IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2013-485-007502
[2014] NZHC 1166

UNDER	Section 4 of the Judicature Amendment Act 1972
IN THE MATTER OF	Decisions by the Immigration Advisers Complaints and Disciplinary Tribunal dated 19 March 2013
BETWEEN	BAE LIAN LOH First Applicant
	SAMMI GU-CHANG Second Applicant
AND	IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL First Respondent
	IMMIGRATION ADVISERS AUTHORITY Second Respondent

Hearing:	21 May 2014
Counsel:	S L Laurent for Applicants First Respondent to abide the decision of the Court E J Child for Second Respondent
Judgment:	30 May 2014

JUDGMENT OF COLLINS J

Introduction

[1] Mr Loh and Ms Gu-Chang were licensed immigration advisers. They seek judicial review of decisions issued by the Immigration Advisers Complaints and Disciplinary Tribunal (the Tribunal), which hears complaints against immigration

advisers that are referred to it by the Immigration Advisers Authority (the Authority). The Tribunal issued two sets of decisions. Mr Loh and Ms Gu-Chang seek to judicially review only the first set of decisions issued by the Tribunal.

[2] In the first set of decisions, the Tribunal found Mr Loh and Ms Gu-Chang liable in relation to complaints that had been initiated by Mr Chen (the liability decisions). The Tribunal found Mr Loh and Ms Gu-Chang had acted dishonestly in charging the fees that Mr Chen paid them. In its liability decisions the Tribunal sought submissions on what sanctions it should impose.

[3] In the second set of decisions, the Tribunal imposed a number of sanctions on Mr Loh and Ms Gu-Chang, including cancelling their immigration advisers' licences (the sanctions decisions).

[4] Mr Loh and Ms Gu-Chang have filed notices of appeal in the District Court against the Tribunal's decisions. Rather than pursue their appeals at this stage, Mr Loh and Ms Gu-Chang have commenced this judicial review proceeding. In the meantime, their appeals to the District Court have been stayed by consent pending the outcome of the application for judicial review.

[5] The grounds of judicial review advanced by Mr Loh and Ms Gu-Chang are:

(1) The Tribunal acted ultra vires when it issued the liability decisions.

(2) The Tribunal erred in law when it found Mr Loh and Ms Gu-Chang had dishonestly charged Mr Chen excessive fees.

(3) The Tribunal erred in law when it determined the fees were excessive by referring to an hourly rate that the Tribunal said Mr Loh and Ms Gu-Chang must have charged.

(4) If the findings against Mr Loh are set aside, the findings against Ms Gu-Chang must also be set aside.

[6] I have decided that none of the grounds for judicial review have been established. My reasons can be distilled to the following three basic conclusions:

(1) The Tribunal did not act ultra vires when it issued its liability decisions.

(2) The Tribunal was entitled to conclude Mr Loh and Ms Gu-Chang acted dishonestly when they charged the fees Mr Chen paid them.

(3) The Tribunal did not err when it determined the fees charged by Mr Loh and Ms Gu-Chang were excessive.

[7] To assist in understanding why I have reached these conclusions, I shall explain:

(1) The relevant legislation.

(2) The background facts.

(3) The Tribunal's decision.

(4) Why the grounds for judicial review must be dismissed.

(5) My conclusion.

Relevant legislation

[8] The purposes of the Immigration Advisers Licensing Act 2007 (the Act) include the protection of those who receive immigration advice and services from immigration advisers.[1] In *ZW v Immigration Advisers Authority*, Priestley J summarised Parliament's goals in passing the Act when he said:[2]

> In 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.

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1 Immigration Advisers Licensing Act 2007, s 3.

2 *ZW v Immigration Advisers Authority* [2012] NZHC 1069 at [41].

[9] The Act establishes the Authority as an entity within the Ministry of Business, Innovation and Employment.[3]

[10] The Authority's functions include:[4]

> (a) … establish[ing] and maintain[ing] a register of licensed immigration advisers:
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> (b) … administer[ing] the licensing regime for immigration advisers:
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> (c) … develop[ing] and maintain[ing] competency standards and a code of conduct for immigration advisers:
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> …
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> (f) … investigat[ing] and tak[ing] enforcement action in relation to offences under this Act:
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> (g) … provid[ing] procedures for the lodging of complaints, including requiring immigration advisers to set up their own complaints processes:
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> …

[11] The Authority developed a Code of Conduct (the Code), which licensed immigration advisers are required to observe.[5] The Code included a provision that licensed immigration advisers must "set fees that are fair and reasonable in the circumstances".[6]

[12] Any person may make a complaint to the Authority concerning the provision of immigration advice by a licensed immigration adviser.[7] The grounds upon which a complaint may be made are:[8]

> (a) negligence:
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> (b) incompetence:
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> (c) incapacity:
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> (d) dishonest or misleading behaviour:

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3 Immigration Advisers Licensing Act 2007, s 34.
4 Section 35(1).
5 Immigration Advisers Licensing Act 2007, s 37.
6 Licensed Immigration Advisers Code of Conduct 2008, cl 8(a).
7 Immigration Advisers Licensing Act 2007, s 44(1).
8 Section 44(2).

(e) a breach of the code of conduct.

[13] The Authority may reject a complaint if it does not disclose one of the five grounds of complaint set out in s 44(2) of the Act. The Authority may also reject a complaint on the grounds that it does not comply with the procedural requirements set out in s 44(3) of the Act, is trivial or inconsequential or could be best settled by using the immigration advisers own complaints procedure.[9]

[14] The Authority must notify the immigration adviser of the complaint and give both the complainant and the immigration adviser a reasonable opportunity to make a statement or explanation about it.[10] The Authority may also gather further information about the complaint.[11]

[15] If the complaint is not rejected the Authority must refer it to the Tribunal for determination.[12] It is the Authority that prepares the complaint and files it with the Tribunal.[13]

[16] The Tribunal is required to hear matters "on the papers", but it may, "if it thinks fit in its absolute discretion", request further information from any person or request that a person appear before it to make a statement or explanation.[14] In all other respects the Tribunal is expressly empowered to regulate its procedures as it thinks fit.[15]

[17] After hearing a complaint the Tribunal may:[16]

(1) decide to dismiss the complaint; or

(2) uphold the complaint but determine to take no further action; or

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9 Section 45(1).
10 Section 47(2)
11 Section 47(1).
12 Immigration Advisers Licensing Act 2007, s 45(2).
13 Sections 45(4) and 48.
14 Section 49(3) and (4).
15 Section 49(1).
16 Section 50.

(3) uphold the complaint and impose on the immigration adviser one or more of the sanctions set out in s 51 of the Act.

[18] The sanctions which the Tribunal may impose under s 51 of the Act are:

(a) caution or censure:

(b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:

(c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:

(d) cancellation of licence:

(e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:

(f) an order for the payment of a penalty not exceeding $10,000:

(g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:

(h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:

(i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[19] Subsections (2) and (3) of s 51 are central to this case. They provide:

(2) The Tribunal must notify its decision to the complainant (if any) and the person complained about in writing, giving reasons for the decision.

(3) A person subject to a sanction under this section has the right to appeal, under section 81, the Tribunal's decision to impose the sanction.

[20] Section 81(1)(c) and (d) of the Act provides for a right of appeal to the District Court against a decision of the Tribunal to cancel or suspend the licence or any other sanction imposed on an immigration adviser by the Tribunal. The Act also

provides for a right of appeal to the High Court from District Court decisions, but any appeals to the High Court are confined to questions of law.[17]

Background facts

[21] Mr Loh became a licensed immigration adviser on 27 February 2009. Ms Gu-Chang became a licensed immigration adviser on 19 October 2010. They worked for an immigration consultancy firm called Advantage Global Consultants Ltd (AGCL).

[22] Mr Chen first contacted AGCL in December 2009. At that time, Mr Chen was in New Zealand unlawfully. By the time Mr Chen approached AGCL he had built up a considerable history of unsuccessful applications for visas with New Zealand Immigration authorities. Between 2000 and 2002 he had made three unsuccessful applications for a visa under his former name, Hao Shang. He changed his name to Zie Chen in 2002 and then successfully applied for a student visa under his new name. That visa was issued in 2003. In September 2007 Mr Chen unsuccessfully applied to have his student visa renewed. Mr Chen then made two unsuccessful applications under s 35A of the Immigration Act 1987 for permission to remain in New Zealand.

[23] Mr Chen's initial contact at AGCL was with Ms Gu-Chang. She introduced him to Mr Loh.

[24] Mr Chen entered into an agreement with AGCL for the provision of immigration services. That agreement is dated 16 December 2009. The services are described as applying for a s 35A work visa. The fee specified for that service was $22,800. Mr Chen also agreed to pay a further $8,800 to assist him to apply to renew his Chinese passport.

[25] Mr Loh wrote letters on Mr Chen's behalf to Immigration New Zealand on 10 March 2010 and 7 September 2010. The last of these letters requested a review of a decision to decline Mr Chen's application under s 35A of the Immigration Act

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[17] Section 85(1).

1987. The letters sent by Mr Loh added little to what had already been submitted to Immigration New Zealand prior to Mr Chen engaging the services of Mr Loh and Ms Gu-Chang. Immigration New Zealand rejected all of the requests made by Mr Loh on behalf of Mr Chen.

[26] On 25 November 2010 Ms Gu-Chang sent another letter to Immigration New Zealand on behalf of Mr Chen. That letter was a further application, this time under s 61 of the Immigration Act 2009 for permission for Mr Chen to remain in New Zealand. On 24 February 2011 this application was declined by Immigration New Zealand as it contained no new information. After this application failed Mr Loh advised Mr Chen that he had no option but to return to China and that any further applications would be futile.

[27] In addition, on 17 December 2009 Mr Chen paid Ms Gu-Chang $8,800 in cash to renew his Chinese passport. He was told by Mr Loh and Ms Gu-Chang he needed the services of an immigration adviser because if the Chinese Embassy knew he was in New Zealand without a permit the Embassy would tell New Zealand Police about Mr Chen and he would be arrested.

[28] By early 2011, Mr Chen had approached another licensed immigration adviser. After obtaining advice from that adviser Mr Chen complained to the Authority that Mr Loh and Ms Gu-Chang had overcharged him. By this time Mr Chen had paid Mr Loh and Ms Gu-Chang $29,600 of the $31,600 they had said they would charge him.

[29] The Authority received the complaint, gathered further information, notified Mr Loh and Ms Gu-Chang of the complaint and provided them with an opportunity to respond to it. The Authority also reviewed the complaint and determined it should be referred to the Tribunal. The Authority then filed the complaint with the Tribunal.

The Tribunal's decision

[30] After reviewing the material provided to it, the Tribunal issued two minutes on 17 September 2012. The minutes comprise a total of 220 paragraphs and explain in considerable detail the allegations against Mr Loh and Ms Gu-Chang and the

issues which they needed to address. I was informed minutes of this nature are regularly issued by the Tribunal in the absence of particularised allegations being lodged by the Authority with the Tribunal. In its minutes the Tribunal fully explained the allegations against Mr Loh and Ms Gu-Chang and invited the parties to provide further evidence and make submissions.

[31] Mr Loh and Ms Gu-Chang responded by filing evidence and submissions through their counsel, Mr Laurent. The Authority also provided further information.

[32] In its liability decisions issued on 19 March 2013, the Tribunal upheld the allegations of gross overcharging and found that the overcharging was done dishonestly. In summary, the Tribunal concluded that:

(1) None of the work was complex and would not require substantial investigation, analysis or challenges in presentation.

(2) The work was insignificant and of a poor quality.

(3) A reasonable amount of time for the work actually done would not have exceeded 18 hours, which meant that if Mr Loh and Ms Gu-Chang had done just 18 hours work their hourly rate was approximately $1,200.

(4) The excessive fee was so high that it justified a finding that Mr Loh and Ms Gu-Chang had acted dishonestly and exploited Mr Chen.

(5) The finding of dishonesty was also justified because:

- There was no evidence Mr Loh and Ms Gu-Chang had explained to Mr Chen that his prospects of success were low.

- Mr Loh and Ms Gu-Chang had been invited to justify their fees in the Tribunal's minutes but had failed to do so.

(6) Mr Loh and Ms Gu-Chang also dishonestly misrepresented that Mr Chen needed their assistance in relation to his application to renew his passport when they told him Chinese Embassy officials would refer him to the New Zealand Police if they became aware of his presence in New Zealand.

[33] The Tribunal found Mr Loh:

(1) Failed to engage with Mr Chen so as to obtain informed instructions.

(2) Dishonestly overcharged Mr Chen $22,800[18] in relation to the visa application.

(3) Dishonestly overcharged Mr Chen $8,800 in relation to the passport renewal application.

(4) Failed to account to Mr Chen for the funds paid by Mr Chen.

[34] The Tribunal found Ms Gu-Chang:

(1) Dishonestly represented that fees of $29,600 had been earned.

(2) Failed to account to Mr Chen for the funds that he had paid.

[35] In its sanctions decisions issued on 30 August 2013, the Tribunal ordered Mr Loh and Ms Gu-Chang each:

(1) Be censured.

(2) Be ordered to pay a penalty of $6,000.

(3) Be directed to refund fees of $29,600.[19]

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[18] This was an error by the Tribunal. Mr Chen paid $20,800 in relation to the visa application.

[19] Mr Loh and Ms Gu-Chang were found joint and severally liable.

(4) Be directed to pay Mr Chen $1,000 in compensation.

(5) Have their licences cancelled.

(6) Be prevented from reapplying for a licence for two years.

Why the grounds for judicial review must be dismissed

First ground of judicial review

[36] Mr Laurent submitted the Tribunal had:[20]

> acted ultra vires by issuing the [liability] decisions which set out its reasons for determining the complaint with no explicit statutory authority to do so, and against which there was no separate right of appeal. The Act conferred no such authority either expressly or by implication, and it was not the will of Parliament that it should do so.

[37] As an alternative argument, Mr Laurent submitted the Tribunal:[21]

> erred in law and was wrong to conclude that it had authority to issue the [liability] decisions separate to the decisions on sanctions when it did not have such authority.

[38] I will address why the first ground fails under the following headings:

(1) Limited rights of appeal; and

(2) Were the Tribunal's liability decisions ultra vires?

(1) Limited rights of appeal

[39] The first ground of judicial review is based upon the concern that the Act does not permit immigration advisers to appeal a Tribunal's finding that they are liable under the Act because of their negligence, incompetence, incapacity, dishonest or misleading behaviour, or other breaches of the Code of Conduct. The contention is that the Tribunal acted ultra vires by issuing the liability decisions as standalone decisions because there is no right of appeal from liability decisions.

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[20] Submissions of counsel for applicants at [2].
[21] At [3].

[40] It is clear the Act does not permit an immigration adviser to appeal any decision which is confined to a liability finding. The language of ss 51(3) and 81(1) of the Act plainly restrict rights of appeal to decisions "to impose sanctions".[22] The words of ss 51(3) and 81(1) of the Act are unambiguous. If Parliament had wanted immigration advisers to be able to appeal findings of liability it would have said so.

[41] My interpretation mirrors that which Priestley J adopted in *ZW v Immigration Advisers Authority*, where he said:[23]

> There is no right of general appeal.
>
> … Parliament is certainly entitled to adopt a more stringent approach to appeal rights from the Tribunal if it so chooses. I see no warrant to give s 81(1) an expansive interpretation beyond its clear words.

[42] The approach which Priestley J and I have taken to the Act's limited rights of appeal is reinforced by the relevant legislative material. The commentary to the Immigration Advisers Licensing Bill contains the following:[24]

> **Limited Rights of Appeal to Decisions on Sanctions**
>
> We recommend an amendment to clause 70(1)(d) *to confine the right to appeal decisions* under clause 43 (enabled by clause 70(1)(d)) *to decisions to impose sanctions*, excluding decisions to dismiss complaints.
>
> As drafted, clause 70(1)(d) provides for the right of appeal against, in addition to the decisions set out in clauses 70(1)(a) to (c) "any other decisions of a kind referred to in section 43". Under clause 43 the Tribunal has the power to either dismiss the complaint or impose sanctions.
>
> In addition, new clause 71(1)(e) refers to the right of appeal against any decision of the Tribunal to reject an appeal against cancellation of the licence by the Registrar.
>
> It is not intended that a person may appeal to the District Court against a decision of the Tribunal to dismiss a complaint which could lead to vexatious or frivolous complaints. We note that Judicial Review is a remedy that can be used by any person to challenge administrative decisions. (emphasis added)

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22 See [19]-[20] of this judgment.

23 *ZW v Immigration Advisers Authority*, above n 2, at [33]-[34].

24 Immigration Advisers Licensing Bill 2006 (270-2) (select committee report) at 15.

[43] Thus, the Select Committee consciously limited an immigration adviser's right of appeal to the sanctions imposed by the Tribunal and not the Tribunal's findings of liability.

(2) Were the Tribunal's liability decisions ultra vires?

[44] Mr Laurent submitted that the Act authorises the Tribunal to issue a decision on sanctions. From that position he advanced the argument that absent statutory authority, the Tribunal could not issue a separate decision on liability and therefore, because the Tribunal's decisions on liability were ultra vires, they should be quashed.

[45] In my view there are three fundamental flaws to this line of argument.

[46] First, s 49(1) of the Act expressly allows the Tribunal to regulate its process as it thinks fit. This enables the Tribunal to conduct its processes in any way, provided that it acts consistently with the Act and complies with the principles of natural justice. The power in s 49(1) of the Act provides a basis for the Tribunal to deliver a decision on liability before considering the appropriate sanctions and then issuing a second decision in relation to sanctions. This course of action is consistently followed by professional disciplinary bodies.[25]

[47] I do not think it is appropriate to infer that the existence of an obligation in s 51(2) on the Tribunal to give its decision about sanctions means the Tribunal cannot at any earlier time issue a reasoned decision on liability. Section 51(2) imposes a particular duty. It does not prevent the Tribunal delivering a separate reasoned decision as to why it finds an immigration adviser liable as long as the decision is based on reasons.

[48] In addition, I am not satisfied that the use of the singular noun "decision" in s 51(2) of the Act requires the Tribunal to issue only one decision in relation to a complaint. All that s 51(2) requires is that the Tribunal issue a decision in relation to

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[25] See for example, Health Practitioners Disciplinary Tribunal "The Tribunal Hearing Procedures" http://www.hpdt.org.nz (26 May 2014); New Zealand Lawyers and Conveyancers Disciplinary Tribunal "Hearing process" http://www.justice.govt.nz/tribunals/lawyers-and-conveyancers-disciplinary-tribunal/hearing-process (27 May 2014).

sanctions based on reasons. That requirement does not preclude the Tribunal from issuing a decision on liability.

[49] Second, the Tribunal's practice of issuing decisions on liability and then issuing separate decisions on sanctions is entirely reasonable and affords immigration advisers who have been found liable a full and fair opportunity to make submissions on what penalty or sanction should be imposed in light of the Tribunal's findings of liability.

[50] The Tribunal's two-step process is the antithesis of unfairness and is fully consistent with principles of natural justice.

[51] Third, even if the Tribunal were to issue one decision which encompassed both its reasons for finding an immigration adviser liable and the sanctions which it imposed upon the immigration adviser, the immigration adviser's rights of appeal would still be confined to the sanctions imposed by the Tribunal.

[52] I cannot accede to Mr Laurent's wistful plea in which he asked me to direct that Mr Loh and Ms Gu-Chang be permitted to appeal the Tribunal's liability decisions. It is not within my jurisdiction to override Parliament's clear intentions when it limited the rights of appeal of immigration advisers to the sanctions which the Tribunal imposes.

[53] I have therefore concluded the Tribunal did not act ultra vires when it delivered its decisions on liability.

Second ground of judicial review

[54] Mr Laurent submitted the Tribunal erred:

(1) when it concluded Mr Loh and Ms Gu-Chang had acted dishonestly solely on the basis of the fees they charged Mr Chen; or

(2) when it held Mr Loh and Ms Gu-Chang had acted dishonestly, when there was no evidence they had deceived Mr Chen or made misrepresentations about his prospects of success;

(3) when it compared the fees charged by Mr Loh and Ms Gu-Chang with typical fees for the work they did when there was no evidence of what a typical fee would be for the work they undertook.

[55] I will address this ground under two headings:

(1) The meaning of "dishonesty"; and

(2) The evidence of "dishonesty".

(1) The meaning of "dishonesty"

[56] Mr Child, counsel for the Authority, helpfully and accurately submitted that a finding of dishonesty is not dependent on "misrepresentation" or "proven deceptive conduct".

[57] In the present case, the term "dishonesty" is clearly not synonymous with "misleading" because the terms "dishonest" and "misleading behaviour" are separated in s 44(2)(d) of the Act by the disjunctive "or". The existence of the disjunctive "or" in s 44(2)(d) clearly means "dishonest" and "misleading behaviour" are not the same.

[58] This statutory divide between "dishonesty" and "misleading behaviour" is further supported by case law. In *Royal Brunei Airlines Sdn Bhd v Tan Kok Ming*, Lord Nicholls described acting dishonestly as being synonymous with "a lack of probity", and meaning simply "not acting as an honest person would do in the circumstances".[26] In *Three Rivers District Council v Governor and Company of the Bank of England (No 3)*, Lord Hutton described dishonesty as meaning "acting in bad faith".[27]

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[26] *Royal Brunei Airlines Sdn Bhd v Tan Kok Ming* [1995] 2 AC 378 (PC) at 389.
[27] *Three Rivers District Council v Bank of England (No 3)* [2000] 3 All ER 1 (HL) at 41.

[59] These descriptions of dishonesty are consistent with dictionary definitions of that concept which say dishonesty means, amongst other things "lacking in probity or integrity, untrustworthy …".[28]

(2) The evidence of "dishonesty"

[60] "Dishonesty" is usually inferred. The Court of Appeal acknowledged the need to draw an inference in finding dishonesty in *Amaltal Corporation Ltd v Maruha Corporation*. The Court of Appeal said:[29]

> … This is not a case in which there is what North Americans would call a "smoking gun" – that is, a single document which explicitly states: "we can rip X off, this way". Cases in which there is such hard evidence do not get to trial, for obvious reasons. A Court has to draw an inference.

[61] Excessive overcharging may, depending on the circumstances, by *itself* give rise to a finding of dishonesty. For example, in *Spencer v Spencer*,[30] a finding of dishonesty was inferred when trustees charged fees of $167,752 in circumstances where a reasonable fee for the work in question would have been $54,000. The Court of Appeal held that in the circumstances "the trustees could not be said to have acted reasonably or honestly".

[62] Thus, once the Tribunal concluded the fees were excessive, the natural and ordinary meaning of the term "dishonestly" enabled the Tribunal to reasonably infer that because of the magnitude of the fees Mr Loh and Ms Gu-Chang charged Mr Chen, they acted dishonestly. In these circumstances the Tribunal could have found that the excessive overcharging itself was enough to give rise to a finding of dishonesty.

[63] However, in this case the Tribunal did go further than suggested by Mr Laurent. The Tribunal's findings that Mr Loh and Ms Gu-Chang had acted dishonestly were not solely based on the level of fees they had charged. The Tribunal's findings were also based upon its concerns:

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28 Definition of "dishonesty" in The New Oxford English Dictionary, Lesley Brown (ed) Clarendon Press, Oxford 1993.

29 *Amaltal Corporation Ltd v Maruha Corporation* [2007] 1 NZLR 608 (CA) at [134].

30 *Spencer v Spencer* [2013] NZCA 449, [2014] 2 NZLR 190 (CA) at [144]-[145].

(1) That Mr Chen was not given an informed appreciation of how low his prospects of success were;

(2) The failure of Mr Loh and Ms Gu-Chang to explain or justify the fees that they had charged when the minutes issued by the Tribunal invited them to do so; and

(3) The gross misrepresentation that Mr Chen needed to engage the services of an immigration consultant to have his passport renewed.

[64] The Tribunal's findings that Mr Loh and Ms Gu-Chang had acted dishonestly were not based on a comparison with a "typical fee" for the type of work which they undertook. Instead, the Tribunal, being a specialist Tribunal, relied upon its understanding of the amount of work involved and compared the work involved with the fees actually charged by Mr Loh and Ms Gu-Chang. The Tribunal did note that there were published fee ranges for other types of work frequently undertaken by immigration consultants but those fees were a "starting point", which could indicate if the fees charged in a particular case were significantly out of line with fees typically charged for that type of work.

[65] For these reasons, I have concluded that the second ground of review based upon the submission that the Tribunal erred in law when it found Mr Loh and Ms Gu-Chang had acted dishonestly cannot succeed.

Third ground of judicial review

[66] The third ground of judicial review is the Tribunal erred by assessing the reasonableness of the fees Mr Loh and Ms Gu-Chang charged by reference to an hourly rate.

[67] Mr Laurent submitted that there was no evidence that immigration advisers charge on an hourly basis and that it was not uncommon for other professional

groups to charge on a basis that reflected a commission or fee structure that was unrelated to hourly rates.[31]

[68] The Tribunal concluded that Mr Loh and Ms Gu-Chang must have charged Mr Chen at an hourly rate of approximately $1,200 per hour if they had undertaken 18 hours of work. The Tribunal's reference to a possible hourly rate for the work done in this case was merely a form of supplementary reasoning that confirmed the fees were excessive.

[69] This aspect of the application for judicial review fails because the Tribunal was entitled to find that Mr Loh and Ms Gu-Chang's conduct was so extraordinary that it defied common sense and reasonableness and from that basis, conclude the fees charged by Mr Loh and Ms Gu-Chang were grossly excessive.

Fourth ground of judicial review

[70] Because the first three grounds of judicial review must be dismissed, the Tribunal's findings against Ms Gu-Chang cannot be disturbed.

Conclusion

[71] The application for judicial review is dismissed.

[72] The Authority is entitled to costs on a scale 2B basis.

[73] There will be a single award of costs that will be paid by Ms Loh and Ms Gu-Chang equally.

D B Collins J

Solicitors:
Laurent Law, Auckland for Applicants
Crown Law Office, Wellington for Respondents

[31] Mr Laurent referred to Real Estate agents in particular.