

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

Decision No: [2018] NZIACDT 8

Reference No: IACDT 017/16

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

BY **The Registrar of Immigration
Advisers**

Registrar

BETWEEN **Andrej Stanimirovic**

Complainant

AND **Howard Levarko**

Adviser

**INTERIM DECISION
(SANCTIONS)**

REPRESENTATION:

Registrar: Ms Jessica Ellison, lawyer, MBIE, Wellington

Complainant: In person

Adviser: Mr K Lakshman, Barrister, Wellington

Date Issued: 22 March 2018

DECISION

Preliminary

- [1] This complaint was upheld in the substantive decision *Stanimirovic v Levarko* [2018] NZIACDT 3. That decision should be read with the present decision. The key findings were:
 - [2] This case is one of the most egregious examples of rubber-stamping, which involves being a party to unlicensed persons providing immigration services, which is a criminal offence. The Tribunal found the circumstances were egregious as:
 - [2.1] there was no attempt whatsoever to ensure that Mr Stanimirovic received the protections afforded by the Immigration Advisers Licensing Act 2007 (the Act), and the Licensed Immigration Advisers Code of Conduct 2014 (the 2014 Code) (even when Mr Levarko was on notice Mr Stanimirovic was a victim of unlicensed persons providing immigration services);
 - [2.2] the modus operandi involved deceptive certification in the documents (though as it happens they were not submitted to INZ in this case);
 - [2.3] Mr Levarko, instead of recognising the professional responsibilities he had after creating the situation for Mr Stanimirovic, referred him back to the unlicensed persons who did not have the skills to assist him;
 - [2.4] Mr Levarko lied about what had happened to Mr Stanimirovic's application, and disparaged INZ;
 - [2.5] the key skill Mr Levarko provided in the rubber-stamping operation was to review documents to see they appeared in order and were likely to be approved by an immigration officer (using his experience as a former immigration officer); and
 - [2.6] after the complaint and the Registrar's statement of the complaint which sets out in the clearest terms the obligations that Mr Levarko had failed to meet, Mr Levarko continued to deny his responsibilities and minimise his conduct.
- [3] The complaint also found Mr Levarko was dishonest, as he provided misleading information to Mr Stanimirovic. The Tribunal found Mr Levarko fabricated information which he provided to Mr Stanimirovic, intending to deceive Mr Stanimirovic and cause him to believe that Mr Levarko had his immigration affairs in hand, whereas in fact he had no knowledge of them. The behaviour was dishonest and misleading. It occurred in the context of an illegal rubber-stamping operation and the gravity of the dishonesty was to be

measured against that background. As noted, rubber-stamping is a criminal offence under the legislation that gives Mr Levarko the status of being a licensed immigration adviser.

- [4] The third aspect of the complaint referred to the Tribunal is that Mr Levarko breached cl 18 of the 2014 Code, because he did not provide Mr Stanimirovic with a written agreement. This was not a mere technical oversight, it was part of Mr Levarko's rubber-stamping modus operandi. Mr Levarko knew Mr Stanimirovic had not received the most elementary and obvious protections afforded by the Act and the 2014 Code. His failure to provide a written agreement at the point when he was confronted with Mr Stanimirovic personally identifying himself as a victim of the rubber-stamping operation, was an integral part of the illicit operation.
- [5] Having upheld the complaint in those respects the Tribunal sought submissions on potential sanctions it could impose under s 50 of the Act.

Submissions

The Registrar

- [6] The Registrar noted that s 3 of the Act focuses on the protection of the public, particularly persons requiring immigration advice. She further identified that the Courts have determined that a high standard of propriety and conduct is to be exercised by practitioners; and unsuitable persons should be prevented from practising. She further noted that setting standards inspired confidence in the profession and its members.
- [7] Given the grounds on which the complaint was upheld the Registrar considered that the following sanctions should be imposed:
- [7.1] A caution or censure.
- [7.2] Cancellation of Mr Levarko's licence.
- [7.3] An order preventing Mr Levarko from reapplying for a licence unless or until he had completed the full Graduate Diploma in New Zealand Immigration Advice. She noted that completion of the qualification would not necessarily establish that he was fit to hold a licence.
- [7.4] A monetary penalty not exceeding \$10,000.
- [7.5] An order for the payment of all or any of the costs or expenses of the investigation, enquiry and hearing. She sought a nominal figure of \$3,000 in costs.

Mr Stanimirovic

- [8] Mr Stanimirovic considered Mr Levarko was responsible for his “deportation”, apparently referring to him travelling to New Zealand and being refused entry. In addition, he held him responsible for his loss of employment and the money he would have earned had he been in employment. He said that having handed over his passport to the person involved in the rubber-stamping arrangement in Canada, he was told lies and given false timeframes regarding potential employment in New Zealand. Mr Stanimirovic sought compensation for these losses. He provided some information relating to the costs he had incurred. This claim is discussed in more detail below, as Mr Stanimirovic provided some additional information.
- [9] Mr Stanimirovic also referred to suffering from a medical condition. He did not identify why the medical condition was a result of any of the adverse findings against Mr Levarko.

Mr Levarko

- [10] Significantly Mr Levarko accepted the findings of the Tribunal. The key submission for him was that there could be a proportionate response without suspending or cancelling his licence.
- [11] Mr Levarko claimed in mitigation that before embarking on the rubber stamping operation he took advice from an official employed by the Authority and that he understood the arrangements were permissible.
- [12] Mr Levarko pointed to his 19 years of experience in immigration work, 11 of those years being as an employee of the Department of Labour with the New Zealand Immigration Service. He drew attention to his previous exemplary record, high level of skill and reputation for integrity.
- [13] Mr Levarko also drew attention to the consequences of losing his licence, given that his principle source of income is his immigration practice, noting that if he was unable to continue in practice that may affect his ability to meet a compensation payment.
- [14] Mr Levarko noted he had suffered ill health. He also provided a range of testimonial-type material and evidence to support his claim that he had a reputation for integrity, and engaged in voluntary community service.
- [15] Mr Levarko contended that the appropriate sanctions were:
- [15.1] A caution or censure.

[15.2] A requirement to enrol and complete the full Graduate Diploma in New Zealand Immigration Advice, and practice under supervision until completing that qualification.

[15.3] Pay a penalty not exceeding \$10,000.

[15.4] Pay \$3,000 in costs to the Authority.

[15.5] Pay reasonable compensation to the complainant.

Mr Stanimirovic in reply

[16] Mr Stanimirovic replied to Mr Levarko's submission. He said that he was aware of other people who had suffered similar consequences to those that he suffered when dealing with Mr Levarko's rubber stamping operation. He said that he found the claims relating to Mr Levarko's high level of competence to be ridiculous. Mr Stanimirovic said that instead of competence, Mr Levarko had lied, provided misleading information which cost him employment and his health. He had a two-year struggle to resolve the consequences of Mr Levarko's actions. He said that eventually showing remorse after all that he had done, and seeking to take credit for it was highly inappropriate. He said that after 19 years' experience in immigration work, Mr Levarko had little excuse for his conduct.

[17] In relation to Mr Levarko's licence, Mr Stanimirovic said that while the decision was not his he would not wish to be represented and would not hire an immigration adviser like Mr Levarko. He noted Mr Levarko had openly lied and provided misleading information, and pointed to the serious harm it caused him and the potential for serious harm to other people.

[18] Mr Stanimirovic gave further particulars of his compensation claim:

[18.1] Eight months' salary amounting to: €7,040.

[18.2] A fee paid to TEC employment and Gateway: USD 2,500.

[18.3] Accommodation in New Zealand for his visit (when he was not allowed to enter): USD 450.

[18.4] Medical examination and carrier fees for an application: USD 400.

[19] Mr Stanimirovic concluded by expressing the view that Mr Levarko's remorse sounded more consistent with a regret that he had been detected and now faced the consequences of his conduct.

The Registrar in reply

[20] After receiving Mr Levarko's submissions, the Registrar abandoned her view that Mr Levarko's licence should be suspended or cancelled and instead said

that she was agreeable to Mr Levarko's proposed sanctions, except she sought to have his full licence cancelled and an order allowing him to apply for and practice under a provisional licence, with appropriate supervision arrangements.

Discussion

Interim decision

- [21] Aspects of the sanctions to be imposed have caused me considerable concern. Mr Levarko's expressions of contrition have come very late. Mr Stanimirovic's perception that the contrition has more to do with the consequences he is facing rather than insight into his conduct are reasonable. Mr Levarko did not accept any of the grounds of complaint after the Registrar set them out, with the particulars and supporting evidence. He pursued an unrealistic construction of the conversations he had when he misled Mr Stanimirovic.
- [22] I note Mr Levarko still claims that a staff member with the Authority endorsed his rubber-stamping operation. At best, the claim of endorsement is grossly exaggerated. Mr Levarko has not been able to name a person who gave the advice, or show any written approval of his conduct. Any support from Authority staff could only have been procured by failing to be frank about what Mr Levarko was doing. Mr Levarko's rubber stamping operation was plainly illegal. Mr Levarko still claims he has high levels of expertise in immigration practice. However, even the most inexperienced immigration practitioner must understand that every person receiving immigration advice in accordance with the Act (unless from a person who is exempt), has undergone a client engagement process and has a written agreement. Mr Levarko was fully aware victims of his rubber-stamping operation had no agreements, and had not undergone a client engagement process. It is implausible that Mr Levarko informed a staff member of the Authority that he was planning to provide immigration services to an offshore service provider who would then engage clients without complying with the Act, and he would sign off documents the unlicensed person completed. That is in fact what he was doing; and it was patently obvious to the least experienced practitioner and the staff of the Authority that the operation was illegal.
- [23] Not only was Mr Stanimirovic a victim of Mr Levarko's rubber stamping operation, when he confronted Mr Levarko, Mr Levarko was dishonest and deliberately misled him. Not only did he do that, he also took the opportunity of disparaging Immigration New Zealand to hide his own misconduct.
- [24] The Registrar's initial response that Mr Levarko should expect to have his licence cancelled, and that he should not assume that he would in the future meet the fitness requirements to be issued with another licence, was an unsurprising and proportionate response to the Tribunal's findings.

- [25] Mr Stanimirovic as the victim of Mr Levarko's misconduct has clearly expressed the point of view of a consumer of immigration services and his expectation that New Zealand's immigration law demands high standards.
- [26] Given the Registrar's position that she considers that Mr Levarko can continue to practice, notwithstanding the findings made against him, it is important to accurately record her position and the reasons why she has taken her stance that the findings do not require prohibiting Mr Levarko from practising.
- [27] In relation to the compensation claim, there are aspects of the claim that need to be carefully considered.
- [28] Accordingly, there will be an oral hearing to deal with the issue of sanctions. I now identify the areas of concern from the Tribunal's perspective, but emphasise that the parties may freely address any issues relating to sanctions.

Areas of concern

Whether Mr Levarko should remain in the profession

- [29] The most critical issue to be determined is whether Mr Levarko should remain a member of the profession. There can be little doubt that the ordinary consequences of the findings made against Mr Levarko are simply that his licence would be cancelled, he would be prohibited from applying for a further licence under the Act until he complied with all the sanction orders imposed, and further prohibited from making an application for a licence until completing the full graduate diploma. There would also be a note that notwithstanding compliance with orders and gaining qualifications, fitness would remain a matter for the Registrar indefinitely. The Registrar is authorised to take account of a person's disciplinary history. The authorities generally indicate that in the face of a finding of dishonesty, the appropriate disciplinary response is removal from the profession. A key element in the qualification for holding a license is that an adviser has the integrity to ensure that they notify applicants of the responsibilities, and properly warn them of the consequences of dishonesty or deception.
- [30] The Tribunal does recognise that the Registrar is typically in a better position to assess the integrity of a practitioner, and will give significant weight to her views.
- [31] One of the matters that the Tribunal will have to weigh is the importance of maintaining confidence in the integrity of New Zealand's immigration regime. Section 3 of the Act specifically identifies that one of the purposes of the Act is to "enhance the reputation of New Zealand as a migration destination". The overall sanctions should accordingly, as far as possible, restore Mr Stanimirovic to the position he would be in had he received services to the standard required by the Act. I further discuss this aspect under the following heading.

Compensation claim

- [32] Mr Stanimirovic has claimed €7,040 for loss of salary as a result of him becoming entangled in Mr Levarko's rubber stamping operation. The way this occurred was that Mr Levarko approached the Canadian company TEC. TEC used Gateway, the service provider who Mr Levarko engaged with. Mr Levarko's name was being used on documents provided by Gateway and it appears that TEC and Mr Stanimirovic had both understood that Mr Levarko was responsible for the immigration services. It appears that there were serious irregularities, one of the documents produced was an employment agreement where Gateway, specifically a company associated with it, was purporting to offer employment in New Zealand. In reality, it seems that Gateway was not a New Zealand employer. Mr Stanimirovic was encouraged to believe that employment was available, he was also misled about the progress with him obtaining a visa, both by Mr Levarko personally and the business associates involved in the rubber-stamping operation.
- [33] If the claim for loss of employment is contentious; then:
- [33.1] I will seek to get sworn evidence from Mr Stanimirovic that the rate at which he has claimed is accurate (it appears to be a modest rate but needs to be confirmed), and
- [33.2] I will seek his confirmation that the period of time for which he remained unemployed did result from the rubber-stamping activities.
- [34] On the face of it, Mr Stanimirovic is no longer making a claim relating to his illness. If that is not the case then clarification of that issue will not be required.
- [35] Mr Stanimirovic has claimed a fee of USD 2,500 relating to the fees he paid to TEC employment and Gateway. He has not claimed the cost of travelling to New Zealand when he was turned around at the border. It appears that TEC and/or Gateway funded Mr Stanimirovic's travel. It appears that in essence Mr Stanimirovic's claim is that he paid this money to service providers in Canada. He was reliant on the appearance of authenticity provided by Mr Levarko's rubber stamping operation. Mr Stanimirovic received nothing of value to him from paying those fees and accordingly seeks reimbursement from Mr Levarko on the basis that it is a direct result of his rubber stamping operation. However, he is not claiming additional travel costs.
- [36] Mr Stanimirovic has claimed USD 450 for accommodation in New Zealand. It appears that this relates to when he travelled to New Zealand and was turned around at the border due to Mr Levarko's failure to provide proper or adequate immigration advice, and instead referred him back to unlicensed persons. Before making an order for compensation I would wish to have confirmation that

the costs were not refunded after Mr Stanimirovic was unable to enter New Zealand.

- [37] Mr Stanimirovic has claimed the costs of a medical examination and application fees of USD 400. It is not entirely clear what triggered those expenses.

Costs

- [38] The Tribunal understands that Mr Levarko has consented to costs of \$3,000 identified as a nominal figure. If that is not correct, then it would be necessary to itemise the amount and the Authority would consider making an order that was the whole or a portion of the actual costs.

Oral hearing

- [39] The Tribunal will endeavour to arrange an oral hearing as soon as possible. No party will be required to provide any further written submissions, as the positions of the parties have already been identified in writing. The Tribunal will seek clarification in relation to the matters raised. If any party does wish to raise any issue that has not been covered already, then they should notify the Tribunal and other parties to ensure that an adjournment is not necessary to deal with the point. The case manager will arrange for a hearing date as soon as possible.

DATED at WELLINGTON this 22nd day of March 2018

G D Pearson
Chair