

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 67

Reference No: IACDT 015/18

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **XN**
Complainant

AND **YAN (RYAN) JI**
Adviser

SUBJECT TO SUPPRESSION ORDER

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

REPRESENTATION:

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

INTRODUCTION

[1] The complaint by the complainant, Mr Ji's client, 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 *XN v Ji*.¹

[2] The Tribunal found that Mr Ji had failed to take personal responsibility for client engagement and had allowed unlicensed individuals to provide services that only a licensed immigration adviser should provide. His 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. He has since left that company and is a partner of NZ Immigration Consultancy.

[6] The complainant, a national of China, approached Globe Visa (Globe) in China in order to lodge an application for residence in New Zealand. Mr Ji of NZ Business Migration was appointed by Globe to assist with her application. The complainant entered into a client agreement with NZ Business Migration, which identified Mr Ji as the immigration adviser.

[7] At no time prior to the decline of the residence application did Mr Ji engage with the complainant. All of the complainant's communications were with unlicensed Globe employees, who in turn communicated with unlicensed employees of NZ Business Migration who then communicated with Mr Ji.

[8] An application for residence was duly completed and lodged by Mr Ji with Immigration New Zealand. It was declined on 24 June 2016. The basis of the decline was that the complainant had failed to show that her nominated funds had been earned or acquired legally. According to Immigration New Zealand, she had been sent "PPI" (potentially prejudicial information) letters on 19 February, 11 May and 30 May 2016, but

¹ *XN v Ji* [2019] NZIACDT 49.

the responses had only addressed concerns regarding RMB 7.6 million of the total nominated funds of RMB 13 million.

[9] There are on the file produced to the Tribunal four letters from Mr Ji to Immigration New Zealand sending further information in support of the application. Three of them address investment funds. They are all dated 25 May 2017, presumably the date the file copies produced were printed. These letters will be Mr Ji's responses to the PPI letters. One of the letters enclosed a statement from the complainant concerning RMB 7.6 million of the investment funds (unseen by the Tribunal).

[10] Immigration New Zealand sent the decline letter of 24 June 2016 by email to Mr Ji that day. About one hour later, Mr Ji emailed it to an employee at NZ Business Migration, expecting it to be promptly sent via Globe to the complainant. However, the complainant did not receive it from Globe until 12 July 2016, the letter by then having been altered to bear the date of 12 July 2016. Mr Ji says the date must have been altered by somebody at NZ Business Migration or Globe.

[11] The complainant appealed the decline of residence to the Immigration and Protection Tribunal (IPT), but by then an appeal was out of time. The complainant had been led to file it late because of the altered date.

[12] Mr Ji left NZ Business Migration at the end of 2016 to set up his own immigration consultancy.

Decision of the Tribunal

[13] In its decision of 19 July 2019, the Tribunal found that Mr Ji had engaged in the practice known as rubber stamping. He had permitted the unlicensed staff of Globe and/or NZ Business Migration to undertake work falling within the statutory definition of immigration advice. That work had all been undertaken in his name, as he was the only person who could lodge an application with Immigration New Zealand apart from the complainant herself. Furthermore, he had failed to directly obtain instructions from the complainant. Mr Ji was found to be in breach of cls 1, 2(e) and 3(c) of the Code.

SUBMISSIONS

Registrar's submissions

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

Complainant's submissions

[15] Counsel for the complainant, Mr Chen, in his submissions of 13 August 2019 seeks compensation for the loss the complainant has suffered.

[16] Mr Chen observes that the application for residence was declined because the complainant did not provide evidence as to how she had acquired all of her nominated funds, as requested by the immigration officer. It is contended that the complainant had not been aware that this information had been requested. This occurred because the application was not undertaken by Mr Ji but instead the work was given to unqualified staff. The residence application became a lost cause due to the failure of Mr Ji to properly supervise the application and ensure all the required evidence was provided to Immigration New Zealand.

[17] Furthermore, it is contended that because unsupervised people had been left to do the work, the date of the decline letter was altered and the complainant did not become aware of it until it was too late to appeal to the IPT. She lost the opportunity to have her application considered on appeal and accordingly seeks compensation for the fees paid in relation to the appeal.

[18] At the request of the Tribunal, Mr Chen filed evidence supporting the claimed expenses on 10 September 2019. An additional expense was also claimed.

[19] The following table identifies the items of compensation claimed, together with the amounts for which the complainant has been able to provide receipts or an invoice:

Expense	Amount	Receipts
Immigration application fees paid to Globe or Notary	RMB 81,700	RMB 38,390
Application fees paid to Immigration New Zealand	NZD 4,585	NZD 4,585
Legal fees for appeal and advising	NZD 5,980	NZD 5,980
Legal fees regarding complaint	NZD 3,020	NZD 3,020
Translation fees for documents requested by Authority	NZD 295	NZD 295
Banking fees to transfer money from overseas for payment of the adviser and lawyer	NZD 60 and RMB 700	NZD 60 and RMB 600
Document courier fee	RMB 308	RMB 308

Mr Ji's Submissions

[20] Mr Ji, in his submissions of 13 August 2019, accepts the finding of negligence and the breaches of the Code found by the Tribunal. He acknowledges that he should be censured.

[21] Mr Ji says that 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.

[22] According to Mr Ji, 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.

[23] 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.

[24] Mr Ji sent a further submission to the Tribunal on 16 September 2019, together with a declaration of the same date, replying to the complainant's itemised expenses claim. The principal point made is that it is not true that the complainant did not know of Immigration New Zealand's concern about her funds. He had sought information from her (through intermediaries) as to the sources of her investment funds and passed onto the agency the information sent to him which could only have come from her. It was the complainant who was responsible for proving that her funds were lawfully obtained and

she failed to do so. That was the reason Immigration New Zealand declined the application.

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

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: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.

[27] 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

² Immigration Advisers Licensing Act 2007.

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.

[28] 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.

[29] 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.

...

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.

[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.⁴

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

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].

[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.⁵

[32] 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

[33] The starting point is the seriousness of the practice of rubber stamping. Mr Ji and the unlicensed staff who dealt with the complainant 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 complainant and prepare her application robbed her of the protection to which she was entitled and would have obtained, if she had dealt directly with a licensed and therefore knowledgeable adviser who was subject to professional standards and a disciplinary regime.

[34] Mr Ji's mode of rubber stamping approaches the upper end of the spectrum. He had no contact whatsoever with the complainant and communicated through a chain with multiple links between him and the complainant. However, he does appear to have been involved with the application. I accept his evidence that he was responsible for advising

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].

(through intermediaries) on the documentation and information requested by Immigration New Zealand and for corresponding with the agency.

[35] The only appropriate sanctions to be considered are censure, a financial penalty and compensation.

Censure

[36] Ms Pragji submits that censure would be appropriate and Mr Ji accepts this. I agree. Mr Ji is formally censured.

Financial penalty

[37] 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 penalty directed to be paid in that other case. There is no overlap, since this complaint relates to a different client. However, in respect of each complaint, I will treat Mr Ji as a 'first offender', as he has not previously appeared before the Tribunal.

[38] More recent sanctions decisions concerning the unlawful delegation of immigration work are summarised in *Immigration New Zealand (Calder) v Shearer*.⁷ The number of clients involved and the penalty in each case are identified there. The penalty in *Shearer* was NZD 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.

[39] 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.

[40] There is only one client involved in the case of Mr Ji.

[41] 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.

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

[42] Mr Ji has uniquely put forward a worthwhile proposal in the form of what he describes as community service. While his 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.

[43] 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.

[44] The penalty is set at NZD 3,000.

Compensation

[45] The complainant paid no fees directly to Mr Ji. So far as I can discern, any fees paid to NZ Business Migration have been refunded. Certainly, none are now claimed. In respect of the fees paid to Globe, they have also been refunded, apart from RMB 80,000 or RMB 81,700 (both amounts have been claimed at different times). The sum of RMB 81,700 is included in the current claim for compensation. I will therefore treat that item within the claim for compensation, rather than separately within the possible sanction of a refund. It will make no difference to the outcome.

[46] It is accepted by the parties that the Tribunal can only award compensation where the loss or expense can be said to arise from Mr Ji's professional misconduct.⁸ It will be recalled that the Tribunal found that his misconduct was permitting unlicensed staff to deal directly with the complainant, particularly in relation to supporting documentation, which is work exclusively reserved to him.

[47] Immigration New Zealand was satisfied that the complainant met most of the relevant criteria, but declined the residence application because she did not provide evidence as to how she had acquired all of the nominated funds. It is contended by Mr Chen that the agency had requested this evidence, but Mr Ji had not sought it from her. The whole residence application therefore became a lost cause, due to Mr Ji's failure to properly supervise it and ensure that the complainant had provided all the required evidence.

[48] Furthermore, according to Mr Chen, as a result of unqualified persons undertaking the work unsupervised by Mr Ji, the date of the decline letter was changed and the complainant lost her right of appeal to the IPT.

⁸ *KIT v Zhu* [2019] NZIACDT 46 at [35].

[49] The complainant therefore seeks compensation for the fees and disbursements paid in relation to both the application and the appeal, as itemised in counsel's submissions.

[50] Mr Ji does not agree that there is a causal link between his failure to discharge his professional obligations and the claimed heads of loss. He notes the complainant's contention that the whole residence application became a lost cause because, as a result of his use of unlicensed staff, she did not know of Immigration New Zealand's primary concern regarding the source of the nominated funds. Mr Ji says this is not true and that the complainant was well aware of this concern.

[51] It is pointed out by Mr Ji that Immigration New Zealand wrote to him on three occasions requesting information as to how the investment funds were acquired and he replied each time, having sought information from the complainant through the intermediaries of NZ Business Migration and Global. The agency's three PPI letters were dated 19 February, 11 May and 30 May 2016. Mr Ji provided to the Authority his three letters in reply. As noted earlier, they all bear the date of 25 May 2017, which will be the date he printed them out from his electronic record, in order to produce to the Authority.⁹

[52] The replies from Mr Ji attached numerous documents. I accept his contention that they are likely to have come from the complainant. For example, there are photographs of her, personal banking records, other personal financial documents, personal residential/utility documents and a statement from her (all attachments described in the covering letters, but unseen by the Tribunal).

[53] I find, on the balance of probabilities, that the complainant knew of Immigration New Zealand's concern regarding her funds and through intermediaries provided the best information that she could muster to satisfy the agency. Regrettably for her, it transpired that Immigration New Zealand was not satisfied and declined the application.

[54] I accept Mr Ji's contention that proof of the legitimacy of the complainant's funds is not a matter over which an adviser has control or responsibility. There is no reason to believe that more evidence could have been provided, sufficient to satisfy Immigration New Zealand, if he had worked directly with the complainant, as he should have.

[55] It has not therefore been shown that the visa application was unsuccessful because of the professional misconduct of Mr Ji upheld by the Tribunal. It has not even been shown that his unlawful use of intermediaries contributed to the unsuccessful outcome. The evidence produced to the Tribunal is that the application would likely have

⁹ Registrar's supporting documents at 23-24, 26 & 29.

failed anyway. It is the complainant herself who was responsible for the outcome of the application, as she was not able to prove that she had earned the nominated funds lawfully.

[56] It follows that the loss of the opportunity to appeal to the IPT was also not material to the outcome. I appreciate that it was not the complainant's fault that her appeal was invalid because of the altered date of the decline letter. To some extent, it can be said to be Mr Ji's fault because he permitted a chain of intermediaries to interpose between him and the complainant, which plainly heightened the risk of fraud. But while he bears some responsibility for the alteration of the date by an unknown third person, there is no reason to believe that a valid appeal to the IPT would have led to any different outcome. Mr Chen advances no argument as to why the IPT would have allowed the appeal. Given the reason for Immigration New Zealand's decline, I do not accept that appeal is likely to have been successful.

[57] I decline to award any compensation, as it has not been shown that the complainant's wasted expenditure was caused wholly or materially by Mr Ji's professional misconduct.

OUTCOME

[58] Mr Ji is:

- (1) censured; and
- (2) ordered to pay immediately to the Registrar a penalty of NZD 3,000.

ORDER FOR SUPPRESSION

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

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

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

D J Plunkett
Chair

¹⁰ Immigration Advisers Licensing Act 2007, s 50A.