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DECISION RECORD

AGENT	Saemi Seon
COMPLAINT NUMBER/S	CMP-49047 & CMP-58799
DECISION	Suspension – Three Months
DATE OF DECISION	7 August 2024
TERMS USED FOR REFERENCE	Refer Appendix A

Jurisdiction

1. The Office of the Migration Agents Registration Authority (the Authority) performs the functions prescribed under section 316 of the *Migration Act 1958* (the Act).
2. The functions and powers of the Authority under Part 3 of the Act and *Migration Agents Regulations 1998* (the Agents Regulations) may only be exercised by the Minister or by a delegate of the Minister. The Minister has delegated the powers under Part 3 of the Act and the Agents Regulations to officers of the Authority. I am delegated under the relevant instrument to make this decision.

Relevant Legislation

3. The functions of the Authority under the Act include:
 - to investigate complaints in relation to the provision of immigration assistance by registered migration agents (paragraph 316(1)(c)); and
 - to take appropriate disciplinary action against registered migration agents (paragraph 316(1)(d)).
4. The Authority may decide to cancel the registration of a Registered Migration Agent (RMA) by removing his or her name from the Register, or suspend his or her registration, or caution him or her under subsection 303(1), if it is satisfied that:
 - the agent's application for registration was known by the agent to be false or misleading in a material particular (paragraph 303(1)(d); or
 - the agent becomes bankrupt (paragraph 303(1)(e); or
 - the agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance (paragraph 303(1)(f); or
 - an individual related by employment to the agent is not a person of integrity (paragraph 303(1)(g); or
 - the agent has not complied with the former Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).

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5. Subsection 314(2) of the Act provides that an RMA must conduct himself or herself in accordance with the Code. The *Migration (Migration Agents Code of Conduct) Regulations 2021* made under the Act prescribes the Code.
6. The Code of Conduct for RMAs in force at the time of the conduct that is the subject of this decision was:
 - The former Code of Conduct for registered migration agents (former Code) being Schedule 2 to the *Migration Agents Regulations 1998*, (the Agents Regulations) as in force prior to 1 March 2022.

AGENT BACKGROUND

Agent Registration

7. The Agent was first registered as a migration agent on 16 February 2016 and was allocated the MARN 1679394. The Agent's registration had been renewed annually to date, with the most recent registration commencing on 15 February 2023.
8. The Register lists the Agent's current business name as SCVI Pty Ltd with the ABN 33607592718.

Prior Disciplinary action

9. The Agent does not have a history of prior disciplinary actions.

BACKGROUND

Allegations – the Authority's investigation

10. The Authority received two complaints about the Agent's conduct as an RMA, as follows:
 - CMP-49047– received on 23 December 2019, from JK.
 - CMP-58799 – received on 24 November 2020 from the Department of Home Affairs (the Department).

CMP-49047 – JK

11. JK made allegations primarily regarding the Agent's mishandling of her visa and migration matters. She also made allegations about the integrity of the Agent's business practices and structure. In summary, JK alleged the following:
 - In addition to being the director for SCVI Pty Ltd, the Agent was also the director for both **** Pty Ltd and KS Pty Ltd. The previous director of KS Pty Ltd was the Agent's associate, KL.
 - **** Pty Ltd advertised itself as a business that provided migration assistance whereas KS Pty Ltd provided financial advice, however the distinction was not clear in practice, noting that the Agent and KL were friends and shared an office space.
 - On 4 July 2016, JK began working for both businesses. She undertook this work with no pay for three months, after which she was paid, but below the minimum wage.
 - In November 2016, the Agent began to discuss JK's migration options and guaranteed a pathway to permanent residency if JK continued working with her and followed her instructions. JK agreed to this, placing her trust in the Agent.

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- In January 2017, the Agent arranged for JK to attend a two day course to complete her Certificate IV and Diploma in Finance and Mortgage Broking. The Agent paid for the course, and JK subsequently repaid the course fee to the Agent.
- The Agent asked JK to sign an employment contract which contained a forged signature of KL.
- On 9 February 2017, the Agent lodged a Regional Sponsored Migration Scheme (subclass 187) nomination application, on behalf of KS Pty Ltd, nominating JK for a Financial Broker position.
- On 9 February 2017, the Agent lodged a subclass 187 visa application, on behalf of JK, nominating KS Pty Ltd as the sponsor. On 28 June 2017, the subclass 187 nomination was refused and JK was given 21 days to appeal the decision with the Administrative Appeals Tribunal (AAT).
- The Agent advised JK that the nomination was refused because the Department did not want to approve permanent residency in Western Australia. JK was not satisfied with the reason the Agent provided and asked for a copy of the decision record, which the Agent provided. In this letter, she was surprised to find out that financial documents submitted by the Agent, indicated that KS Pty Ltd was in no financial position to pay the full salary for the nominated position. In particular, she was shocked to find that the company's stated income for the 2015/16 financial year was AUD48,475.44 and expenses were AUD48,142.22.
- A number of documents submitted were fraudulent and were created by the Agent's office for the purpose of a visa grant. These documents include falsified financials and organisation chart.
- Following the nomination refusal, JK requested her subclass 187 visa application be withdrawn and stated that she would use the refunded money to return to South Korea. The Agent insisted JK seek merits review of the refusal decision at the AAT, once again guaranteeing a successful outcome and permanent residency. The Agent advised JK, that if the review was unsuccessful and she had to depart Australia, she would offer her a full refund. JK agreed to these conditions.
- On 18 July 2017, the Agent sought review at the AAT for the subclass 187 nomination refusal.
- On 1 December 2017, JK contacted the Department to verify her visa status. During this call she was made aware that her subclass 187 visa application had been refused on 24 August 2017. The Agent did not apply for merits review of this refusal decision at the AAT.
- JK contacted the Agent and asked for an explanation as to why she was not informed of the visa refusal and why review at the AAT was not commenced. The Agent advised that she had not received the refusal letter from the Department. JK again informed the Agent of her intention to leave the country now that her visa had been refused.
- The Agent insisted there were other visas to apply for and that she will continue to apply for each visa until at least one is granted.
- On 11 December 2017, the Agent lodged a Temporary Work (subclass 457) nomination application on behalf of KS Pty Ltd with the Department, nominating JK for a Financial Broker position.
- On 12 December 2017, the Agent lodged a subclass 457 visa application on behalf of JK, nominating KS Pty Ltd as the sponsor.

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- In January 2018, the Agent contacted JK and requested she apply for a skills assessment with VETASSESS, and stated that based on her experience assisting other clients with this process, she is likely to be approved. The Agent also advised JK that once she obtained an approval, she will be able to apply for the Employer Nomination Scheme (subclass 186) visa. JK had some doubts however the Agent clarified that she will not be able to come back to Australia if she left the country without lodging the visa application, so JK placed her trust in the Agent and agreed to the plan.
- In February 2018, the skills assessment with VETASSESS was not approved. The Agent advised JK not to worry because the AAT review for the subclass 187 nomination refusal was still ongoing and that it would likely be decided in her favour.
- The Agent also advised JK of her intention to move the address of KS Pty Ltd to the Mandurah area, as Perth was removed from the RSMS approved regions.
- JK sought advice from other RMAs in regards to her situation. She was informed that even if the subclass 187 nomination was approved, she would not be eligible for the grant of a subclass 187 visa, as she did not apply to the AAT for review of the visa refusal decision and she no longer meets the requirements for the visa.
- JK confronted the Agent with this information and the Agent informed her that it was incorrect and that after consulting with the Department, she confirmed that an approved nomination will allow JK to obtain the subclass 187 visa. JK asked for this advice to be provided to her in writing, which to date, the Agent has not provided.
- JK requested the Agent provide her with the subclass 187 refusal decision letter. However the Agent stated that it was no longer in her lodgement record.
- In August 2018, the Agent asked JK to work for her again as she may be opening up an Adelaide office, and that she will apply for another subclass 187 visa from there with the new details.
- In October 2018, the Department refused the subclass 457 nomination application. As part of the decision record, it was noted that the Agent did not provide any documentation to support KS Pty Ltd's financial position.
- On 31 December 2018, the Agent met with JK and advised her to go back to South Korea and wait for the outcome of the subclass 187 nomination review by the AAT. JK asked the Agent for financial assistance, reminding her of previous conversations where the Agent had promised to cover certain financial costs if she was refused the visa. The Agent advised that she did not have the money to support JK's request.
- After JK's subclass 457 visa application was refused, on 22 January 2019, for not having an approved nomination in place, she contacted the Agent on numerous occasions advising she will report her to the authorities for negligence and illegal activity.
- The Agent responded to JK and provided her with an undisclosed amount of money and declared it as compensation.
- In April 2019, JK contacted the Agent from South Korea and asked about the subclass 187 nomination review at the AAT. The Agent advised that it is still pending, after which JK became frustrated and advised that she was going to contact the appropriate Government agencies to report the Agent.
- In June 2019, JK received a letter from Korean Police notifying her that the Agent commenced legal proceedings against her for harassment.

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- JK claimed she has paid in total AUD19,130 for the below expenses:
 - Certificate IV & Diploma
 - Subclass 187 visa application fee and service fee to the Agent
 - Skills Assessment Fee
 - Insurance fee for the subclass 457 visa application.

Departmental Records

12. ASIC records show directorship of the companies referred to in paragraph 11, as below:

**** Pty Ltd Historical Company Extract (extracted 9 May 2024)

Name	Role	Date commenced	Date ceased
Saemi SEON	Director	25 February 2011	Ongoing

KS Pty Ltd Historical Company Extract (extracted 9 May 2024)

Deregistered: 8 September 2022

Name	Role	Date commenced	Date ceased
Saemi SEON	Director	31 December 2018	8 September 2022
JL	Director	4 September 2020	5 October 2020
KL	Director	30 August 2016	31 December 2018
Saemi SEON	Director	21 March 2016	30 August 2016
KL	Director	15 April 2015	21 March 2016

13. Regarding nomination and visa applications lodged, on 9 February 2017, the Agent lodged a subclass 187 nomination application with the following details:

TRN	Main Applicant	Nominee	Secondary Nominee
EGODTMZ8L8	KS Pty Ltd	JK	JP

14. On 9 February 2017, the Agent lodged a subclass 187 visa application with the following details:

TRN	Main Applicant	Dependant	Sponsor
EGODTN6J5Q	JK	JP	KS Pty Ltd

15. On 28 June 2017, the subclass 187 nomination application was refused and the Agent sought review at the AAT on 18 July 2017.

16. On 28 June 2017, the Department sent the Agent an Invitation to Comment letter in relation to the subclass 187 visa application. In this letter, the Agent was advised that the nomination submitted to the Department by KS Pty Ltd, listing JK as their Nominee, had been refused. The Agent was given the option to withdraw JK's subclass 187 visa application within 28 days.
17. On 29 June 2017, the Agent lodged a second subclass 187 nomination application, with the following details:

TRN	Main Applicant	Nominee	Secondary Nominee
EGOF2YVHVC	KS Pty Ltd	JK	JP

18. On 24 August 2017, after the 28 day period had passed with no response to the Invitation to Comment letter, JK's subclass 187 visa application was refused and review of the decision was not sought at the AAT.
19. On 11 December 2017, the Agent lodged a subclass 457 nomination application for KS Pty Ltd for a Financial Broker position, with the following details:

TRN	Main Applicant	Nominee
EGOGOVL3CM	KS Pty Ltd	JK

20. On 12 December 2017, the Agent lodged a subclass 457 visa application with the following details:

TRN	Main Applicant	Dependant	Sponsor
EGOGOVL3CM	JK	JP	KS Pty Ltd

21. On 30 January 2018, the Agent requested the second subclass 187 nomination application be withdrawn.
22. On 11 October 2018, the subclass 457 nomination application was refused.
23. On 24 December 2018, the Department sent the Agent an Invitation to Comment letter regarding the outstanding subclass 457 visa application. The agent was advised that the nomination submitted to the Department by KS Pty Ltd, listing JK as their Nominee, had been refused. The below options were given, with a 28 day period provided to respond:
- (a) Provide comment on your intentions regarding your visa application
 - (b) Withdraw your application in writing
 - (c) Provide comment or any other information which you think is relevant in response to this adverse information.
24. On 22 January 2019, after the 28 day period had passed with no response to the Invitation to Comment letter, the subclass 457 visa application was refused.
25. On 3 December 2019, the subclass 187 nomination refusal decision was affirmed by the AAT.

CMP-58799 – the Department

26. The Department alleged the following:

- The Agent represented AP Pty Ltd, as their listed RMA on a number of nomination and business visa applications.
- The Agent provided invoices directly to two visa applicants, JY and IL, for fees and costs which are a requirement of the sponsor, AP Pty Ltd, to meet.
- The Agent also invoiced AP Pty Ltd, to make it appear to the Department that they were paying these costs.
- The Agent had discussions with JY and IL, and were aware that they had paid all sponsorship fees associated with their visa applications.

Departmental Records

27. Departmental records reflect that on 27 February 2018, the Agent lodged a subclass 457 nomination application for AP Pty Ltd, for a Chef position, with the following details:

TRN	Main Applicant	Nominee
EGOHGW253J	AP Pty Ltd	JY

28. On 28 February 2018, the Agent lodged a subclass 457 visa application, with the following details:

TRN	Main Applicant	Dependant Applicant	Sponsor
EGOHGWYPFG	JY	EO	AP Pty Ltd

29. On 3 April 2018, the subclass 457 nomination application for AP Pty Ltd was approved.

30. On 11 April 2018, JY's subclass 457 visa application was granted.

31. On 9 August 2018, the Agent lodged a Temporary Skill Shortage (subclass 482) nomination application on behalf of AP Pty Ltd, for a Chef position, with the following details:

TRN	Main Applicant	Nominee
EGOJ23WZ4R	AP Pty Ltd	IL

32. On 9 August 2018, the Agent lodged a subclass 482 visa application for IL, with the following details:

TRN	Main Applicant	Sponsor
EGOJ4020U9	IL	AP Pty Ltd

33. On 16 August 2018, the subclass 482 nomination application for AP Pty Ltd was approved.

34. On 5 September 2018, IL's subclass 482 visa was approved.

35. On 17 July 2020, the Australian Border Force (ABF) Sponsoring Monitoring Unit (SMU) wrote to AP Pty Ltd, in the form of a Notice of Intention to Take Action (NOITTA) letter, which stated that a delegate of the Minister was considering taking action under section 140M of the Act. Section 140M of the Act states:

- (1) *If regulations are prescribed under section 140L, the Minister may (or must) take one or more of the following actions in relation to an approved sponsor:*
- (a) *cancelling the approval of a person as a work sponsor or family sponsor in relation to a class to which the sponsor belongs;*
 - (b) *cancelling the approval of a person as a work sponsor or family sponsor for all classes to which the sponsor belongs;*
 - (c) *barring the sponsor, for a specified period, from sponsoring more people under the terms of one or more existing specified approvals as a work sponsor or family sponsor for different kinds of visa (however described);*
 - (d) *barring the sponsor, for a specified period, from making future applications for approval as a work sponsor or family sponsor in relation to one or more classes prescribed by the regulations for the purpose of subsection 140E(2).*

36. The NOITTA was sent to the Agent as the listed RMA for AP Pty Ltd.

37. As part of the response to the NOITTA, AP Pty Ltd submitted to the ABF the following invoice for IL's nomination costs, visa application costs, Agent's costs and job advertising, as shown below:

Invoice Reference:	090820181
Invoice Date:	9 August 2018
Issued By:	**** Pty Ltd
Issued To:	PF Trust
Invoice Amount:	AUD6,858.76
Bank Account Details:	KS Pty Ltd

38. As part of the response to the NOITTA, IL submitted to the ABF a duplicate invoice with a different reference number and invoice date, as shown below:

Invoice Reference:	21080301
Invoice Date:	25 July 2018
Issued By:	**** Pty Ltd
Issued To:	PF Trust
Invoice Amount:	AUD6,858.76
Bank Account Details:	KS Investment Pty Ltd

39. The bank account name listed on the invoices was KS Investment Pty Ltd.

40. As part of the response to the NOITTA, AP Pty Ltd submitted to the ABF the following invoice for JY's nomination costs, visa application costs, agent's costs and training benchmark costs, as shown below:

Invoice Reference:	210802212
Invoice Date:	21 February 2018
Issued By:	**** Pty Ltd
Issued To:	PF Trust
Invoice Amount:	AUD14,974.34
Bank Account Details:	**** Pty Ltd

41. The bank account name listed on the invoice was **** Pty Ltd.
42. Bank statements show transactions of funds being transferred to the bank account of KS Pty Ltd, from IL, with the exact figures shown in the Agent's invoices.
43. Bank statements show transactions of funds being transferred to the bank account of **** Pty Ltd, from JY, with the exact figures shown in the Agent's invoices.
44. The Agent was the Director of **** Pty Ltd and KL was the director of KS Pty Ltd at the time of these payments.
45. On 9 November 2020, AP Pty Ltd's business sponsorship was cancelled under section 140M(1) of the Act.
46. As part of the Notice of Decision, dated 9 November 2020, it was determined that JY and IL paid all costs in the invoice to the Agent. These costs were the obligation of the sponsor under Regulation 2.87 of the *Migration Regulations 1994*.

Notice under section 308 of the Act (section 308 notice)

47. On 20 May 2021, the Authority sent the Agent a section 308 notice, requiring her to answer questions relevant to the allegations made in cases CMP-49047 and CMP-58799. The Agent was also requested to provide copies of her client files.
48. On 3 June 2021, the Authority received the Agent's response to the complaint by way of a statutory declaration and supporting documentation.
49. In respect of JK (CMP-49047), the Agent made the following claims/submissions:
 - JK was employed by KL, at KSA Pty Ltd and KS Pty Ltd, from October 2016 to July 2018.
 - The subclass 187 and subclass 457 nomination and visa applications lodged on 9 February 2017 and 12 December respectively, listed KL as the Director and Shareholder. The change of directorship (from KL to the Agent) happened after these lodgements, on 31 December 2018.
 - The Agent was the director of **** Pty Ltd, which offered migration services. The Agent rented her office space from KL.
 - KL and the Agent often referred clients to one another.
 - **** Pty Ltd and KSA Pty Ltd were completely separate entities.
 - JK was initially hired to work for KSA Pty Ltd, then later transferred to KS Pty Ltd, providing administrative support in relation to mortgage broking and financial services.
 - All nomination and visa applications for JK were sponsored by KL, under KS Pty Ltd.
 - The Agent had no association with the entity at the time of the visa lodgements for JK.
 - The directorship of KS Pty Ltd was changed to the Agent on 31 December 2018.
 - Whilst operating **** Pty Ltd at the same premises as KS Pty Ltd, the Agent had close contact with JK.
 - The Agent did not charge for her migration services when KL approached her to assist with JK's visa application. In order to form a contractual agreement, the Agent charged KL AUD1 to process the subclass 187 nomination application and the visa application.
 - The Agent never made promises regarding application success to any client.

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- Prior to the visa lodgement, the Agent informed JK that KS Pty Ltd was a newly established company with less than six months of financials. JK was given access to the financial documents from KL and was aware of the financial status of the business.
- The Agent advised JK that the business was continuously growing and showing steady sales, therefore she could continue to upload financial documents, whilst pending a decision to be made on the nomination and visa.
- The Agent submitted a letter from the accountant, profit and loss statements and BAS statements, and continued to upload a further BAS statement, the following month, as it became available.
- The Agent claimed JK blamed her for not providing these documents to the Department because she was only able to view her visa application on the Department's ImmiAccount system.
- Anything related to the business was uploaded to the subclass 187 nomination application rather than JK's visa application. The Agent provided to the Authority, a screenshot of the subclass 187 nomination application in ImmiAccount, uploaded on 9 February 2017, showing the submitted financial reports to support her claims.
- The Agent advised KL over the phone of the subclass 187 nomination refusal. KL showed a strong intention of wanting to appeal the case.
- KL initially advised JK of the nomination refusal and then the Agent met with JK in person to discuss further options. JK's co-worker, Mrs Y, was present at this meeting.
- At this meeting, JK was concerned that appealing the subclass 187 nomination refusal would be time consuming and costly, and she spoke about potentially leaving Australia and returning back home.
- The Agent discussed her reasoning for why she thought appealing the nomination refusal would be a good option for KL and JK. The Agent also advised JK that if the subclass 187 visa application was not withdrawn, the visa would be refused in due course. A decision was made by KL to proceed with the appeal of the nomination refusal at the AAT. No decision was made to appeal the visa application at this point.
- During this meeting, the Agent claimed she also advised JK of the Invitation to Comment letter dated 28 June 2017, in relation to her subclass 187 visa application.
- In June 2017, the Agent had a number of IT issues with her domain, 'xxx.com.au' and her Gmail account, which led to a number of emails going missing. The Agent provided to the Authority an invoice from Crazy Domain, dated 24 June 2017, to substantiate these claims.
- To maintain a good relationship with KL, the Agent offered to cover the cost for the subclass 187 nomination appeal at the AAT.
- On 24 August 2017, JK's subclass 187 visa application was refused and the Agent was not directed to appeal the visa refusal decision.
- In regards to JK's subclass 457 visa application, KL instructed the Agent to apply for the visa, as JK's existing subclass 457 visa was due to expire.
- On 11 December 2017, the Agent lodged a subclass 457 nomination application, on behalf of KS Pty Ltd, nominating JK for a Financial Broker position. All of the evidence to support the financial status of the business, was attached to the sponsorship application. These attachments included financial statements, company tax returns, bank statements and multiple BAS statements.

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- Following the refusal of the subclass 187 nomination application on 3 December 2019, the Agent met with JK to inform her of the decision and provide her with the option of withdrawing her associated visa application. JK requested the Agent withdraw the application, which she did. The Agent also refunded all fees to JK.
- During this meeting, JK confirmed that she would return to South Korea and asked the Agent if she could lend her AUD10,000 for a bond payment. The Agent advised that she will see what she could do for her.
- JK began messaging the Agent threats that if she did not pay her, she would report the Agent on a local social network. Not wanting her business to be impacted, the Agent decided to lend JK the money.
- Subsequently, JK returned to South Korea. However upon her return, she began to message the Agent again and blackmailed her, which led the Agent to reporting JK to the police in South Korea.
- In late 2019, both the Korean Civil and Criminal Court found that there is no relevance between JK's unsuccessful migration outcome and the Agent's migration advice and actions.
- The Agent did not inform JK of the outcome of the subclass 187 nomination appeal, however she did notify KL that JK did not wish to proceed with appeal.
- The Agent declared that none of the documents provided to the Department were modified or falsified in any way. She also confirmed that she had never engaged in any labour exploitation.

50. In respect of CMP-58799, the Agent made the following claims/submissions:

- The Agent represented AP Pty Ltd, as their listed RMA for the subclass 457 nomination and subclass visa applications for JY and IL.
- The Agent met with JY and his partner in January/February 2018, to discuss the prospects of their visa applications. At this meeting, the Agent was asked by JY to contact his employer, AP, the director of AP Pty Ltd, on his behalf. JY advised that he was concerned that his employer would not agree to pay for the costs associated with the visa application.
- The Agent emailed AP and explained the prospects of a visa grant. AP informed the Agent that he had another RMA acting on his behalf, who advised that JY's visa application is unlikely to be approved.
- The Agent explained to AP why she believed there were good chances for a visa grant. AP accepted the Agent's advice and a decision was made to proceed with lodgement.
- The Agent alleged that she made it clear to AP that there are certain fees to be paid by the sponsor.
- The Agent also alleged that she advised JY that the fees need to be paid by the employer, and that all invoices will be sent directly to the employer.
- The Agent agreed that two payments were made for JY's application for the total invoice amount, by JY and his partner. The Agent did not know if they had an arrangement with the employer.
- The Agent claimed that it was common for one party to make the entire payment for the invoice and have their own arrangements set up with each other.
- In August 2018, the Agent spoke with IL in person and advised the same information to her.

- Following the Agent's meeting with IL, she contacted AP, and again advised him of his sponsorship responsibilities. The Agent discussed the training benchmark fee and nomination fee will be invoiced to AP Pty Ltd.
- The Agent claimed that it is not her common practice to encourage or advise visa applicants to pay for any fees which the sponsor is responsible for.
- Prior to IL departing Australia on a permanent basis, she contacted the Agent to advise that she had paid all the fees associated with the sponsorship and that she was underpaid for the period of her employment with AP Pty Ltd. She also advised that she was going to contact 'Fairwork' regarding this matter.
- IL contacted the Agent a number of times to confirm if AP Pty Ltd were responsible for covering her return flight to her home country. The Agent advised that the sponsor is obligated to pay for travel costs.
- The Agent also emailed AP information about his obligations under the standard business sponsor agreement.
- From the Agent's knowledge, AP paid all outstanding payments as instructed by 'Fairwork', totalling over AUD20,000.
- AP engaged with a lawyer in relation to this dispute and made IL sign a statement, stating that she would not make further issues regarding this matter.
- After receiving a phone call from the ABF, the Agent received a phone call from AP's lawyer, asking whether she had informed AP over the phone or in writing, of his sponsorship obligations, in relation to the fees. The Agent advised the lawyer that she provided AP with the information over the phone and that she had no written records to confirm what was discussed.
- AP argued that he was not aware of his sponsorship obligations in relation to the fees.
- The Agent did not believe that AP was not aware of the fees to be paid by the sponsor.
- The Agent has evidence from other employees at AP Pty Ltd, who were sponsored previously from the company, that AP was well aware of the sponsorship obligations.

51. The Agent did not provide any evidence to the Authority to support her response.

Notice under section 309 of the Act (section 309 notice)

52. On 27 June 2022, the Authority sent a section 309 notice to the Agent, advising that the Authority was considering cautioning, or suspending or cancelling her registration under section 303(1) of the Act.
53. On 27 July 2022 the Authority received a written submission and supporting documentation from the Agent in response to the section 309 notice.
54. In respect of JK (CMP-49047), the Agent made the following claims/submissions:
- The Agent acknowledged that she did not inform JK of her subclass 187 visa application refusal in a timely manner.
 - The Agent accepted that her record keeping practices have been below the appropriate standard for JK's case.
 - The Agent claimed that during the time of representing JK, she was in her first year of practicing as a RMA. She had not subscribed to any professional software which would assist her with managing her workloads. However, since then, she is has now improved her work practices and is subscribed to Migration Manager.

- The Agent recognised she made an error of judgement whilst working on JK's case, as she believed they had a personal relationship and thought this meant that no formal records were required.
- The Agent believed that not only was she JK's migration agent, she was her friend, and by applying for numerous visa applications, she was looking out for her best interest, hoping that one would be successful and JK could remain in Australia.
- The Agent denied that JK was financially disadvantaged at any stage, as the nominator, KL, paid for all nomination and visa application fees. In addition to this, the Agent did not charge JK for her migration services.
- The Agent was under the belief that if JK did not want to apply for any further visas, or explore her options, then she would have left Australia.
- The Agent denied that JK was working for KS Pty Ltd for free, as claimed, and that there is no evidence to support this accusation.
- JK was hired to work for KS Pty Ltd by KL. She was paid according to her experience and qualifications, which was not below the minimum wage.
- The Agent claimed that she assisted KS Pty Ltd as a mortgage broker, however the business was owned by KL at the time and there was no conflict of interest.
- The Agent claimed that other than wanting to assist a friend with her migration options, there was no benefit to herself or KL.

55. In respect of CMP-58799, the Agent made the following claims/submissions:

- The Agent accepted limited responsibility for not clearly advising in writing, the visa applicants and sponsor of the sponsorship obligations and fees payable.
- The Agent confirmed that AP was made aware of the sponsorship fees via telephone conversations on numerous occasions. The Agent regrets not following these conversations up in writing.
- The Agent believed that AP understood his sponsorship obligations, as he had sponsored other applicants before and always paid their sponsorship fees.
- The Agent declared that she had no intention to financially disadvantage JY and IL.
- The Agent has now implemented processes in her office to ensure no future confusion is repeated. As part of these processes, she created two separate engagement contracts for both the visa applicant and sponsor through the Migration Manager Software Program, which individually details their obligations and fees.

Agent's response to invitation to provide further information to the Authority

56. On 9 May 2024, the Agent provided the following documents as evidence to show she has improved her business practices over the past two years:

- Copy of a newly improved Engagement Contracts signed by the applicants and sponsors
- Copies of Deposit requests
- ImmiAccount summary listing all current cases on hand.

THE AUTHORITY'S INVESTIGATION

Evidence and other material

57. In reaching the following findings of fact, I have considered the following evidence:

- Documentation contained in the Authority's complaint files for CMP-49047 and CMP-58799;
- Information held on Departmental records in relation to visa applications lodged by all parties mentioned in this decision;
- Information held by the Authority in relation to the Agent; and
- The supporting documentation provided by the Agent in response to the section 308 notice and the section 309 notice.

Findings on material questions of fact

58. Having considered the information before me, I am satisfied that the Agent has acted in breach of her obligations under clauses **2.1, 2.4, 2.8, 2.9A, 6.1 and 6.1A of the former Code**.

59. My findings and full reasons for the decision are set out below.

Competence, diligence, due regard for client dependence, in accordance with instructions

60. An RMA must act in accordance with the law and deal with their client competently, diligently and fairly, whilst having due regard for a client's dependence on their knowledge and experience. An RMA must also act in accordance with the client's instructions and keep them fully informed of the progress of their application. I have considered whether you have fulfilled these obligations in respect of:

- JK
- AP Pty Ltd, JY and IL

CMP-49047

61. JK alleged that she began working for KS Pty Ltd and **** Pty Ltd *'with no pay for three months.'* After three months she claimed she started to get paid *'but under the national minimum wage.'*

62. In JK's initial statement to the Authority, she claimed that in November 2016, the Agent began to discuss her migration options with her and guaranteed a pathway to permanent residency if she continued to work with the Agent and follow her instructions.

63. It is apparent that JK depended heavily on the Agent's knowledge and expertise, and that she was willing to follow the Agent's instructions in order to make her *'dream'* of being granted permanent residency in Australia come true.

64. Further, JK claimed that on numerous occasions the Agent advised her that if she left Australia, she will not be able to return and that applying for different visas until one is granted, is her best option. The below is an extract from a Messenger conversation between the Agent and JK, dated 3 December 2017:

The Agent: 'I think you should extend your visa first and think about other options'

The Agent: 'So, shouldn't you go for the 457?'

JK: 'Have you talk to the accountant again?'

The Agent: 'He thinks you'd try for 457...'

The Agent: 'You know there's nothing he can do for you 😊'

The Agent: 'What you want to do, JK...'

JK: 'I guess applying for this and that can be an option, but it's true that it's a bit too much in our current situation. According to you, we're applying for three visas 457, ENS, RSMS at the same time, so it's a lot of pressure... We're not sure if we'll get the refund either... RSMS application was refused quite a while ago, and the refund is not on their policy... We might just go back to Korea. I'll go to work and to the accountant tomorrow.'

65. In the Agent's initial response to the Authority, she claimed that KL instructed the Agent to apply for the subclass 457, as JK's current visa was due to expire. However, the Agent did not provide any evidence regarding JK's instructions on the lodgement. Instead, this conversation suggests that it was the Agent's idea to lodge the subclass 457 visa application and JK was listening to the Agent's advice, despite having reservations. Furthermore, the conversation ended with JK stating that she might depart Australia. No evidence of her agreeing to the lodgement of the subclass 457 visa application was submitted to the Authority. Based on this information, I find that JK put her trust in the Agent, who led her to believe that if she kept applying for different visas, she would achieve her desired outcome, even if it significantly impacted her financial situation.
66. According to Departmental records, the Agent lodged a subclass 187 nomination application on behalf of KS Pty Ltd on 9 February 2017, sponsoring JK and her spouse, JP. On the same date, the Agent also lodged an application with corresponding details for a subclass 187 visa application for JK.
67. The subclass 187 nomination application was refused on 28 June 2017 and the Agent sought review of the decision at the AAT. On the same day, an Invitation to Comment letter was sent to the Agent advising that due to the refusal of the nomination application, the visa could not be granted. The letter stated that JK had the option to withdraw her subclass 187 visa application, or await an unfavourable outcome. On 24 August 2017, after the 28 day period passed with no response, the subclass 187 visa application was refused.
68. In the Agent's response to the section 308 notice, she advised that she met with JK following the subclass 187 nomination application refusal and discussed her options. The Agent claimed that at this meeting, a decision was made to appeal the nomination refusal decision at the AAT. The Agent also claimed that she advised JK of the Invitation to Comment letter, and explained that if she did not withdraw her subclass 187 visa application, the visa would be refused in due course. The Agent did not provide the Authority with any evidence of JK's instructions following this advice.
69. Contrarily, JK alleged that the Agent did not tell her about the Invitation to Comment letter, nor the subclass 187 nomination refusal. She became aware of the refusal, after she contacted the Department. She also claimed that once she was aware of the refusal, she requested the Agent withdraw the subclass 187 visa application, so she could leave Australia.
70. In JK's initial complaint, she attached extracts from Messenger conversations between the Agent and herself. These extracts were provided to the Agent in the section 308 notice for her reference. On 3 December 2017, the following conversation took place between the Agent and JK:

JK: 'So, when I went for the Nomination AAT, was my visa application supposed to be rejected not stopped? They didn't even email you after rejecting my visa application which is ridiculous – can we take action on it because it's obviously immigrations fault...'

OFFICIAL

The Agent: 'I know. Actually it doesn't make sense to me either. Why did they refuse it just like that...Then why would people pay for AAT? I can't understand it at all. Can't even see it on the ImmiAccount phew.'

71. This conversation suggested that the Agent was unaware of the refusal decision and implied that it was never received. This contradicted the Agent's response to the Authority, where she claimed she notified JK of her option to withdraw the subclass 187 visa application following the nomination refusal. The Agent also claimed that JK did not want to appeal the subclass 187 visa refusal decision at the AAT, yet it appeared that JK was unaware of the refusal decision during the appeal timeframe.
72. Contrary to the section 308 notice response above, in the section 309 notice response, the Agent admitted to not advising JK of her visa refusal decision in a timely manner.
73. Based on the above, I am satisfied that JK was not aware of the subclass 187 visa refusal decision, dated 24 August 2017. She was also not aware as to why the Department had refused her application, when she instructed the Agent to withdraw the application following the nomination refusal.
74. The Agent did not provide evidence to the Authority to substantiate her claims, that she made contact with JK to discuss the Department's Invitation to Comment letter, the subclass 187 nomination application refusal and JK's subclass 187 visa refusal.
75. As part of the Agent's response to the section 308 notice, the Agent stated that she had a number of IT issues with her domain and Gmail account. This led to a number of missing emails from the Department. Although the Agent provided evidence to the Authority of an invoice from Crazy Domain, dated 24 June 2017, the Agent did not provide an explanation for its relevance. The Agent did not claim that during this period she missed any specific correspondence from the Department or JK.
76. Departmental records of visa and nomination applications lodged on behalf of KS Pty Ltd and JK are listed in paragraphs 13 to 25 of this notice. The Agent did not provide to the Authority evidence that JK instructed her to apply for any of these applications. Nor is there evidence that JK was made aware of the outcomes in each case.
77. In the Agent's response to the section 308 notice, the Agent stated to the Authority that she did not notify JK of the subclass 187 nomination refusal outcome on 3 December 2019. Yet, the Agent also claimed that she informed KL of the outcome and advised that JK did not want to appeal the decision. Given that JK was not notified of the subclass nomination application refusal, I find that that the Agent took it upon themselves to make decisions for JK, without her knowledge and consent.
78. I considered the conflicting claims made by JK and the Agent in respect of whether the Agent informed JK about pivotal outcomes throughout her matter. The Agent has not provided sufficient evidence to support her statements. On the contrary, evidence provided by JK, such as the Messenger conversations, strongly suggests that she was not kept informed throughout the process.
79. Further, the below is an extract from a Messenger conversation between JK and the Agent, dated 12 February 2018. It reads;

The Agent: 'I feel down'

JK: 'Let's cling to our last hope with AAT....haha'

The Agent: 'We'll get it through right? ☹'

The Agent: 'We will'

The Agent: 'I guess we will'

The Agent: 'I think so'

JK: 'hahaha I don't know LOL We'll just have to stay positive LOL'

The Agent: 'If we don't get it, the accountants office will move to Mandurah and we'll try for 187 again. We'll do it until we get the visa'

JK: 'LOL, nah let's not go that way LOL'

The Agent: 'Yes, I will. No matter what. Even if we have to do cookery again LOL'

JK: 'LOL'

The Agent: 'No matter what we must get it no matter what. Get the visa and go back to Korea LOL.'

80. Based on the above conversation, I find that the Agent was willing to ensure JK kept applying for any type of visa at all costs. Even suggesting moving the accountant's office for KS Pty Ltd to another location, so that JK can reapply for a subclass 187 visa.
81. It is noted that the Agent claimed JK was not financially disadvantaged due to the application lodgements, as the Agent and KL covered all associated costs. Further the Agent treated JK as a close friend, rather than a client and therefore believed she was acting in her best interests at all times.
82. Despite the above, the Agent has not explained her reasoning for not withdrawing the visa application upon receiving the Invitation to Comment letter, or exploring other visa options for JK prior to the subclass 187 visa refusal decision taking place.
83. Additionally the Agent failed to explain why she did not advise JK to appeal the subclass 187 visa refusal decision at the AAT, noting her nomination application had already been refused and was pending merits review at the AAT. Instead, by waiting for the refusal decision for the subclass 187 visa, the Agent impacted her future visa prospects and ability to remain in Australia.
84. On the basis of the available evidence, and in the absence of evidence to the contrary, I find that the Agent did not act in accordance with JK's instructions. The Agent failed to advise JK of the outcomes of her respective applications in a timely manner, and communicate with her pivotal information. Therefore, I am satisfied that the Agent did not act with the competence and diligence expected of a migration agent.
85. Furthermore, the Agent did not provide evidence to illustrate the steps taken to ensure JK, who depended on her knowledge and experience, was provided with adequate services. Instead, the Agent continued to provide her with false hope and encouraged her to keep applying for any visa, until a desired visa outcome was obtained.
86. As such, I am satisfied that the Agent has breached **clauses 2.1(b), 2.4 and 2.8** of the former Code.

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87. The Agent represented AP Pty Ltd, as their listed RMA on a number of nomination and business visa applications.
88. On 27 February 2018, the Agent lodged a subclass 457 nomination application and visa application for AP Pty Ltd, listing JY as the nominee. The nomination application was approved on 3 April 2018 and the subclass 457 visa was granted on 11 April 2018.
89. On 9 August 2018, the Agent also lodged a subclass 482 nomination for AP Pty Ltd, listing IL as the nominee, and a respective visa application for IL. The subclass 482 nomination application was approved on 16 August 2018 and the subclass 482 visa was granted on 5 September 2018.
90. Evidence submitted to the Authority by the ABF indicated that in both JY and IL's cases, the nominees paid all sponsor fees associated with their visa applications.

91. In the Agent's Statutory Declaration submitted to the Authority, dated 3 June 2021, the Agent claimed that at her initial meeting with JY and IL, JY raised concerns about the willingness of his employer, AP, the director of AP Pty Ltd, to pay the sponsors fees associated with the visa application. The Agent stated, *'during my discussions with visa applicants (i.e. JY), he showed concerns that his employer may refuse to pay for the costs associated with the sponsorship.'* Further, the Agent stated, JY asked her to discuss his case with AP and confirm whether he is still willing to sponsor the applicant, knowing his sponsorship obligations and the prospects of success.
92. Following this meeting, the Agent claimed that she emailed AP explaining the prospects of success for JY's visa, to which AP then instructed the Agent to proceed with lodgement. I note, that in the Agent's submission to the Authority, the Agent claimed that after receiving the notification from the ABF, she received a call from AP's legal representative. During this discussion, the Agent confirmed with him that all information provided to AP in relation to sponsorship fees had been done over the phone and that they have no written evidence to support their statements.
93. When these contradicting statements were put forward to the Agent in the section 309 notice, the Agent confirmed to the Authority that all discussions in relation to sponsorship fees were done verbally and no written evidence was available.
94. Further, in both the section 308 and section 309 notices, the Agent claimed that on numerous occasions, the director of AP Pty Ltd, AP, was made aware of his sponsorship obligations, including fees to be paid. However, in response to the NOITTA, AP argued that he was never made aware of these obligations.
95. The Agent alleged that both JY and IL were advised the same information, and that all invoices would be sent directly to the employer, AP Pty Ltd. However, evidence submitted to the Authority by the ABF indicated that in both JY and IL's cases, the Agent sent the invoices to both the applicants and the sponsor. The Agent has not provided an explanation as to why she sent the visa applicants invoices which covered the sponsorship fees. Therefore, I find that the Agent led the applicants to believe that they were responsible for these fees.
96. In relation to JY, the Agent acknowledged that two payments were made for his applications, for the total invoice amount. However, the Agent was not sure whether JY had an arrangement in place with AP. The Agent claimed it was common practice for applicants to pay all fees associated with their applications, including sponsorship fees, and then seek reimbursement from the employer. She did not provide an explanation as to why she failed to question JY's payment, nor is there any evidence that the Agent followed up with AP to ensure that he was aware of and meeting his sponsorship obligations, and reimbursing JY.
97. JY raised concerns with the Agent at their initial appointment about AP's willingness to pay the sponsorship fees. He trusted in the Agent's professionalism and depended on her advice to ensure that the sponsorship obligations were going to be met, prior to lodging the nomination and visa application. Instead, by accepting payment from JY without questioning it, he was left to pay costs which were not his responsibility, and which impacted him financially.
98. In her response to the section 308 notice, the Agent claimed that in August 2018 she advised IL that AP Pty Ltd was responsible for all sponsorship fees. At this point, the Agent then contacted AP via telephone and once more advised him of his obligations as the sponsor.

99. Prior to IL departing Australia, she contacted the Agent and advised that she had paid for all the fees associated with the sponsorship and that she was underpaid for her work. She also informed the Agent that she would be reporting AP Pty Ltd to 'Fairwork'. The Agent claimed that following this revelation, she contacted AP via telephone and again reminded him of his obligations. The Agent claimed that she followed this call up with an email, providing him information again about standard business sponsor obligations. However as noted above, the Agent also claimed that she advised AP's legal representative that all advice was given verbally and that she had no written records to substantiate her claims. The Agent did not submit evidence to the Authority of this email or any other documentation which could substantiate her version of events.
100. According to the Agent's response to the section 308 notice, IL also enquired about whether AP Pty Ltd was responsible for bearing the costs associated with her flights to depart Australia permanently. The Agent advised IL that the sponsor is obligated to pay these costs.
101. Based on IL's enquiries with the Agent, I find that she was not fully aware or did not understand the sponsor's obligations and her rights. The fact the Agent sent the invoice to her, and that she paid the sponsorship fees, without guidance in respect of the sponsor's obligations, shows the Agent's lack of regard for IL's legitimate interest.
102. Further, not only was the Agent obligated to act in the best interest of JY and IL, AP Pty Ltd also trusted in the Agent's advice and knowledge to provide them with accurate information. Despite the Agent's claims that AP Pty Ltd was made aware of their obligations in relation to both JY and IL's matters, no supporting evidence to confirm this was provided. There are numerous conflicting statements as to whether verbal or written advice was given to the Agent's client. The Agent also failed to confirm whether AP Pty Ltd understood the extent of their responsibilities, nor did they make any effort to confirm obligations were being met in accordance with the law.
103. Following an investigation conducted by the ABF, it was determined that AP Pty Ltd, failed to satisfy its sponsorship obligations by failing to pay the full amount owing to a sponsored employee. A decision was made to cancel AP Pty Ltd's business sponsorship on 9 November 2020. In the Notice of the Decision, it was determined that JY and IL paid all costs in the invoice to the Agent.
104. On the basis of the available information before me, I find that the Agent did not deal with AP Pty Ltd, JY and IL, in a competent, diligent and fair manner, nor did she have due regard to the client's dependence on her knowledge and experience.
105. I also find that the Agent has acted contrary to the law and not in the best interest of AP Pty Ltd, JY and IL. By sending JY and IL invoices, including the sponsorship fees, the Agent allowed them to believe they were responsible for these fees, hence why they ended up making the payments to the Agent. Also, by not fully informing AP the requirements under the business sponsorship, AP Pty Ltd failed to meet their obligations, which resulted in the business sponsorship being cancelled. The consequence of having the business sponsorship cancelled is significant, as it has repercussions for AP Pty Ltd's ability to sponsor other applicants in the future.
106. Therefore, I am satisfied that the Agent breaches **clauses 2.1(a), 2.1(b) and 2.4** of the former Code.

Misleading or deceiving the Authority

107. An RMA must not mislead or deceive the Authority, whether directly or by withholding relevant information. I have considered whether the Agent fulfilled these obligations in respect of:

- JK
- AP Pty Ltd, JY and IL

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108. In the Agent's responses to the section 308 and section 309 notices, the Agent stated to the Authority that KS Pty Ltd was a separate business entity to **** Pty Ltd and that they were not associated with KS Pty Ltd at the time of representing JK.

109. Messenger conversations dated 12 February 2018, show that the Agent was willing to move the accountant's office for KS Pty Ltd to another location, so that JK could reapply for a subclass 187 visa. Suggesting the move of the office location implies that the Agent had a much more active role with both business entities.

110. JK also submitted to the Authority an email from the Agent to K & Co, dated 10 January 2017, titled '*broking course*'. In this email the Agent provided the details of a two day course which JK claimed the Agent organised she attend, to obtain her Certificate IV and Diploma in Finance and Mortgage Broking. She further claimed that the Agent paid for this course, which she later reimbursed her for. As evidence of payment, she submitted to the Authority an invoice dated 11 January 2017, showing the Agent's name and credit card details for the course, referencing JK as the attendee.

111. ASIC records of the company extracts for KS Pty Ltd show that since the establishment of KS Pty Ltd, and until it was deregistered on 8 September 2022, the Agent had an active role with the company before and straight after representing JK.

KS Pty Ltd Historical Company Extract

Name	Role	Date commenced	Date ceased
Saemi SEON	Director	31 December 2018	8 September 2022
JL	Director	4 September 2020	5 October 2020
KL	Director	30 August 2016	31 December 2018
Saemi SEON	Director	21 March 2016	30 August 2016
KL	Director	15 April 2015	21 March 2016

112. Suggesting the relocation of KS Pty Ltd's office, paying for JK's mortgage broking qualifications and the Agent's changing role over the years with the company, suggests that the Agent had a much more active role with both business entities, than she has expressed to the Authority.

113. On the basis of the available information before me, I find that the Agent knowingly made misleading statements in her response to the section 308 notice and section 309 notice, understating her level of responsibility and involvement in the operations of KS Pty Ltd in this case. Therefore, I am satisfied that the Agent has breached clause 2.9A of the former Code.

114. Furthermore, although JK stated that she initially worked for the Agent for free and then for below the minimum wage, the evidence before me is insufficient to conclude that the Agent was for all intents and purposes acting as the director of KS Pty Ltd during JK's time of employment. Therefore, the Agent was not responsible for JK's employment conditions and salary payments. For this reason, I am unable to make a finding on the allegations of worker exploitation.

CMP-58799

115. In the Agent's response to the section 308 notice, the Agent claimed that she advised JY and IL that the invoice for the sponsorship fees will be sent directly to the employer. However this contradicts evidence submitted by the Agent, AP Pty Ltd, JY and IL to the ABF as part of her responses to the NOITTA.
116. Records before the Authority indicated that on 17 July 2020, the ABF wrote to AP Pty Ltd, in the form of a NOITTA letter, which stated that a delegate of the Minister was considering taking action under section 140M of the Act.
117. The evidence showed that **** Pty Ltd invoiced AP Pty Ltd for fees and costs associated with the visa applications, including the sponsor's fees. However, duplicate invoices with different reference numbers were also submitted to the ABF from IL. In the Agent's response to the section 308 notice, the Agent accepted that the applicants made payments, including the sponsorship fees, to her bank account. However, the Agent did not provide an explanation as to why IL was sent an invoice with a different reference number to that sent to AP Pty Ltd which included the sponsorship fees.
118. Further, the bank account name KS Pty Ltd was listed on the invoice addressed to IL. However in the Agent's section 308 notice and section 309 notice responses to the Authority, she claimed that **** Pty Ltd and KS Pty Ltd were two separate entities at the time, and she did not affiliate one with the other on a business level.
119. I note that the Agent became the Director of KS Pty Ltd on 31 December 2018, after the invoice date, 9 August 2018.
120. Therefore, I find that the Agent knowingly made misleading statements in her responses to the section 308 notice and section 309 notice, understating her level of responsibility and involvement in this case. Thus, I am satisfied that the Agent has breached **clause 2.9A** of the former Code.

Record keeping and failing to respond to the Authority

121. If the Authority gives an RMA details of a complaint made to the Authority about:
- the work or services carried out by the agent or the agent's employee's; or
 - any other matter relating to the agent's compliance with this Code the agent must respond to the Authority, within a reasonable time specified by the Authority when it gives the details to the agent.
122. Further, a RMA must maintain proper records that can be made available for inspection on request by the Authority, this includes written communication and file notes for every substantive oral communication. Under clause 6.1A of the former Code, these records must be kept for a period of seven (7) years. I have considered whether the Agent fulfilled these obligations in respect of:
- JK
 - AP Pty Ltd, JY and IL
123. In the case of CMP-49047 the Authority requested the Agent, under section 308 of the Act, to provide a complete client file in respect of JK.
124. In the Agent's response to the section 308 notice, she stated that she provided JK with advice in relation to numerous nomination and visa applications, and fully informed her of pivotal outcomes throughout her case. The Agent did not provide any evidence to support this statement, and did not provide the client file requested by the Authority.

125. Clause 6.1 of the former Code requires a migration agent to maintain proper records that can be made available for inspection on request by the Authority. This includes written communication and file notes for every substantive oral communication. Additionally, a migration agent is expected to confirm a client's instructions in writing to the client. The Agent did not provide the Authority evidence that JK instructed her to apply for any visa or nomination application. Nor is there evidence that JK was made aware of the outcome in each case.
126. Further, the Agent did not provide any records or file notes of the actual conversations held with JK. Oral advice in respect of visa applications, and outcomes of such applications, as well as a client's instructions, are considered to be substantive, and as such should be noted in a client's file.
127. The Agent did not provide any other documentation from her files. In particular, there is nothing to substantiate the advice she claimed she gave to JK and the instructions she received from her in relation to her dealings.
128. Similarly in the case of CMP-58799, the Agent claimed that on numerous occasions, AP (the Director of AP Pty Ltd), JY and IL were made aware of all sponsorship obligations associated with their visa applications.
129. In the Agent's response to the section 308 notice, she claimed that she sent two emails to AP, following verbal discussions about his obligations as a sponsor. However, no records of these emails were submitted to support her response.
130. I note that in the Agent's submissions she also claimed to have advised AP's legal representative that all discussions were done so verbally by telephone and that she had no evidence in writing to substantiate her version of events, contradicting her original statement to the Authority claiming to have sent two emails.
131. Further, in the Agent's response to the section 309 notice, the Agent confirmed that all advice to AP was done so verbally, contradicting her initial response to the Authority.
132. The Agent did not provide any records or file notes of the actual conversations held with AP, JY and IL, nor advice or instructions in relation to her dealings with each client.
133. It appeared the Agent's record keeping practices did not meet the standard required under the former Code. The Agent appeared to have no records of any interactions with her clients. The Agent did not provide any file notes to give an accurate representation of what transpired with her clients either orally or in writing.
134. In the absence of any evidence to the contrary, I find that the Agent failed to maintain proper records and file notes in accordance with her obligations under clause 6 of the former Code.
135. Therefore, I am satisfied that the Agent engaged in conduct in contravention of **clauses 2.8, 6.1 and 6.1A** of the former Code.

CONSIDERATION OF APPROPRIATE DISCIPLINARY ACTION

136. In deciding to discipline the Agent under section 303 of the Act, I have taken into account all of the circumstances of the case, including the following:

- Whether the Agent's behaviour is of a minor or serious nature. The Authority has identified the following behaviour as extremely serious and therefore likely to result in discipline at the higher end of the scale:
 - criminal behaviour;
 - fraudulent behaviour;
 - behaviour that demonstrates fundamental lack of knowledge of the law; or
 - involves a blatant disregard for or a significant degree of indifference to the law;
 - repeated occurrences of the conduct described in subsection 303(1) (d)-(h) and/or;
 - agent behaviour that has resulted in significant harm or substantial loss to clients.
- Any aggravating factors that increase the Agent's culpability including but not limited to previous conduct.
- Any mitigating factors that decrease the Agent's culpability including but not limited to evidence that the Agent's health has contributed to the Agent's culpability or where the Agent has undertaken steps to remedy the situation.

Seriousness of behaviour

137. In deciding to discipline the Agent under section 303 of the Act, I have taken into account all of the circumstances of the case, including the severity of the Agent's behavior and any mitigating or aggravating circumstances which may exist. I have also considered:

- whether the behaviour in question could be the subject of rehabilitation;
- the level of impact, if any, that a sanction would have on the Agent's livelihood;
- the circumstances of the clients, including any vulnerability; and
- any wider issues pertaining to consumer protection or the national interest.

Aggravating factors

138. I have considered that the Agent's conduct falls short of the standard expected of an RMA for the following reasons:

- The Agent has breached clauses 2.8, 6.1 and 6.1A of the former Code, indicating significant poor business practices.
- She has attempted to take limited responsibility for her actions.
- She has failed to maintain proper records of material conversations with clients.
- Her actions may result in reputational damage to the migration advice profession.

139. Further, the seriousness of the Agent's conduct in relation to making misleading statements to the Authority cannot be ignored, nor excused. The Agent was given a number of opportunities to address these allegations in the section 308 and section 309 notices, however she continued to mislead the Authority in parts of her responses.

Mitigating Factors

140. The Agent provided the following submissions to be taken into account in making this decision.

- The Agent has represented roughly 2000 clients since being first registered on 16 February 2016, with over 140 active cases at present.
- She believes that she has a good reputation amongst her clients and has received praises for her work ethic.
- She is a migrant and went through the process, unsupported, which took over nine years to obtain Australian permanent residency. She has dedicated her career to helping those in similar circumstances, so that they are not disadvantaged.
- She is a sole income earner and is working as a migration agent for primary income to support her livelihood.
- She has rectified her shortfalls and has subscribed to Migration Manager, to manage the everyday dealings within her work practice. She has also hired three support staff to assist with providing a better service to her clients.

141. I have considered that the Agent has been registered since 16 February 2016 and that no previous disciplinary action has been taken against the Agent.

142. I acknowledge the passage of time since the events outlined in this notice and that no further adverse information regarding the RMA's conduct, by way of external complaints or internal Departmental referrals, has been received by the Authority.

143. I acknowledge that the Agent has stated that she has implemented procedures to address shortcomings in regards to poor record keeping and administrative practices.

144. I have also taken into account that a disciplinary decision would affect the Agent's financial earning capacity and livelihood.

Consumer Protection

145. Consumers of professional services of RMAs are often vulnerable and place a high degree of trust in their RMA. Consumers are therefore entitled to a high level of professional service from their RMA.

146. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a RMA. I consider that the Agent poses a risk, not only to consumers, but to the integrity of the Department's visa programs that are made available to visa product consumers. I am satisfied that if the Agent were to continue to practice as a RMA, the Agent would not demonstrate the requisite skills expected of a RMA. I therefore consider that a disciplinary decision is warranted to address the serious conduct addressed in this decision, in the interests of consumer protection, and in maintaining confidence in the integrity of the Australian migration program.

147. I expect that a decision to sanction the Agent would more likely than not deter other RMAs from engaging in similar practices and ensure that public confidence in the migration agent industry is maintained.

DECISION

148. I have turned my mind to the appropriate sanction action to impose on the Agent. I consider that the Agent requires a period of separation from the industry that a suspension imposed on the Agent would maintain the interests of consumer protection and the migration program in general.

149. Following consideration of the information before me, I have decided to suspend the Agent from being a RMA from the date of this decision for a period of three months, and until the Agent has met the below condition.

Conditions

150. The following condition is to be completed at the conclusion of the three month suspension period, or no more than five years from the date of suspension.

- A statutory declaration in Commonwealth form stating the Agent has not made immigration representations for a fee, has not advertised the provision of immigration assistance and has not given immigration assistance whilst suspended.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'S' or 'C' shape followed by a horizontal line.

Position Number: 8121
Senior Investigations Officer
Office of the Migration Agent Registration Authority
Immigration Integrity and Assurance Branch | Immigration Operations Group
Department of Home Affairs

Date of Decision: 7 August 2024

APPENDIX A: TERMS USED FOR REFERENCE

1. The following abbreviations may have been used in this decision:

ABN	Australian Business Number
AAT	The Administrative Appeals Tribunal
MARN	Migration Agent Registration Number
Section 308 Notice	Notice issued by the Authority under section 308 of the Act
Section 309 Notice	Notice issued by the Authority under section 309 of the Act
The Act	<i>The Migration Act 1958</i>
The Regulations	<i>Migration Agents Regulations 1998</i>
The Agent	<i>Saemi SEON</i>
The Authority	The Office of the Migration Agents Registration Authority
The Former Code	Code of Conduct prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i> by regulation 8 and Schedule 2 of the <i>Migration Agents Regulations 1998 – repealed on 1 March 2022</i>
The Department	The Department of Home Affairs
The Register	Register of migration agents kept under section 287 of the Act