IN THE DISTRICT COURT
AT CHRISTCHURCH

CIV-2015-009-000787
[2016] NZDC 2227

BETWEEN	MOHAMMED SHAHADAT Appellant
AND	REGISTRAR OF IMMIGRATION ADVISERS Respondent

Hearing: 21 October 2015

Appearances: J N Williamson for the Appellant
A McIlroy for the Respondent

Judgment:

RESERVED JUDGMENT OF JUDGE R E NEAVE

Introduction

[1] The appellant has applied to the Registrar of Immigration Advisers for a licence to operate as an immigration adviser under the Immigration Advisers Licensing Act 2007 ("the Act").

[2] On 2 April 2015 the Registrar declined the application on the grounds that she was not satisfied that the appellant was a fit and appropriate person to hold an Immigration Advisers Licence. This decision was based in significant measure on the applicant having :

1. Previously been struck off the Roll of Barristers and Solicitors, for Disciplinary proceedings under the Law Practitioners Act 1982; and

2. That the appellant had subsequently been adjudicated bankrupt and that notwithstanding his discharge from bankruptcy, the circumstances

of that bankruptcy indicated that he was not a fit and appropriate person.

Mr Shahadat's history

[3] The appellant's difficulties date back as far as 2004. The background is essentially summarised in the charges laid against him in 2007 by the Westland District Law Society. Those charges were :

1. During February and March 2004, while acting as solicitor and attorney for his elderly client M, he abused the trust of Mr M by facilitating the sale of his property to a friend or associate, Maurice Arthur Austin, at a price substantially less than the price reasonably attainable on the market, to the detriment of his client and for the financial benefit of Mr Austin, and was thereby guilty of misconduct in his professional capacity.

2. During February and March 2004, while acting as Mr M's solicitor and attorney in relation to the sale of Mr M's home:

   (a) He failed to adopt or follow a proper and responsible process for the sale of the home;

   (b) He failed to consult with Mr M or Mr M's immediately relatives; and

   (c) He sold Mr M's property in circumstances detrimental to Mr M, and was thereby guilty of misconduct in his professional capacity.

3. On or about 17 February 2004, when he was presented with a superior offer for the purchase of Mr M's home, he failed to identify a serious conflict of interest between himself and Mr M and instead continued to act for Mr M in breach of Rule 1.03 of the *Rules of Professional Conduct for Barristers and Solicitors,* and was thereby guilty of misconduct in his professional capacity.

4. In combination with a fellow practitioner, Maurice Arthur Austin, he contrived an arrangement for the end-purchaser of Mr M's property, P, to be represented in that transaction by Mr Austin, and thereby fostered a conflict of interest to the detriment of Ms P and was guilty of misconduct in his professional capacity.

5. In the same circumstances, he acted for Ms P and Mr M in a conflict of interest situation, without the consent of either party, in breach of Rule 1.04, and was thereby guilty of misconduct in his professional capacity.

[4] The defendant was found guilty in the end of charges 1, 3, 4 and 5. His associate, Mr Austin, was charged with three charges in the following terms :

> 1. During February and March 2004 he participated in an arrangement with a fellow practitioner, Mohammed Shahadat, in which he purchased the property of Mr Shahadat's elderly client in circumstances financially advantageous to him when he knew or should have known that Mr Shahadat was subverting his client's interests in selling the property to him, and was thereby guilty of conduct unbecoming a solicitor.
>
> 2. In March 2004 he acted for the purchaser of the same property, [P], when he was the vendor personally, when he knew or should have known that there was a serious conflict of interest between him and [P], in breach of Rules 1.03 and 1.04 of the *Rules of Professional Conduct,* and was thereby guilty of misconduct in his professional capacity.
>
> 3. In combination with a fellow practitioner, Mohammed Shahadat, he contrived an arrangement for [P] to be represented in that transaction in circumstances which he knew or should have known would result in [P] being deprived of proper and effective legal representation and advice, and was thereby guilty of misconduct in his professional capacity."

[5] He admitted charge 2, and was found guilty of charges 1 and 3.

[6] In 2009, the appellant and Mr Austin appealed against the decision of the Tribunal to the High Court, and on 3 August a Full Court dismissed the appeal against the findings of misconduct and the penalty imposed.

[7] Subsequently, the appellant appears to have become embroiled in High Court proceedings not connected with the disciplinary matters, which resulted in an award of costs against him. It was his inability to meet the costs award which lead to his bankruptcy. In part, the inability to meet the costs award was because of the financial position in which he found himself after he had been barred from practising.

[8] In April 2014, the appellant successfully applied to the High Court to be discharged from his bankruptcy. Associate Judge Mathews determined that this was an appropriate case for termination of the appellant's bankruptcy.[1] The discharge was sought for what was described as a sound reason, namely his rehabilitation into the workforce, and the appellant's co-operation with the Official Assignee throughout the bankruptcy period was noted. Such assets as were available had been realised. The Judge also noted that the matters which ultimately lead to the appellant's financial collapse were in the past, and there was no ability to return to his practice as a lawyer where the difficulties appear to have commenced. As against that, the obligations and duties that will be imposed upon the appellant as an Immigration Adviser have distinct similarities to the obligations placed on a law professional.

[9] In 2010, the appellant's co-offender in the disciplinary proceedings, who had unsuccessfully applied for an Immigration Advisers Licence in 2009, appealed to the District Court against that refusal. Judge Sharp dismissed the appeal and concluded :

> That may not always be the case however and I repeat that in the future, once he has behaved in a way which could be considered to show rehabilitation, that he may be capable of being reconsidered for admission to such a licence, all things being equal.[2]

[10] Mr Austin clearly took heart from those comments and did re-apply and was granted a licence as an Immigration Adviser. The date of that grant is unclear.

[11] It should be noted that Mr Shahadat has been working as an Immigration Adviser quite appropriately, and there is no challenge to his competence in the field nor any suggestion he has in any way misconducted himself in work of this nature.

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[1] Shahadat v Official Assignee, HC Christchurch CIV-2014-409-000085, 9 April 2014
[2] Austin v Registrar of Immigration Advisers DC Auckland CIV-2009-004-001116, 15 April 2010 para [43]

The Registrar's decision

[12] There were clearly two factors which influenced the Registrar's decision. The first was the disciplinary proceedings which required determination under s 17(b) of the Act and Mr Shahadat's bankruptcy, which is required by s 16(c). While the analysis is lengthy I think it is appropriate to set it out in full.

> **My Assessment of your fitness**
>
> I am required to consider your present fitness to provide immigration advice. I must be satisfied that your bankruptcy is unlikely to adversely affect your fitness to provide immigration advice and in determining your fitness, I may also take into account the disciplinary proceedings taken against you.
>
> As a solicitor you had a fiduciary duty to act in your clients' best interests. Notwithstanding your obligations, you instead acted in your own self-interest and in the interest of your friend, to the detriment of your vulnerable client. I consider that the core roles of a licensed immigration adviser are similar to that of a barrister and solicitor and therefore place considerable weight on your past misconduct while practising as a lawyer.
>
> Licensed immigration advisers are also held to high standards which are codified in the Licensed Immigration Advisers Code of Conduct. A licensed immigration adviser must maintain a relationship of confidence and trust with the client and provide objective advice. They must also obtain and carry out the informed lawful instructions of the client. Your misconduct seriously breached the trust of your client while acting for them on a significant matter and you failed to obtain your client's informed instructions.
>
> Further, I place weight on your admission that you were the instigator: *"I fully accept that I drew my fellow practitioner into this scheme, and hence he suffered irreparable damage to his reputation. Like me, he was also struck off the roll of barristers and solicitors of the High Court."*
>
> Approximately four years after this misconduct you were adjudicated bankrupt. Bankruptcy by itself is a significant fitness issue. This is supported by the complete prohibition in section 15(1)(a) of the Act where an undischarged bankrupt is entirely prohibited from holding any type of licence regardless of whether they are an employed adviser or practising on their own account.
>
> You have stated that you have been in a position of responsibility by virtue of acting as a trustee for two separate family trusts. While I acknowledge this shows you have held some responsibility I am not convinced that this shows your bankruptcy is unlikely to adversely affect your fitness to provide immigration advice.
>
> I note that handling vulnerable clients' finances is also a crucial part of being a licensed immigration adviser. Licensed immigration advisers are required

to manage client funds, including, for example, managing a client account for fees taken in advance. Your past bankruptcy from which you were only recently discharged suggests that you have experienced difficulty managing financial matters.

In my view your bankruptcy is aggravated by the fact it was partly the result of your misconduct in a profession very similar to the one you now apply to enter. You have submitted that your bankruptcy was the result of a set of circumstances that will not occur again, however other thank your assurance, you have not provided any information that directly addresses that your bankruptcy is unlikely to adversely affect your fitness to provide immigration advice.

I take into account that approximately ten years have passed since your misconduct, and five and a half years have passed since your appeal against your striking off was dismissed. I consider that the time during which you logically could have begun to accept the true severity of your misconduct began after your appeal was dismissed, as appealing your penalty suggests to me that you had not accepted the true severity of your conduct prior to that.

You were adjudicated bankrupt on 20 August 2012. I consider that this matter is recent.

While there has been some time for you to reflect on your conduct and subsequent recent bankruptcy, the mere passage of time is not sufficient to satisfy me of your fitness to provide immigration advice. It is my view that in this case, the seriousness of the misconduct and the recency of your bankruptcy are of more weight than the mere passage of time.

In support of your application you have provided an affidavit and several references. Your affidavit directly acknowledges your wrongdoing, and the references provided allude to, or directly point out, that you have acknowledged your misconduct. None of the references refer to your bankruptcy.

I have considered whether your references assist to satisfy me of your fitness to provide immigration advice. I have considered whether they demonstrate that you have learnt from your past misconduct and put measures in place to prevent risk to any future clients. I have considered how your references inform me of your character prior to the misconduct and changes you have made since.

I acknowledge that your referees think highly of you and I accept that people close to you believe that you have rehabilitated following your misconduct. However in light of the severity of your disciplinary matter and your subsequent bankruptcy I am not persuaded that they are sufficient to satisfy me of your present fitness to provide immigration advice.

In discharging you from bankruptcy nearly a year ago, Justice Matthews appears to have taken solace in the fact that you had no ability to return to your legal practice. I take into account that that Justice Matthews' concerns remained even 9 years after the conduct occurred, and were expressed only 12 months ago.

I accept that you have met the costs and expenses ordered by the Tribunal and that you have paid the Official Assignee for costs and administration charges relating to your discharge from bankruptcy.

Taking into account all submissions, including references, the passage of time and your positions of responsibility, I am not satisfied the information you have provided in support of your application together satisfies me of your current fitness to carry out duties and obligations of a licensed immigration adviser.

I consider that your misconduct involved placing self-interest and self-preservation before your clients' interest to perverse a financial advantage. This as a whole portrays you as someone who should not be managing client funds or responsible for a relationship of confidence and trust with a client. The purpose of the Act is to promote and protect the interests of consumers receiving immigration advice; the handling of vulnerable clients' finances and significant personal decisions relating to immigration matters is a crucial part of being a licensed immigration adviser. Taking into account the disciplinary proceedings and your bankruptcy, I cannot be satisfied of your fitness to provide immigration advice.

Conclusion

In making my decision I have considered all of the information you have provided in support of your application.

The purpose of the Act is to promote and protect the interests of consumers receiving immigration advice. I have concerns about your fitness to enter a profession where you would once again be in a position of trust and required to deal with vulnerable clients and finances.

I accept that your misconduct occurred some time ago and I acknowledge that the references demonstrate that you have gained the trust of the people in your life.

However, the gravity of your misconduct was serious, and your bankruptcy raises concerns over your ability to manage your finances and to hold funds on behalf of your clients. I cannot be satisfied that the information you have provided displaces the prohibition that your bankruptcy otherwise creates.

A licensed adviser is required to act in their client's best interests. Your past conduct demonstrates that you were willing to act in your own self-interest and in the interest of your friend, and to breach the trust of your client.

Following consideration of the matters in both sections 16 and 17 of the Act, I am not satisfied that you are a fit and appropriate person to hold an immigration advisers licence. Accordingly, I must refuse your application for a full immigration adviser licence.

[13] The considerations referred to by the Registrar were all quite proper and nothing in this judgment should be taken to indicate that the Registrar has taken into account improper matters. Rather, the question involves an assessment of the weight

to be attached to these matters and the balance between past conduct and the present circumstances of the applicant.

The statutory regime

[14] As set out in s 3, the purpose of the Immigration Advisers Licensing Act 2007 (the Act) is to promote and protect the interest 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.

[15] In *Nagra v Registrar of Immigration Advisers* HC Auckland CIV-2010-404-4045, 11 March 2011, Peters J outlined that "the legislation was a response to the unscrupulous manner in which some advisers had dealt with consumers, often in a vulnerable position, requiring immigration advice." In *ZE v Immigration Advisers Authority* [2012] NZHC 1069 at [41], Priestly J observed "[i]n passing the Act, Parliament has clearly intended to provide a system of competency standards, and a Conduct Code to clean up an industry which hitherto had been subject to much justified criticism."

[16] Section 6 of the Act prohibits persons from providing immigration advice unless they are licensed under the Act to provide that advice or exempt under s 11 from the requirement to be licensed. The Appellant is not exempt. He therefore requires a licence in order to be able to provide immigration advice.

[17] Section 10 sets out who may be licensed as an immigration adviser:

> **10 Who may be licensed as immigration adviser**
>
> A person may be licensed as an immigration adviser only if—
>
> (a) the person is a natural person who applies for a licence under section 18; and
>
> (b) the Registrar is satisfied that the person meets the competency standards set under section 36; and
>
> (c) the person is not prohibited from holding a licence under section 15, and, in the case of a person to whom section 16 or 17 applies, is determined by the Registrar to be a fit and appropriate person to hold a licence; and

(d) the person is not a category 2 exemptee or a lawyer.

[18] Section 16 provides that certain persons must not be licensed unless the Registrar is satisfied that the nature of the relevant offence or matter is unlikely to adversely affect the person's fitness to provide immigration advice. The Appellant is a person to whom s 16 applied because he has been an undischarged bankrupt in the past.

[19] Section 15 sets out that certain persons are prohibited from licensing, and s 19 of the Act states that the respondent must grant a licence if satisfied that an applicant is fit to be licensed having regard to the matters in ss 16 and 17 of the Act. The relevant matters for the purpose of this appeal are set out in ss 16(c) and 17(b) of the Act.

[20] Section 16(c) states that a person should not be licensed unless the Registrar is satisfied that the nature of a previous bankruptcy will be unlikely to adversely affect the person's fitness to provide immigration advice.

[21] Section 17(b) states that when the respondent is determining a person's fitness to be licensed the respondent may take into account any disciplinary proceedings taken against the person.

[22] In this appeal, I am required to consider afresh the Appellant's fitness to provide immigration advice. This requires that I consider the factors that have been raised in the appeal and make a judgment of fact and degree in applying ss 16 and 17 of the Act. In determining this appeal I may confirm, vary or reverse the Respondent's decision (s 84). I may also remit the whole or any part of the matter back to the Respondent for further consideration and determination pursuant to DC Rule 561(2).

Grounds of appeal

[23] The Appellant bases his appeal on the following grounds:

(a) The Registrar erred in fact and in law by placing undue weight on the Appellant's alleged admission that he was the instigator of an

incident which led to him and another solicitor being struck off the roll of Barristers and Solicitors.

(b) The Registrar erred in law by failing to take into account that the New Zealand Law Practitioners Disciplinary Tribunal (the Tribunal) found the Appellant and his fellow practitioner Maurice Austin to be equally culpable.

(c) The Registrar erred in fact and in law by finding that the Appellant could not have begun to accept the true severity of his misconduct until after his appeal against the penalty imposed by the Tribunal was dismissed.

(d) The Registrar erred in fact and in law by finding that the Appellant's bankruptcy was "aggravated by the fact it was partly the result of [his] misconduct in a profession very similar to the one [he was applying] to enter".

(e) The Registrar erred in fact and in law by taking into account comments made by Associate Judge Matthews in his judgment of 9 April 2014 regarding the fact that the Appellant had no ability to return to his legal practice but failing to take into account that the Appellant applied for a discharge from his bankruptcy for the express purpose of training to be an immigration adviser and His Honour Judge Matthews granted the discharge and made no adverse comment regarding this expressed intention of the Appellant.

(f) The Registrar erred in law by failing to process the application by the Appellant in a manner that was consistent with the Registrar's processing of the application of Maurice Henry Austin.

Submissions for the appellant

[24] Mr Williamson on behalf of the appellant submits :

(a) That the Registrar has overstated the culpability of the appellant in the original disciplinary proceedings;

(b) There was an error in determining that the appellant's appeal against penalty somehow indicated a failure to appreciate the severity of this conduct, and that time for the rehabilitation of his character could only run from the dismissal of the appeal to the High Court. It should be noted that Mr Austin appealed at the same time and in the same proceeding, and was granted a licence at a much earlier stage, when a shorter period of time had elapsed. Mr Williamson notes that the appellant had in fact only appealed against penalty, and not against the culpability findings, and there was no ground for submitting that the appellant in some way failed to appreciate the seriousness of his conduct.

(c) Mr Williamson further submits that the respondent appeared to have placed too much weight on the fact of the bankruptcy, or that at least the Registrar had only taken into account a small part of the Associate Judge's decision, rather than the whole of the remarks.

(d) Finally, Mr Williamson submits, in what I think is probably the strongest argument, that there is an unhealthy conflict between the decisions in relation to Mr Austin and the decision in relation to Mr Shahadat. Given the joint nature of their culpability and the lack of any other significantly distinguishing feature (other than the bankruptcy) that it is inconsistent of the Registrar to allow Mr Austin to practice as an Immigration Adviser but not Mr Shahadat. Further, if there is the need for any distinction, the fact that a longer period of time has elapsed between these matters

and Mr Shahadat's application than that which preceded the granting of Mr Austin's and thus any further distinction between them would be unreasonable and improper.

[25] Mr Williamson submits that to maintain such a distinction is an unacceptable inconsistency in approach on the part of the Registrar.

Submissions for the Respondent

[26] For the respondent it is submitted that it was reasonable for the Registrar to make an assessment of the appellant's level of culpability in the disciplinary proceeding and to draw a distinction between Mr Shahadat and Mr Austin. Further, it was submitted that whilst the Disciplinary Tribunal took an approach which considered there was essentially no difference between the two, it was noted there were some matters which distinguished one practitioner from the other, and that the Registrar was not bound to take the same view as the Disciplinary Tribunal.

[27] In particular, it was submitted there was a distinction to be drawn between Messrs Shahadat and Austin:

> 22. The respondent submits that, in terms of s 17, the appellant's conduct is at a higher level of involvement than Mr Austin's conduct, due to the following factors:
>
> (a) the appellant faced a higher number of charges;
>
> (b) the Disciplinary Tribunal noted that Mr Austin "did not act in a professional capacity as purchaser and vendor in the simultaneous sale of the property" and this is why his participation in the arrangement was limited to conduct unbecoming of a solicitor;
>
> (c) the Disciplinary Tribunal found that Mr Austin was in a state of confusion and labouring under a disability brought about by deteriorating mental health, stress, anxiety and deep seated personal issues. The appellant was not suffering from these issues;
>
> (d) the Disciplinary Tribunal stated that the appellant's referral of Ms P was not genuine and that the appellant effectively acted for Ms P. Mr Austin did not have any direct involvement in this arrangement and did not act for Ms P in any capacity;

(e) the Disciplinary Tribunal stated that the appellant was the lawyer that substantively acted for both vulnerable clients;

(f) Mr Austin's role, in relation to Ms P, was described by the Disciplinary Tribunal as being "merely functional and transactional";

(g) Mr Austin's conduct, was described by the Disciplinary Tribunal, as more of a failure to make inquiries of the appellant and remaining silent; and

(h) The appellant swore an affidavit confirming that he drew Mr Austin into the scheme and caused irreparable harm to Mr Austin's reputation.

Discussion

[28] To the extent that the respondent appears to have drawn a distinction between the conduct of Mr Austin and the appellant in relation to the transactions which lead to the striking off, I think Mr Williamson was on reasonably strong ground in submitting that there is no real distinction to be drawn between the two of them. The Disciplinary Tribunal drew no distinction between the two defendants, and the High Court accepted the Tribunal's assessment of the practitioner's conduct. The Tribunal further accepted that the penalty to be imposed on each of the practitioners was the same. Equally, it is not correct to submit that Mr Austin was only found guilty of conduct unbecoming a solicitor. It is true that while one of his charges was framed in those terms, other charges involved findings of misconduct. Given the decisions of the Tribunal and the High Court a detailed analysis of the particular charges, in terms of their number and precise wording, is not helpful.

[29] These bodies clearly viewed the whole transaction as one enterprise with each practitioner being equally culpable notwithstanding the differences in their precise roles. I think it appropriate to note that the conduct in question involved a significant departure from the standards of conduct required of solicitors. That conduct required strong condemnation and was met with the ultimate penalty, namely striking off.

[30] That being said it is clear that such a fall from grace need not be permanent. With appropriate time and steps rehabilitation is clearly possible. An example of a more spectacular fall resulting in an eventual return to the roll of barristers and

solicitors can be found in *Leary v NZ Law Practitioners Disciplinary Tribunal* CIV-2006-404-277, High Court Auckland, 21 August 2007 (Williams, Venning and Andrews JJ).

[31] It is clear the Registrar formed the view that Mr Austin had ultimately done enough or sufficient time had passed to permit his licensing application to be approved, and that he had "behaved in a way which could be considered to show rehabilitation" to quote Judge Sharp.[3] The question is whether it is appropriate for the Registrar to take a different view in respect of Mr Shahadat.

[32] The Tribunal accepted that while Mr Austin was undergoing a period of therapy and counselling due to mental illness and depression, equally it was accepted that the appellant in this case was under significant work and time pressure derived from the structure and demands of his practice, and from his public service on the District Health Board. The key finding of the Tribunal was at paragraph 12 :

> "We do intend to treat the practitioners as equally culpable. Just as we saw the matter is involving one transaction each of its component parts could not have been completed without the knowing, complicity and deception of both practitioners. Their joint ends were to enable the purchase of a property on favourable terms by Mr Austin, and by achievement at that end, the collection of a windfall gain by Mr Austin."

[33] It should be noted that the ultimate beneficiary of the transaction was to be Mr Austin and not Mr Shahadat.

[34] I can see no reason to distinguish between the appellant and Mr Austin in terms of culpability in relation to the Disciplinary Tribunal. It is probably also worth recalling the comments of the Tribunal at para [43]:

> [43] In this case there was no suggestion of conduct by either practitioner which amounts to intentional wrong doing in the sense of unlawfulness. Nor is there a foundation in the evidence to support a contention of dishonesty in the sense of a deliberate falsehood. Applying the range of conduct contemplated by *APC* as amounting to professional misconduct our review of the evidence requires us to look beyond mere negligence to find serious negligence. Imported into the term serious negligence, which we take to be a grave failing or a serious breach of professional duty, is the implicit notion of indifference to the needs and plight of the client. This is more so if

[3] See note 2.

> the client evidences a degree of vulnerability and dependence on the professional standing of their law practitioner. For indifference to amount to serious negligence, and thereby considered professional misconduct, it should at least be proven as knowing rather than inadvertent. The privilege of practice requires a law practitioner to be vigilant and scrupulous in the discharge of the privileges of legal practice and to recognise circumstances of knowing indifference and take steps to correct the potential prejudice to the interest of the client and the public.

[35] While that conduct cannot be condemned in strong enough terms, as is noted both by the Tribunal and the High Court, once it is accepted that Mr Austin has been sufficiently rehabilitated to permit registration, it is difficult to distinguish him from Mr Shahadat.

[36] The only issue that distinguishes between the two practitioners is Mr Shahadat's bankruptcy.

[37] On the facts of the bankruptcy, which are not disputed, I cannot see that anything arises out of that which reflects on Mr Shahadat's fitness to hold the appropriate licence. There were two principal reasons for the bankruptcy. The first being the costs and expenses incurred as a result of the disciplinary proceedings. It is important I think not to double punish in this regard. Mr Shahadat then became involved in something of a "perfect storm" when he was subsequently ordered to pay costs in a defamation proceeding. He was one of two defendants and it was subsequently, on the application of the other defendant, held that there had been no defamation. It seems this in effect came too late to solve Mr Shahadat's financial difficulties, and it seems that he was effectively forced into bankruptcy as a result of a debt for which ultimately he was not responsible.

[38] This is not a case of a person who is running up accounts that he simply cannot pay in a way which demonstrates irresponsibility or recklessness. Such a person would undoubtedly be someone whom the Registrar would be rightly suspicious given the fiduciary element of an Immigration Adviser's role. Associate Judge Matthews in his decision discharging the appellant from bankruptcy noted that it was an appropriate case for termination of the bankruptcy. The discharge was for a sound reason namely his rehabilitation into the work force (i.e. working as an Immigration Adviser), that Mr Shahadat had co-operated with the

Official Assignee Associate throughout the bankruptcy period, and all available assets had been realised. While Mathews A J had concerns about the underlying reasons for the financial collapse, as the applicant did not have the ability to return to practice as a lawyer those difficulties were unlikely to be repeated. The Judge clearly anticipated the applicant working as an Immigration Adviser. I do not consider the circumstances of this bankruptcy have a material impact on Mr Shahadat's fitness.

[39] The Act does not give any clear guidance as to the considerations that are relevant in deciding whether someone is an appropriate person. It is clearly necessary to examine an applicant's history but as Peters J noted in *Nagra v Registrar of Immigration Advisers*[4] the Registrar is required to consider the applicant's present fitness to provide immigration advice (my emphasis). Reference must be made to the nature of past infractions as well as information relevant to the fitness to provide advice at the time the application is made.

[40] Given that Mr Austin's involvement in the transaction which lead to striking off was no longer considered a bar to his receiving a licence notwithstanding that he had earlier had an unsuccessful appeal before Judge Sharp, there can be no reason for distinguishing between Mr Shahadat and Mr Austin. Had the Registrar maintained a refusal for both the applicant and Mr Austin I doubt the decision could be the subject of complaint. However, to grant a license to one and not the other simply lacks a logical foundation when the full facts are examined.

[41] The only other reason advanced for distinguishing between the two of them is Mr Shahadat's bankruptcy which as I have outlined is much less significant than might appear on its face. Furthermore, he has been discharged from his bankruptcy and nothing in the information before me suggests that the circumstances in which he became bankrupt cast any doubt on his ability to practice as an adviser. The Registrar certainly does not indicate any such reasons in the decision. If the Registrar is inferring some degree of mismanagement of client funds there is no basis for such a conclusion. Nor is this a case where there is evidence of muddlement in the managing of his or clients' money. To the extent that bankruptcy

[4] CIV-2010-404-004045 11 March 2011, High Court Auckland, at para [5]

issues relate to the disciplinary proceedings, exactly the same comments can be made in respect of Mr Austin yet apparently they did not form a barrier to his being granted a licence.

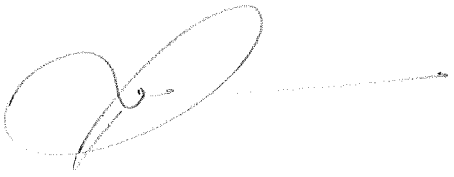
[42] While the Registrar makes reference to past misconduct there is no real consideration of the present position. Essentially the Registrar's decision says that insufficient time has passed to distance Mr Shahadat from his history and his bankruptcy. However, as the significance of the bankruptcy has been overstated and I can find no reason to distinguish between the appellant and Mr Austin I am satisfied that the Registrar has, in effect, misdirected herself. Even if there were grounds to distinguish between Messrs Shahadat and Austin the time that has elapsed since Mr Austin's approval more than satisfies the test.

[43] It may be possible to argue that Mr Austin was lucky to receive the licence in the first place, but having granted a licence to him, it seems to me that refusal of a licence to Mr Shahadat is such an obvious inconsistency to suggest that the Registrar has misapplied the discretion vested under the legislation.

[44] Under s 84 of the Act the District Court may confirm, vary or reverse the decision under appeal. Given the above conclusions I am satisfied that the decision of the Registrar should be reversed.

[45] For that reason I consider the appeal should be allowed and Mr Shahadat should be granted a license as an Immigration Adviser.

[46] If the applicant seeks costs a memorandum not exceeding two pages may be filed by each party.



R E Neave
District Court Judge

Signed this 18th day of February 2016 at 12.30 ~~am~~/pm