IN THE DISTRICT COURT
AT AUCKLAND

CIV-2010-004-002925

	BETWEEN	JOSEPHINE CHRISTINE SILBERY Appellant
	AND	REGISTRAR OF IMMIGRATION ADVISERS Respondent

Hearing: 5 October 2011

Appearances: R McKelvin for the Appellant
R Denmead for the Respondent

Judgment: 5 October 2011

ORAL JUDGMENT OF JUDGE M-E SHARP

Introduction

[1] Josephine Christine Silbery appeals a decision of the Registrar of Immigration Advisers. The decision in question was denying her an Immigration Advisers licence. She is represented today by Mr McKelvin, and the Registrar of Immigration Advisers is represented by Ms Denmead. I have heard submissions from both.

[2] Both the background and the law are more than adequately traversed by Ms Denmead in her written submissions dated 6 September 2011. With thanks, I rely upon those paragraphs between, and including, 3 and 21. I will not repeat what is said there in order to save time.

Appeals

[3] Section 81 Immigration Advisers Licensing Act 2007 provides a right of appeal. The Court may confirm, vary or reverse the decision of the Registrar. Every

appeal is to proceed by way of rehearing pursuant to r 14.17. Re-hearing does not mean that the evidence is to be reheard in its entirety, rather it means that the Court is to consider for itself "the issues which had to be determined at the original hearing and the effect of the evidence then heard as it appears in the record of the proceedings, but applying the law as it was when the appeal is heard", *Pratt v Wanganui Education Board* [1977] 1 NZLR 476 at p 490. Both counsel accept that the Supreme Court's judgment in *Austin, Nichols & Co Inc v Stichting Lodestar* [2008] 2 NZLR 141 discussing the deference that an appellate Court should pay to a decision of a specialist tribunal applies here. In particular, the Chief Justice in delivering the judgment of the Supreme Court stated at para (16):

> Those exercising general rights of appeal are entitled to judgment in accordance with the opinion of the appellate Court, even where that opinion is an assessment of fact and degree and entails a value judgment. If the appellate Court's opinion is different from the conclusion of the tribunal appealed from, then the decision under appeal is wrong in the only sense that matters, even if it was a conclusion on which minds might reasonably differ. In such circumstances it is an error for the High Court to defer to the lower Court's assessment of the acceptability and weight to be accorded to the evidence, rather than forming its own opinion.

[4] Thus, in an appeal hearing such as this, I look to the evidence contained in the bundle of documents provided pursuant to R 14.13 District Courts Rules 2009 and I would, of course, look to any evidence submitted by the appellant. Unfortunately, she has submitted none. There are, in certain circumstances, discretionary powers to receive new evidence. I have not received any application for new evidence or any idea of what any such new evidence could possibly be.

Grounds of Appeal

[5] In essence, the appellant levies criticism at the Registrar's failure to give her another opportunity to explain her position by providing a different means of contacting two clients in particular; one being Thanaporn Thanyapant and the other Faasao Maa. It appears that the Registrar attempted to contact both Thanyapant and Maa, but was unable to. The very, very narrow point of appeal here appears to be that the Registrar should have tried harder, rather than just accepting an inability to speak to those people.

[6] The decision of the Registrar is before me and I have read it from cover to cover. I have also carefully read the letter dated 26 November 2010 from the Registrar to the appellant notifying the declinature of her application. In essence, the declinature was based on the fact that the Registrar did not view the appellant as conducting herself professionally at all times. He considered, because of issues outlined in both his letter and the decision, that her behaviour did not demonstrate professional and ethical behaviour. He summarised her conduct in the following way (page 5):

> "The documents have been intentionally altered from what was originally lodged with INZ. You misled the Authority into believing that you were the advisor for the clients by submitting altered documentation. You misled the Authority into believing that the documentation provided were true copies of the original. You have provided false and misleading information to the Authority. Concerns therefore remain regarding your ability to demonstrate understanding and commitment to the code of conduct. You have not demonstrated professional, ethical and socially responsible behaviour and practiced as per performance indicator 6.1. You have not been able to satisfy me that you meet competency 6".

The History of the Application

[7] The appellant lodged an application form for a full Immigration Advisers licence together with supporting documentation. The Registrar outlined his concerns regarding that information and gave the appellant the opportunity to provide any further comments or information. The appellant provided a letter of response. After he had considered her letter of response he was still not satisfied that she had met competency 6.1, thus refused her licence application.

[8] Pursuant to s 10 of the Act the Registrar was required to determine the appellant's competence to be licensed and, in doing so, had to consider minimum standards of competence set under s 36 of the Act. Competency 6.1 requires an applicant to demonstrate professional, ethical and socially responsible behaviour and practice. She, as with all other applicants, was required to submit four client files completed by her in support of her application for a full Immigration Advisers licence. The application booklet clearly states that those files must be completed by the applicant and must be based on Immigration applications tendered by the applicant to Immigration New Zealand. A client file evidence checklist is additional

to the application booklet. It requires the applicant to confirm that the client files contain the signed application form tendered to Immigration New Zealand. The appellant ticked the relevant box on this checklist confirming that the files that she provided to the Registrar included the signed application form that was tendered to Immigration New Zealand. She was also required to sign a statutory declaration stating:

(a) Clause 1: "The information I have provided in this application booklet, its attachments and accompanying supporting documents, is complete, correct and up to date in every detail to the best of my knowledge".

(b) Clause 6: "I understand that it is an offence under the Immigration Advisers Licensing Act 2007 to supply false or misleading information with this application; and I believe the statements in this declaration are true in every particular".

[9] The difficulty with those declarations and the material that the appellant provided to the Registrar was that parts of the documents that she submitted did not accord with the original documents filed with Immigration New Zealand; there were clear discrepancies. It appears that what had occurred was that the final page of files submitted to Immigration had been removed by the appellant before she sent copies through to the Registrar and she had substituted them with a different back page. Thus, what she had provided to the Registrar in support of her application for licence was not a true copy of the original file with Immigration New Zealand, and she did not disclose this until she was questioned by the Registrar. The Registrar, quite obviously, took the view that the appellant was attempting to mislead him into thinking that she was the sole Immigration advisor responsible for those four client files. Certainly, he raised his concerns with her and asked for an explanation and gave her the opportunity to explain but clearly, from his decision and his letter of declinature, she did not satisfy him. She did not disclose to him, until questioned about it, that anyone else had assisted her with the client files she had submitted to the Registrar or that they were done collaboratively with her colleagues.

[10] I can understand that she feels that it was unfair that the Registrar did not attempt more than once to contact Thanyapant and Maa when, presumably, further communication with her could have elicited a successful way of achieving contact with those two former clients. However, I have to agree with Ms Denmead that, in the scheme of things, talking to those two clients would not actually have overcome the serious doubts that the Registrar obviously had in his mind about the honesty and integrity of the appellant as a result of the provision of false paperwork to the Registrar. That appears to be the major reason that he considered that she had not met competency 6.1.

Decision

[11] There has been no evidence provided for the appellant in this case. I have reviewed the evidence which the Registrar had before him when he determined the application of the appellant. He appears to have done so with due regard to the purpose and scheme of the Immigration Advisers Licensing Act 2007, it being to promote and protect the interests of consumers receiving immigration advice and to enhance the reputation of New Zealand as a migrant destination. He was of the view that the appellant did not meet competency 6 and, therefore, minimum standards of competence. I consider that he was perfectly right in that assessment. There was nothing before him which should have made him believe otherwise and I do not consider that it was his obligation to make more attempts than he did to contact the two clients whose names had been mentioned in this decision. Although, if I am wrong in that and it was in fact his obligation to do so, I fail to see that that would have achieved any different outcome, inasmuch as his only line of investigation with those people would surely have been to confirm the contents of their statutory declarations, particularly in respect to Thanyapant, as to how that person tended to sign their name differently on different occasions and also perhaps to assure the Registrar that those clients had in fact had the appellant acting for them, whether in concert with other Immigration advisors or not.

[12] That was not the real issue. The real issue, of course, was why the appellant made statutory declarations, which she then gave to the Registrar, as to the correctness of the information that she provided in her application booklet, its

attachments and accompanying supporting documents, and also acknowledging that it is an offence under the Immigration Advisers Licensing Act to supply false or misleading information with the application. Clearly, those statutory declarations that she made were false. Regardless of whether she was later able to explain what in fact had happened with respect to the clients' actual applications to Immigration and why there was a difference between those applications and what she tendered to the Registrar, she was, and remains, unable to overcome those false declarations. Of themselves, even with or without an opportunity to explain, it is my view that the Registrar could not possibly have found that the appellant had achieved a minimum level of competency. Competency 6 was to conduct business professionally, ethically and responsibly. On the face of it, she did not appear to do that and I consider that the Registrar was correct to decline her application.

[13] There is nothing that I would have done differently with this evidence had I been in the Registrar's shoes and, therefore, I cannot possibly grant this appeal. I uphold the Registrar's decision. The appeal is dismissed.

M-E Sharp
District Court Judge