

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2018] NZIACDT 1

Reference No: IACDT 001/17

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

BY **The Registrar of Immigration
Advisers**

Registrar

BETWEEN **Tammy Bell**

Complainant

AND **Jacinta Sascha Maria (Jay)
Shadforth**

Adviser

DECISION

REPRESENTATION:

Registrar: In person.

Complainant: In person.

Adviser: In person.

Date Issued: 1 February 2018

DECISION

Preliminary

- [1] This complaint relates to Ms Shadforth, who was formerly a licenced immigration adviser. The complaint alleges that, while she was a licenced immigration adviser and running a practice, Ms Shadforth had a website that:
- [1.1] Claimed membership of professional bodies, when in fact she did not hold membership in those bodies.
- [1.2] Published a passage purported to be a quote from a Refugee Status Appeals Authority decision in order to create an impression that enhanced her professional skills and experience. Whereas Ms Shadforth had altered the passage from the less favourable original wording.
- [2] In dealing with this complaint, it is important to recognise that Ms Shadforth is no longer a member of the immigration adviser profession; this Tribunal cancelled her licence in its decision *MBL v Shadforth* [2016] NZIACDT 37. The terms of that decision make clear that it is unlikely she will ever regain membership of the profession.
- [3] Ms Shadforth filed a statement of reply. It contends the issues in the complaint are academic and, accordingly, are not justiciable. Courts and tribunals only determine live disputes between parties, and should not hear disputes that do not relate to real issues requiring resolution. Ms Shadforth referred to *R v Secretary of State for the Home Department ex Parte Salem* [1999] 1 AC 450 (HL) in support of this argument.
- [4] Beyond that, Ms Shadforth did not dispute the factual narrative supporting the complaint. She accepted that she was not a member of the two relevant organisations at the material times, and she accepted she altered the quote from the Tribunal decision. To some extent, Ms Shadforth claimed there had been an error with earlier versions of documents, but she generally accepted responsibility.
- [5] Ms Shadforth admitted that she failed to be diligent and act with due care in a timely manner to ensure information on the website was accurate and up-to-date; however, she denied her conduct was dishonest.
- [6] In relation to the Refugee Status Appeals Authority quote, Ms Shadforth identified that matter had been the subject of a factual finding in another decision of this Tribunal (see: *Five Complainants v Kumar* [2015] NZIACDT 82), and accordingly the matters arising from it except, potentially, failing to correct the quote on her website, were essentially spent.

- [7] Ms Shadforth also referred to some medical issues.
- [8] Given the concessions made by Ms Shadforth, the key task for the Tribunal is to make an evaluation of the dimension and perspective it should have of the matters put forward in the complaint. If necessary, the Tribunal must make a finding on the allegation of dishonesty, which Ms Shadforth denies. However, to the extent Ms Shadforth's admissions adequately deal with the matter before the Tribunal, it is not necessary to make any factual findings.
- [9] The conclusion reached by the Tribunal is that the matters in the complaint are not simply academic; however, there is nothing in the material before it that indicates either that it is necessary to go beyond the factual findings accepted by Ms Shadforth or to take any further steps in relation to this complaint.

The Statement of the Complaint

The factual background

- [10] The Registrar identified the following factual background:
- [10.1] Ms Shadforth maintained a website promoting her professional practice which displayed logos of the New Zealand Association for Migration and Investment and the Canterbury Chamber of Commerce.
- [10.2] The website also stated that Ms Shadforth was a member of the New Zealand Association for Migration and Investment.
- [10.3] At the material time, Ms Shadforth was not a member of either of the two organisations.
- [10.4] Ms Shadforth's website also indicated that the New Zealand Association for Migration and Investment membership provides for "priority service and benefits" in certain circumstances by the New Zealand Immigration Service. Immigration New Zealand does not prioritise work based on who the representative is for an application and accordingly this representation was not correct.
- [10.5] Ms Shadforth's website included a quote from a Refugee Status Appeals Authority decision, which referred to "the very comprehensive and detailed oral and written submissions made by Ms Jay Shadforth". The quote had been altered in such a way that it omitted the name of the qualified lawyer who was also referenced. At the material time, Ms Shadforth did not have any professional qualifications and was appearing with the qualified lawyer in the proceedings before the Authority.

[10.6] In *Kumar*, Ms Shadforth had sought to represent Mr Kumar in a proceeding before this Tribunal. The *Kumar* decision made a finding that, when seeking leave to represent Mr Kumar, Ms Shadforth had altered the same quote in the same way as she had on her website and accordingly made a false representation to this Tribunal.

The grounds identified by the Registrar

- [11] The first ground identified by the Registrar is put in the alternative. Either Ms Shadforth engaged in dishonest or misleading behaviour which is a ground for complaint under s 44(2)(d) of the Immigration Advisers Licensing Act 2007 (the Act) or, alternatively, she breached cls 1 and 29(a) and (b) of the Licenced Immigration Advisers Code of Conduct 2014 (Code of Conduct). Clause 1 requires that a licenced adviser must be honest, professional and conduct themselves with due care. Clause 29 provides that an immigration adviser must not represent or promote in a false, fraudulent or deceptive manner.
- [12] The Registrar identified that, potentially, Ms Shadforth engaged in misleading behaviour by implying membership of organisations in which she did not have membership status, claiming membership of one of them conferred the benefit of priority service, and she promoted her own experience and ability by altering the quote from the Refugee Status Appeals Authority's decision.

Medical information

- [13] Ms Shadforth provided some medical evidence. However, it is self-reported and does not include any material from a medical practitioner. The information is not in itself sufficient to have any bearing on whether the Tribunal should uphold the complaint. Potentially, it could have some relevance to sanctions.
- [14] Ms Shadforth has requested that the information not be disclosed to the complainant. Given the irrelevance of the information to making the determination as to whether to uphold the complaint, no further action will be taken regarding that material at this point.

Discussion

Procedure

- [15] The complainant did not provide a statement of reply. She was not required to do so, if she accepted the contents of the statement of complaint.
- [16] The usual process for this Tribunal is to make an evaluation of the material before it pursuant to s 49 of the Act. None of the parties have requested the opportunity to be heard in person, and I am satisfied that there is no justification for doing so.

The claim that the matters are academic

- [17] The essential point made by Ms Shadforth regarding the complaint being academic is that the Tribunal, pursuant to s 50, has a statutory authority to determine to dismiss the complaint, and she says it should do so applying the principles in *R v Secretary of State*¹. She also referred to other authorities dealing with the principle. It is elementary that the resources of courts and tribunals ought not to be wasted on dealing with matters that are only theoretical. Instead, resources are to be applied to genuine disputes between parties that exist at the time a matter is litigated.
- [18] In the present case, there is a mid-level complaint relating to false claims of membership of professional bodies and the benefits of the falsely claimed membership on a licenced immigration adviser's website. There is a serious complaint that a licenced immigration adviser deliberately altered a quote from a Tribunal decision to make inaccurate representations regarding her professional background and experience.
- [19] The simple fact that a licenced immigration adviser is no longer in practice does not absolve her from liability for past conduct. It would not be an acceptable message to members of the profession that they could evade responsibility for past conduct by simply ceasing to be a member of the profession. Accordingly, the essential proposition that the issues are theoretical is not consistent with the authorities to which Ms Shadforth refers.
- [20] However, it is important to recognise that Ms Shadforth's circumstances are more complicated, she has not simply left the profession. Rather, she has been removed from the profession. Her removal from the profession resulted in publication of her systematic rejection of the standards expected of members of the profession, and resulting sanctions. Furthermore, there is a finding by this Tribunal that Ms Shadforth did in fact alter the quotation in the way alleged. It is reasonable to say that deterrence is of little or no relevance when a former member of the profession left the profession in the circumstances that applied to Ms Shadforth. Deterrence was addressed when the Tribunal removed Ms Shadforth from the profession, and it does not need to be revisited.
- [21] Nonetheless, in my view it cannot be said that the issues are theoretical. The matters are significant and there are no adverse professional disciplinary findings² in relation to the specific matters arising in this complaint. If Ms Shadforth were ever to seek to re-enter the profession, or establish she was a fit and proper person in some other context, the findings could be relevant. It is

¹ [1999] 1 AC 450

² There is of course the factual finding regarding the use of the altered quote in the *Kumar* decision.

not possible to say that the grounds of this complaint, or indeed other matters of Ms Shadforth's professional history were spent when she was removed from the profession.

- [22] In these circumstances, I am satisfied that the matters are not academic or theoretical in the sense they are not justiciable and there is no justification for dismissing the complaint on that basis.

The grounds of complaint

- [23] The Registrar has put the grounds of complaint in terms of the alternatives of dishonesty and misleading behaviour or breaches of the Code of Conduct.

- [24] Ms Shadforth has claimed that, while she accepts through her own fault she published the incorrect information appeared, her actions fell short of being dishonest. She says it was not "intentionally false, fraudulent or intended to mislead or deceive".

- [25] If Ms Shadforth was still a member of the profession, the difference may well be very important as it could have profound effects on her future in the profession. That is not the case here. Ms Shadforth has made an assertion, and it would be wrong for this Tribunal to make a contrary finding without giving her the opportunity of supporting it with oral evidence and the other parties the opportunity to cross-examine her. No party has sought the opportunity to conduct an oral hearing to test Ms Shadforth's claim. For the reasons already described, in my view, it would be a waste of resources to challenge the position maintained by Ms Shadforth.

- [26] Accordingly, the complaint is upheld on the basis that Ms Shadforth breached cls 1 and 29(a) and (b) of the Code of Conduct. The incorrect information on her practice website was there because Ms Shadforth failed to be professional, diligent and conduct herself with due care, and, accordingly, she represented or promoted herself in a deceptive manner. The deceptive element applies only to the amended quote from the Refugee Status Appeal Authority's decision.

The deceptive alteration of the quote from the Refugee Status Appeals Authority

- [27] Ms Shadforth accepted that in the *Kumar* decision:

... the Tribunal has already made adverse findings regarding integrity and subsequently referred to such 'integrity issues'.

- [28] Ms Shadforth said the issues were essentially spent when the Tribunal made those findings, while accepting the fact she continued to display the quote on her website was potentially a live issue.

- [29] It is not necessary to go further than the findings in *Kumar*. It is true this complaint is a different setting in that it concerns Ms Shadforth's professional

conduct, and it relates to Ms Shadforth's website not the *curriculum vitae* she submitted to the Tribunal. However, my view is this matter does not require any further action beyond the finding that Ms Shadforth failed to maintain the standards required of her, for the reasons already identified. The findings regarding the altered quote are not new in substance.

Sanctions

- [30] Pursuant to s 50 of the Act, after hearing a complaint the Tribunal may uphold the complaint but determine to take no further action or impose a range of sanctions set out in s 51.
- [31] On the information currently before the Tribunal, I am satisfied that the Tribunal should take no further action. Ms Shadforth left the profession with significant sanctions imposed on her. If any persons were misled by the information on Ms Shadforth's website and suffered adverse consequences, compensation ought to be considered in the context of what happened to those particular persons. I am satisfied that it would be a proportionate and appropriate response to take no further action beyond recognising that the complaint has been upheld. The most serious element of the complaint is the altered quote published on the website; I have already discussed why I do not consider this finding requires any further action.
- [32] The Tribunal will nonetheless provide an opportunity for the Registrar and the complainant to provide submissions to the contrary, if they wish to do so, within 10 working days of the date of this decision. Should they provide such submissions, it will not be necessary for Ms Shadforth to respond immediately. The Tribunal will make a determination as to whether there is a *prima facie* case for departing from the tentative view the Tribunal holds on the materials currently before it.
- [33] I note Ms Shadforth has submitted a self-report of her medical circumstances. Potentially, that could be relevant if either the Registrar or the complainant sought to have sanctions imposed. Otherwise, in my view, it is irrelevant and, accordingly, it is not necessary for Ms Shadforth to provide a copy of that material to the other parties.

DATED at WELLINGTON this 1st day of February 2018

G D Pearson
Chair