**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 63

Reference No: IACDT 039/17

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| **IN THE MATTER** | of a referral under s 48 of the Immigration Advisers Licensing Act 2007 |
| **BY** | **THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar |
| **BETWEEN** | **THE REGISTRAR OF IMMIGRATION ADVISERS** Complainant |
| **AND** | **SIEW POH (SHARON) HO** Adviser |

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**DECISION**
**(Sanctions)**
**Dated 6 September 2019**

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**REPRESENTATION:**

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| Registrar/complainant: | M Denyer, counsel |
| Adviser: | Self-represented |

## INTRODUCTION

[1] The Tribunal upheld this complaint against Ms Ho, the adviser, in a decision issued on 31 July 2019 in *Registrar of Immigration Advisers v Ho*.[1]

[2] It found that Ms Ho had engaged in a practice known as "rubber stamping". She had failed to personally engage with her client who had been left to deal with employees of a migration consultancy in another country. This was contrary to the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed 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] Ms Siew Poh (Sharon) Ho was at the relevant time a licensed immigration adviser, based in Australia. She was a contractor to Austral Migration Consultancy Sdn Bhd (the consultancy), a Malaysian company. As a renewal of her licence was refused by the Immigration Advisers Authority (the Authority) on 26 June 2017, Ms Ho is no longer licensed.

[6] The client was based in Malaysia. She approached the consultancy in order to migrate to Australia, but was advised she would not qualify. The client was then given the name of Ms Ho to contact in relation to New Zealand migration, so she sent an email on 9 April 2014 to her. Ms Ho then contacted an employee at the consultancy who got in touch with the client.

[7] The client then dealt with employees at the consultancy in Malaysia. She had a meeting with an employee on 10 April 2014. An expression of interest was duly filed with Immigration New Zealand. There was further contact between the client and the employees in putting together a residence application, which was filed on 17 November 2014. Ms Ho was identified on the application form as the person who was providing immigration advice. Again, there followed communications between the client and the employees.

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[1] *Registrar of Immigration Advisers v Ho* [2019] NZIACDT 54.

[8] On 10 November 2015, the client informed an employee that she would not proceed with the application. On the following day, an employee advised her that Immigration New Zealand had changed the rules and she would no longer be able to meet the requirements. The employees continued to give her further immigration advice. An employee advised Immigration New Zealand on 14 December 2015 that the application was withdrawn.

*Decision of the Tribunal*

[9] In its decision, the Tribunal found that Ms Ho had engaged in the practice of rubber stamping. She had delegated to unlicensed people work exclusively reserved to her under the Act. She had no direct contact at all with the client, who had been left to deal with the staff of a consultancy in another country. Ms Ho was not even an employee of that consultancy. She had no control over the process.

[10] It was not accepted that Ms Ho was aware of communications between the client and the consultancy, as she claimed. It was found that all the work of communicating with the client, obtaining the information and documents, preparing the expression of interest and then preparing a residence application, had been done by the consultancy's unlicensed employees.

[11] While the residence application had been filed in the name of Ms Ho, there was no evidence of her involvement in the file at that time. It was found that it had been sent to Immigration New Zealand by the staff in Malaysia and not by Ms Ho. Her involvement had been limited to signing the letter and form prepared by others.

[12] Ms Ho had facilitated the unlawful conduct of the staff. Her conduct was contrary to the Act and in breach of cls 1, 2(e) and 3(c) of the Code.

**SUBMISSIONS**

[13] Counsel for the Registrar of Immigration Advisers (the Registrar), Mr Denyer, in his submissions of 22 August 2019, notes that Ms Ho obtained her licence through the Trans-Tasman Mutual Recognition Act 1997. She appeared to have a lack of knowledge regarding professional obligations in New Zealand and it would therefore be appropriate to prevent her from reapplying for a licence until she had completed the Graduate Diploma in New Zealand Immigration Advice available through the Toi-Ohomai Institute of Technology. It would also be appropriate to censure her and order a financial penalty in the vicinity of $4,000.

[14] In her brief submissions by email on 5 September 2019, Ms Ho submits that a warning would be appropriate instead of censure and that there should be no fine or a low one, as she might have difficulty paying the $4,000 sought by the Registrar due to her financial situation. A censure will have adverse effects on her work and irreparably damage her reputation. Ms Ho agreed to an order preventing her from reapplying for a licence until she completed the diploma.

[15] Ms Ho contends that she had misunderstood her obligations under the Code, but did not "intentionally mislead the nature of the relationship with the client and with INZ". She had been forthright and honest and provided all the correspondence with the client. The client was comfortable with the arrangement, which Ms Ho now understands contravenes the Code and the Act.

## JURISDICTION

[16] 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**
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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.

[17] 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:
>
> (d) cancellation of licence:

[2] Immigration Advisers Licensing Act 2007.

(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.

[18] 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.

[19] 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.
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> …
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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.

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

[20] 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]

[21] 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]

[22] 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.

**DISCUSSION**

[23] The starting point is the serious nature of the misconduct upheld. Ms Ho and the employees of the consultancy have potentially committed statutory offences. While it is not my role to assess whether conduct is criminal, this potential underlines the gravity of the misconduct. Rubber stamping is serious, not just because it can be criminal, but because it robs the clients of the protection to which they are entitled by dealing directly with a licensed and therefore knowledgeable adviser who is subject to professional obligations and a disciplinary regime.

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[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].

*Caution or censure*

[24] I agree with Mr Denyer that given the seriousness of the misconduct, a censure is appropriate. A warning would not reflect the gravity of the wrongdoing. Ms Ho contends a censure would cause irreparable damage to her reputation. She practices in Australia for Australian migration and is no longer able to assist New Zealand bound clients. I doubt that censure in New Zealand will cause significant damage to her reputation. In any event, any damage will be a consequence of her serious wrongdoing.

[25] Ms Ho is therefore censured.

*Training*

[26] I accept Mr Denyer's submission that before Ms Ho can obtain another licence, she must undergo training in New Zealand immigration criteria and her professional obligations. She obtained a licence without any formal training, which as an Australian registered migration agent she was entitled to do. Ms Ho also accepts the need for full training. As she no longer has a licence, the way to achieve proper training is to make it a condition of any attempt to obtain a licence in the future.

*Prevention of licence reapplication*

[27] I have already made the point that full training will be necessary, should Ms Ho contemplate a renewal of her licence. She agrees. Accordingly, an order will also be made preventing her from renewing her licence until she has passed Toi-Ohomai's diploma course.

*Financial penalty*

[28] The financial penalties imposed in the more recent decisions concerning the unlawful delegation of immigration work were summarised in the Tribunal's decision in *Immigration New Zealand (Calder) v Shearer*.[7] In *Shearer* itself, the penalty was $6,500 in respect of 22 clients.

[29] I recognise that other factors were also relevant to the level of penalty in those decisions. The misconduct and personal circumstances of each of those advisers were not identical to those of Ms Ho.

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

[30] While only one client was involved here, the degree of rubber stamping was extreme. The client was left to deal with the employees of a company in another country. Ms Ho was not even an employee of that company. Her involvement in the file was minimal. She had no engagement with the client and no control over the process.

[31] Ms Ho says she "may" find it difficult to pay $4,000 due to her financial situation, but provides no information about her situation.

[32] The penalty is set at $3,500.

**OUTCOME**

[33] Ms Ho is:

(1) censured;

(2) prevented from reapplying for any licence until she has completed the Graduate Diploma in New Zealand Immigration Advice offered by Toi-Ohomai Institute of Technology; and

(3) ordered to immediately pay to the Registrar a financial penalty of $3,500.

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D J Plunkett
Chair