 12 hours weekly. Her income, which is relatively low, is set out. Her husband does his work with all his heart and strength. He makes a lot of sacrifices for work. He is the organiser of a group of advisers who meet to discuss immigration matters. Mrs Vole states that her husband is very stressed out by the case and is a sick man. It would be hard for them to find other jobs.
- (2) Mr Aalderink-Swormink, manager of the Citizens Advice Bureau, says Mr Vole is a valued member of the CAB Mangere family. Over the years, he has provided training on immigration to the volunteers and gives them advice when needed. He has a passion for teaching and helping others. He is a reliable Justice of the Peace who provides a quality service.

- (3) Mr Komene Jones, barrister and solicitor, has known Mr Vole since 2004. He is a man of integrity who can be trusted. He is generous with his time and skills. Mr Vole's conduct was an aberration and was done with the very best of intentions for the good of his client.
- (4) Mr Siatu Sione-Faamoe, barrister and solicitor, has known Mr Vole for many years as an immigration adviser. He is well respected, honest and reliable.
- (5) Mr Tima Leavi, solicitor and notary public, has known Mr Vole for eight years. Mr Leavi's clients have sought Mr Vole's advice on immigration matters for some years. He is very professional, diligent, knowledgeable and honest. On a personal level, Mr Vole is a unique, lovely gentleman.

[40] Further submissions were sent by Mr Logan on 25 May 2020. It is contended that Mr Vole and his family would not be able to survive financially if he was to be suspended for eight months, as suggested by the Registrar. His business had already been shut down for seven weeks as a result of COVID-19. He survived during the lockdown on the Government's wage subsidy, as he had no clients.

[41] According to Mr Logan, Mr Vole would have real difficulty paying a financial penalty of \$7,000 and could not afford to pay the complainant compensation of \$30,000. Nor has the complainant shown that her loss was sustained as a result of Mr Vole's conduct. Any compensation should be reduced to reflect the complainant's complicity in the wrongdoing.

JURISDICTION

[42] 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.

[43] 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.

[44] 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.

[45] 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.

[46] 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

[47] 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

[48] 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

[49] Mr Vole was found to have been dishonest. The most serious incident of dishonesty was advising the complainant to cover up the earlier marriage in Samoa at the time she applied for residence. He subsequently filed the residence application without reference to the first marriage, thereby misrepresenting to Immigration New Zealand the duration of the relationship. The concealment of the marriage was to hide the earlier false statements to Immigration New Zealand by both the complainant and her husband that they were single.

[50] Mr Vole's misconduct is serious. Honesty goes to the very heart of being professional. Indeed, the integrity of the New Zealand immigration regime and public confidence in it relies on the accuracy of the information provided to Immigration New Zealand. It is not just the honesty of visa applicants that the agency relies on. It also relies on the competence and honesty of advisers who have an important role in upholding the integrity of the immigration system.⁷

[51] While Mr Vole's dishonesty could only be described as serious, it is by no means the most egregious dishonesty seen by the Tribunal. After all, the marriage is genuine. Immigration New Zealand appears to doubt that, but for the purpose of this complaint, it will be accepted by the Tribunal as genuine.

[52] Furthermore, while it was Mr Vole's idea that the couple marry again and then seek residence pretending that the relationship was only recent, the deception of Immigration New Zealand had started earlier and had been initiated by the complainant's husband and repeated later by the complainant herself. Mr Vole was perpetuating lies previously told by his clients to Immigration New Zealand. As Mr Logan emphasises, the complainant was not an innocent party. There was no exploitation of a vulnerable client.

[53] I accept Mr Logan's submission that Mr Vole was not motivated by personal gain. I appreciate that Mr Vole's fees, at about \$16,000 or \$13,000, appear to be high, but there were numerous immigration applications and appeals over a period of some years, so the total fee is not on its face extravagant. The testimonials make it clear that Mr Vole is a person who goes to great lengths to help his clients and this appears to be the motivation in this case.

[54] I have not overlooked the second incident of dishonesty, in that Mr Vole presented to Immigration New Zealand a document certified to be a true copy but where the certifier, Mr Vole himself, had not sighted the original. This instance of dishonesty is

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

of lesser gravity. There is no dispute that the document is genuine. Again, Mr Vole was trying to help his client by providing supporting documents quickly to Immigration New Zealand.

[55] In addition, there are the breaches by Mr Vole of his professional obligations concerning documents and file management. He lacked diligence and due care in filing applications without the necessary supporting documents. He failed to properly communicate in writing to his client material advice given to her and to give her updates of the status of her immigration applications. These are not minor bureaucratic obligations. In particular, it is important that clients are kept informed of issues relating to their immigration applications in writing, so that they do not misunderstand their situation, especially where there is a risk of the client's status in New Zealand becoming unlawful.

[56] Turning now to the possible sanctions.

Caution or censure

[57] Mr Vole's dishonest conduct is denounced. He accepts that he must be censured.

Training

[58] Mr Denyer rightly contends that for a breach of both ethical and file management obligations, Mr Vole must undergo retraining. He entered the profession at a time when there was no need to undertake formal training.

[59] Appreciating that he needs further training concerning his professional obligations, Mr Vole has enrolled in the refresher course offered by Toi-Ohomai, commencing on 6 July 2020. This course covers professional practice and immigration knowledge. While it is broad in content, it is online and has no examination. Mr Denyer recommends the LAWS 7015 course at the same institution. It is narrower as it is focussed on professional practice, but it is more rigorous and requires an examination to be passed.

[60] Given that Mr Vole has practised for 10 years with only one complaint, I regard the refresher course as sufficient. I accept that Mr Vole has learned his lesson, specifically in relation to the failings in his usual honesty.

Cancellation, suspension or prohibition

[61] Depriving a professional person of his or her livelihood indefinitely or even over a finite period is a sanction of last resort. The Tribunal must consider whether a lesser punishment would satisfy the public interest objectives of these sanctions.⁸

[62] While bearing that in mind, the usual sanction for dishonesty is removal from the profession for a period of time. This can occur by way of the cancellation of the adviser's licence, which can be coupled with a period during which the adviser cannot renew his or her licence, or suspension of the licence. A suspension may have conditions attached.

[63] The Tribunal has recently sanctioned two advisers for dishonesty.

[64] Mr Ryan presented false employment offers (created by his own company) on behalf of multiple clients to Immigration New Zealand. He did it for personal reward. He had already relinquished his licence by the time he came to be sanctioned. The Tribunal prevented him from renewing his licence for the maximum period of two years and directed him to pay the maximum penalty of \$10,000 in each of the two complaints.⁹

[65] Mr Wharekura created two emails ostensibly from the Associate Minister of Immigration and/or his office. He presented these false documents to his client in order to pretend that an immigration application had been made but was on hold. Mr Wharekura's licence was suspended for nine months and he was directed to pay a penalty of \$6,500.¹⁰

[66] Mr Vole's misconduct is not even close to the egregious conduct of Mr Ryan. It is closer to that of Mr Wharekura. There are some material differences, however, as there are in every case. No two cases are identical. Mr Wharekura created false documents and duped his client, but did not present the false documents to Immigration New Zealand or in any way rely on them except to mislead his client. The deception by Mr Vole, on the other hand, was not entirely of his own making, as it was a perpetuation of the false story that his clients had already told Immigration New Zealand. The clients were not duped. But there was potentially greater harm to the immigration system as Mr Vole sought to rely on the pretence of a short relationship in an application to Immigration New Zealand.

⁸ *Patel*, above n 5, at [29] & [81].

⁹ *Registrar of Immigration Advisers v Ryan* [2020] NZIACDT 13, *Singh v Ryan* [2020] NZIACDT 14.

¹⁰ *KBN v Wharekura* [2020] NZIACDT 15.

[67] Notwithstanding the differences, there are striking similarities between the two of them. Neither Mr Wharekura nor Mr Vole were motivated by personal benefit. They were also isolated incidents which were out of character. Both readily acknowledged their wrongdoing at the earliest opportunity. Both have a history of community service. Additionally, unlike Mr Ryan, the deception of both Mr Wharekura and Mr Vole was unsuccessful, which limited the harm to the immigration system.

[68] The personal circumstances of an adviser and his or her family are a material consideration in assessing sanctions. Mr Vole's situation is more difficult than that of Mr Wharekura. I accept that Mr Vole's age, medical condition and inability to drive likely rule out alternative employment. His financial situation is precarious. It will have been exacerbated by the recent COVID-19 lockdown. I note that he is the main breadwinner and is still responsible financially for four children.

[69] While I acknowledge that Mr Vole is contrite, readily admitted his wrongdoing and that similar wrongdoing is unlikely, I cannot overlook the serious nature of his misconduct. He advised a client to hide a marriage, remarry the same person and then pretend to Immigration New Zealand that the relationship was of short duration. He coached them as to how to lie to the agency when interviewed. This was done to conceal their previous lies to the agency. Other advisers must be deterred from such conduct. The public interest requires punishment.

[70] Mr Vole must be punished beyond the adverse publicity to date and the effect it will already have had and will continue to have on his business. I agree with Mr Denyer that the punishment must include his removal from the profession for a period, though given his rehabilitation and personal circumstances the removal will be of short duration. Noting his age, he should be given a realistic opportunity to return to the profession.

[71] Mr Vole will be suspended for six months.

Financial penalty

[72] Mr Denyer submits that a penalty of \$7,000 would be appropriate. Mr Logan submits that \$2,000 – \$3,000 would be appropriate.

[73] I observe that Mr Wharekura was ordered to pay \$6,500.

[74] Mr Logan contends that a \$3,000 penalty was imposed against Mr Levarko. This is not correct. A raft of sanction orders was made against him, but there was no financial penalty.¹¹ He was, however, ordered to pay \$3,000 in costs to the Registrar. This was

¹¹ *Stanimirovic v Levarko* [2018] NZIACDT 3, 8 & 25.

in respect of multiple complaints, with the dishonesty complaint being the provision of misleading information to his client. I do not find the decisions concerning Mr Levarko to be useful.

[75] A penalty of the order of that imposed on Mr Wharekura would be appropriate, but I am mindful of Mr Vole's precarious financial situation. Again, I note the recent effect of the COVID-19 lockdown on his business. I also intend to prioritise a partial refund to the complainant (considered below). Moreover, regard must be had to the totality of the sanctions. The suspension of Mr Vole will have a serious effect on his financial situation.

[76] The penalty will be \$2,500. It is light for this type of dishonesty, but is appropriate in all the circumstances.

Refund of fees and compensation

[77] The complainant has sought \$30,000, but has provided receipts from Mr Vole's company for \$13,329 only. To this can be added the medical receipts of \$332. I do not know the relevance of the Samoan government receipts. Mr Vole's various contracts with the complainant specified total charges of over \$16,000, but there is evidence of payment of only \$13,329.

[78] Mr Vole offers to refund \$1,600 in fees for the two failed visa applications. Mr Logan submits that the Tribunal should give serious consideration as to whether any compensation should be ordered since the complainant was an active participant in the deception.¹²

[79] The statutory sanctions distinguish a refund of the fees and expenses paid to the adviser, with reasonable compensation for other losses or expenses. The \$13,329 claimed would be a refund, whereas the medical/Samoan government receipts would be compensation.

[80] I will start with the \$13,329 claimed refund. Of this, \$1,600 has been offered by Mr Vole, so I will direct him to pay this.

[81] As for the balance claimed, the overriding principle is that Mr Vole should not benefit from his participation in a dishonest scheme. He should therefore refund any fee charged. But the difficulty is identifying what he actually received for the dishonest applications. He specified \$4,830 as the contractual fee for the residence application, but the receipts do not identify the particular service for each receipted amount.¹³

¹² Relying on *Singh v Ryan* [2020] NZIACDT 14 at [49]–[50].

¹³ Client agreement dated 15 October 2015.

Furthermore, the total receipts are for less than the total contractual fees. I do not know whether this is because some receipts are missing or the complainant did not pay the total contracted fees. Additionally, the deception actively perpetuated by Mr Vole did not stop with merely filing a residence application, since he was responsible for the later two appeals to the IPT, which were also based on the same deception. The contractual fee for one or possibly both of them was \$4,140.¹⁴

[82] On the other hand, Mr Vole was successful with a number of work visa applications. They are not directly tainted by the deception, so there is no justification for depriving him of the fees.

[83] The parties have not identified for the Tribunal those fees tainted by deception and those that are not. In practical terms, that might be quite difficult to do. I will therefore apportion the balance of \$11,729 (\$13,329 – \$1,600) in a fair and reasonable way, as best I can. Mr Vole should repay half of the balance (\$5,865). Mr Vole will therefore have to refund \$7,465 (\$5,865 + \$1,600).

[84] This brings me to the compensation claim for \$332 for medical receipts. Whether they relate to the work visa applications or the tainted residence application, I do not know. But, as Mr Logan points out, there is another principle to take into account in assessing compensation. The complainant was a willing participant in Mr Vole's dishonesty. Indeed, it had started with both her and her husband. I decline to award any compensation.

OUTCOME

[85] Mr Vole is:

- (1) censured;
- (2) directed to complete Toi-Ohomai's refresher course and provide proof of satisfactory completion to the Registrar of Immigration Advisers;
- (3) suspended for six months from today's date;
- (4) ordered to immediately pay to the Registrar \$2,500; and
- (5) ordered to immediately pay to the complainant \$7,465.

¹⁴ Client agreement dated 25 July 2016.

ORDER FOR SUPPRESSION

[86] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹⁵

[87] There is no public interest in knowing the name of Mr Vole's client.

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

D J Plunkett
Chair

¹⁵ Immigration Advisers Licensing Act 2007, s 50A.