

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

Decision No: [2018] NZIACDT 9

Reference No: IACDT 006/16

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

BY **The Registrar of Immigration
Advisers**

Registrar

BETWEEN **Manya Sharma**

Complainant

AND **Amar Dev (Amar) Manchanda
(Deceased)**

Adviser

**DECISION
(SANCTIONS)**

REPRESENTATION:

Registrar: Ms R Denmead, lawyer, MBIE, Auckland

Complainant: In person

Adviser: Mr Singh Rana, lawyer, Gateway Lawyers, Auckland

Date Issued: Friday, 23 March 2018

DECISION

Preliminary

- [1] This complaint was upheld in the Tribunal's decision *Sharma v Manchanda* [2018] NZIACDT 2. Mr Manchanda had died by the time the complaint was determined.
- [2] The essence of the complaint arises from the following events:
- [2.1] First, the complainant asked Mr Manchanda to assist her in urgent circumstances (her visa was due to expire in a few days' time). The application Mr Manchanda prepared was a failed lodgement with Immigration New Zealand (INZ), due to the absence of a current police certificate;
- [2.2] At that point, the complainant was in New Zealand unlawfully and had limited options to request a visa, as generally a person who is in New Zealand without a current visa cannot apply for a visa; and
- [2.3] When the complaint was made, the Registrar required that Mr Manchanda provide a copy of his file, but he did not provide file notes that he later relied on.
- [3] The Tribunal determined that Mr Manchanda failed to take due care with the initial lodgement; and, as Mr Manchanda accepted, he failed to maintain the required standards for his written communications and delivery of his records to the Registrar. In terms of the discussions between Mr Manchanda and the complainant, the evidence was not adequate to reach an adverse finding. The Authority was satisfied the proper focus in respect of advice provided to the complainant should be on the absence of written confirmation of advice. Mr Manchanda accepted he failed to do that. The complaint was upheld on that basis.

Submissions

The Registrar

- [4] The Registrar did not provide any submissions on sanctions. She noted that Mr Manchanda had died on 11 October 2017 and consequently his licence had been cancelled.

The complainant

- [5] The complainant sought a refund of fees and compensation:
- [5.1] She sought a refund of the \$575 she paid Mr Manchanda for seeking a visitor visa. This was the application the Tribunal found was prepared negligently.

- [5.2] She also sought a refund of the \$230 she paid Mr Manchanda for seeking a post-study work visa under s 61 of the of the Immigration Act 2009.
- [5.3] She also sought compensation for the lodgement fee for the visitor visa application. That fee was \$165.
- [5.4] The other fee she sought to recover was \$1,725 paid to a different immigration adviser after she terminated Mr Manchanda's instructions.
- [5.5] In addition, the complainant sought any compensation the Tribunal thought reasonable for stress caused because of the negligence.

Mr Manchanda's estate

- [6] The executors of Mr Manchanda's estate contended that as Mr Manchanda had died before the decision was issued he "could not have the opportunity to appeal or seek retrial in relation to that decision". Counsel for the executors said the Tribunal's decision was a breach "of the provisions of the Bill of Rights Act as to adviser's rights to a fair trial and to appeal against the decision".
- [7] Counsel contended that the claim for compensation and a refund of fees was "unreasonable and not substantiated" and that accordingly there should be no sanction imposed.

Discussion

- [8] There is no merit in the contention for the executors of the adviser's estate that there is any irregularity in the process. Professional disciplinary proceedings, as already stated in the previous decision, are a civil process. It is a matter for the executors of the late adviser's estate whether they wish to pursue an appeal or seek a rehearing.
- [9] Given that Mr Manchanda is now deceased and the Registrar has not sought any sanctions, I am satisfied that it is unnecessary and inappropriate to impose the sanctions that would normally follow in a case such as the present case.
- [10] However, the complainant is entitled to a decision in relation to compensation and a refund of fees on the merits. The complainant has provided evidence of the expenses she faced. There is a finding by the Tribunal that Mr Manchanda was negligent when he lodged the initial application for a visa. The consequences of that negligence were serious; it resulted in the complainant being in New Zealand unlawfully and the attempts to remediate that situation were inevitable. The complainant was put at very considerable

risk. I recognise there were difficulties due to the absence of a police certificate and the short timeframe available. However, it was Mr Manchanda's duty to recognise the problem and address it with Immigration New Zealand. He failed to do that; but of even greater concern when the lodgement failed he aggravated the problem rather than addressing it effectively. The situation required great care, as his client was at great risk of losing her immigration opportunities completely.

[11] The following compensation will be awarded:

[11.1] A refund of \$230 relating to the request under s 61.

[11.2] However, the payment of \$575 for the original application, and the application of \$165, should not be awarded. That is because I am satisfied that the full cost of remediating the negligence should be awarded. To be consistent:

[11.2.1] The complainant should bear the cost of the work she required initially, and

[11.2.2] Compensated for the cost or restoring her to the position as it should have been if that work was completed properly.

[11.2.3] The remedial work was the \$230 request under section 21, and the work of the new adviser she engaged, after terminating Mr Manchanda's instructions.

[11.3] I accordingly allow the \$1,725 claimed by the replacement immigration adviser for remediating the situation.

[12] This Tribunal will in appropriate cases allow modest awards in the nature of general damages to compensate for harm resulting from negligence and other professional failings. The Tribunal is cautious to ensure that such awards are not at a level where they become an additional form of financial penalty. In the present case, the complainant was put into an invidious position where she was in New Zealand unlawfully; accordingly, she could not work until she rectified that situation. I am conscious that the failed application was only for a visitor visa, as the complainant did not have employment at that time. The steps to obtain alternative employment were inevitably hampered and made more difficult when she was in New Zealand unlawfully. Fortunately, she was able to rectify the situation after a period of delay. In the circumstances, I am satisfied that it is appropriate to award \$1,500 to recognise the difficulties faced by the complainant. I have regard to the fact that the award likely understates the loss of income, and further, in the present case, there would ordinarily be a monetary penalty of more than that amount if Mr Manchanda had not died.

Decision

[13] Pursuant to s 51 of the Immigration Adviser's Licensing Act 2007 the Tribunal orders that:

[13.1] Mr Manchanda refund fees of \$230 to the complainant;

[13.2] He pays compensation of \$1,725 to the complainant for the cost of remediating the negligent failed lodgement; and

[13.3] He is to pay the complainant \$1,500 as compensation for the harm caused by his negligence, in particular for the consequences of her being in New Zealand unlawfully, in addition to the costs of remediation.

[14] It is of course a matter for the executors of Mr Manchanda's estate to comply with the orders.

DATED at WELLINGTON Friday, 23 March 2018

G D Pearson
Chair