



Administrative
Appeals Tribunal

**DECISION AND
REASONS FOR DECISION**

Division: GENERAL DIVISION

File Number: **2019/1486**

Re: **MOFID BEBAWY**

APPLICANT

And **MIGRATION AGENTS REGISTRATION AUTHORITY**

RESPONDENT

DECISION

Tribunal: **Senior Member Katter**

Date: **9 October 2020**

Place: **Brisbane**

The reviewable decision of 14 February 2019 is varied with the Applicant being barred from being a registered migration agent until 15 August 2021.

Senior Member Katter



[SGD]

CATCHWORDS

Cancellation of registration as a migration agent – whether the agent is a person of integrity – whether the agent is a fit and proper person to provide immigration assistance – whether the agent is honest – whether the agent dealt with his or her clients competently, diligently and fairly – decision under review varied

LEGISLATION

Migration Act 1958 (Cth)

Migration Agents Regulations 1998 (Cth)

CASES

Hughes and Vale Pty Ltd v State of New South Wales (No 2) [1955] HCA 28; (1955) 93 CLR 127

Issa and Migrations Agents Registration Authority [2017] AATA 1110

Kraues v Office of the Migration Agents Registration Authority (2018) 158 ALD 493; [2018] FCA 664

Lilienthal v Migration Agents Registration Authority [2002] FCA 93

Narayanan and Migration Agents Registration Authority (2006) 43 AAR 5; [2006] AATA 353

Peng and Department of Immigration and Multicultural Affairs [1998] AATA 12

Queensland Law Society v Bax [1998] QCA 089

Re Altintas and Migration Agents Registration Authority [2004] AATA 978

Shi v Migration Agents Registration Authority [2008] HCA 31

REASONS FOR DECISION

Senior Member Katter

9 October 2020

1. This is an application to review a decision by the Respondent to cancel the Applicant's registration as a migration agent.

BACKGROUND

2. By an application for registration declared by the Applicant on 3 February 2010, the Applicant applied to the Respondent for registration as a migration agent¹. The Applicant was first registered as a migration agent by the Respondent on 24 August 2010². The registration of the Applicant with the Respondent was renewed annually from 24 August 2010³.
3. On 24 April 2018 the Respondent communicated a letter to the Applicant, headed “Notice under section 308 of the *Migration Act 1958*” (Cth) (“the Act”)⁴. That correspondence referred to six complaints made as to the Applicant, stated to have been received by the Respondent on the following dates⁵: 26 September 2016, 10 March 2017, 15 March 2017, 15 March 2017, 15 March 2017 and 15 March 2017. There is a complaint dated 23 September 2016, being a two-page letter from Ms Kiranjeet Kaur⁶. There is an email on 10 March 2017 from the “Border Watch Allegations and Referrals Team (BWART)” at the Department of Home Affairs, as to the Applicant, referring to ‘Dob-In’ feedback from Mr Pradeep Kumar received on 28 December 2016 via a website⁷. On 7 March 2017 N. K. Sharma of Sharma Lawyers, by letter to the Respondent, complained on behalf of Ms Kamla Devi, Ms Rajvinder Kaur, Ms Parmjeet Kaur and Ms Manpreet Kaur Sidhu⁸.
4. On 3 May 2018 the Respondent communicated a letter to the Applicant, headed “Notice under section 308 of the *Migration Act 1958*”⁹. That correspondence of 3 May 2018 referred to three complaints made as to the Applicant, stated to have been received by the Respondent on the following dates¹⁰: 13 June 2017, 18 August 2017 and 16 April 2018. There is a report generated by the Respondent, described as a “Service Complaint”, dated

¹ Exhibit 18, Applicant’s Application for Registration dated 3 February 2010.

² Exhibit 3, Respondent’s Statement of Facts, Issues and Contentions dated 19 September 2019, paragraph 3; Exhibit 1, T Documents, T2, page 16.

³ Exhibit 3, Respondent’s Statement of Facts, Issues and Contentions dated 19 September 2019, paragraph 3; Exhibit 1, T Documents, T2, page 16.

⁴ Exhibit 1, T Documents, T6, pages 444-453.

⁵ Exhibit 1, T Documents, T6, page 444.

⁶ Exhibit 1, T Documents, T8, pages 1093 and 1094.

⁷ Exhibit 1, T Documents, T54B, pages 1569B-1580B.

⁸ Exhibit 1, T Documents, T7, pages 500-501.

⁹ Exhibit 1, T Documents, T348, pages 3028-3038.

¹⁰ Exhibit 1, T Documents, T348, page 3028.

13 June 2017, as to the Applicant, with the complainant described as Mr Brett Andrew Ormrod¹¹. That “Service Complaint” dated 13 June 2017 refers to Mr Ritesh Gohil, with Mr Ormrod and Mr Gohil both having involvement with a business called “Redback Butlers”¹². There is a three-page undated correspondence described as a “Service Complaint” by Mr Manish Kumar¹³. There is also an undated two-page statement by Laiq and Raiz Hussain as to the Applicant¹⁴.

5. On 21 May 2018 the Applicant responded to the notice by the Respondent of 24 April 2018¹⁵ by letter from his solicitors¹⁶, with a statutory declaration including exhibits¹⁷ and 6 lever-arch client files¹⁸.
6. On 15 June 2018 the Applicant responded to the notice by the Respondent of 3 May 2018¹⁹ by letter from his solicitors²⁰, with a statutory declaration including exhibits²¹, a USB drive containing audio recordings and 3 lever-arch client files²².
7. On 10 October 2018 the Respondent communicated a letter to the Applicant, headed “Notice under section 309(2) of the Migration Act 1958”²³. That correspondence dated 10 October 2018 referred to the six complaints in the section 308 notice of 24 April 2018²⁴, the three complaints in the section 308 notice of 3 May 2018²⁵ and a further complaint numbered 37193²⁶. The complaint numbered 37193 is described as “ ... an own motion complaint following a review of departmental records and the receipt of information and

¹¹ Exhibit 1, T Documents, T350, pages 3284-3286.

¹² Exhibit 1, T Documents, T350, pages 3284-3286.

¹³ Exhibit 1, T Documents, T402, pages 3595-3597.

¹⁴ Exhibit 1, T Documents, T511, pages 4049 and 4050.

¹⁵ Exhibit 1, T Documents, T6, pages 444-453.

¹⁶ Exhibit 1, T Documents, T7, pages 454-455.

¹⁷ Exhibit 1, T Documents, T7, pages 456-476.

¹⁸ Exhibit 1, T Documents, T7, pages 454-455.

¹⁹ Exhibit 1, T Documents, T348, pages 3028-3038.

²⁰ Exhibit 1, T Documents, T349, pages 3040-3041.

²¹ Exhibit 1, T Documents, T349, pages 3042-3066.

²² Exhibit 1, T Documents, T349, page 3040.

²³ Exhibit 1, T Documents, T3, pages 119-236.

²⁴ Exhibit 1, T Documents, T6, pages 444-453.

²⁵ Exhibit 1, T Documents, T348, pages 3028-3038.

²⁶ Exhibit 1, T Documents, T3, pages 161-182.

documents from the Department ... ”²⁷. That correspondence of 10 October 2018 was therefore notice to the Applicant of the Respondent’s “own motion complaint”²⁸.

8. By a letter dated 21 December 2018 the Applicant responded to the notice by the Respondent dated 10 October 2018²⁹ by letter from his solicitors³⁰, with a statutory declaration including exhibits³¹.
9. By a letter dated 14 February 2019 the Respondent, having regard to the 10 complaints as to the Applicant, as referred to in the correspondence of 10 October 2018³², decided to cancel the Applicant’s registration as a migration agent³³. That decision stated³⁴:

“Findings

... I am satisfied that you have engaged in conduct in breach of your obligations under clauses 2.1, 2.4, 2.9A, 2.23, 3.1, 5.2, 5.5, 6.1, 6.1A, 7.1, 7.1A and 7.2 of the Code of Conduct for registered migration agents as at 18 April 2017 (“the Code”).

I am also satisfied that you are not a person of integrity, or otherwise not a fit and proper person to give immigration assistance within the meaning of paragraph 303 (1)(f) of the Migration Act 1958 (“the Act”).

Decision

In accordance with paragraph 303(1)(a) of the Act, I have decided to cancel your registration as a migration agent by removing your name from the register of migration agents. This decision will have the effect that you will not be approved registration as a migration agent for a period of 5 years from the date of this cancellation, in accordance with section 292 of the Act.

The decision record, which sets out the reasons for my decision, is attached with this letter.

In accordance with subsection 305(3) of the Act, this decision takes effect when you are given written notice of it. You are taken to have been given notice of my decision at the end of the day on which the notice is transmitted to your email address, pursuant to section 332H of the Act. This notice has been transmitted to your email on 14 February 2019. ...

Publication of Decision

²⁷ Exhibit 1, T Documents, T3, page 162, paragraph 144.

²⁸ Exhibit 3, Respondent’s Statement of Facts, Issues and Contentions dated 19 September 2019, paragraph 6.

²⁹ Exhibit 1, T Documents, T3, pages 119-236.

³⁰ Exhibit 1, T Documents, T4, page 237, received by the Department on 24 December 2018.

³¹ Exhibit 1, T Documents, T4, page 238-385.

³² Exhibit 1, T Documents, T3, pages 119-236.

³³ Exhibit 1, T Documents, T2, pages 11-13.

³⁴ Exhibit 1, T Documents, T2, pages 11 and 13.

Details of the decision will also be made publicly available in accordance with section 305A of the Act. This will include publishing the decision of the “Disciplinary decisions” page of the Authority’s website.

Your attention is directed to Division 2 of Part 3 of the Act, which provides for penalties of up to 10 years imprisonment for the giving of immigration assistance or making immigration representations while not a registered migration agent.

Accordingly, you are not permitted to provide immigration assistance or advertise the provision of immigration assistance, whilst your registration as a migration agent is cancelled. ...”

10. By an Application for Review of Decision submitted online on 14 March 2019³⁵, the Applicant applied to this Tribunal for review of the decision of 14 February 2019³⁶, stating the following as to why that “decision is wrong”³⁷:

“1. The decision by the Migration Agents Registration Authority (“the Authority”) on 14 February 2019 to cancel the applicant’s registration as a migration agent by removing his name from the register of migration agents was wrong and a different decision should be made.

2. In making that decision, the Authority erred (in fact and in law) in finding that the Applicant engaged in conduct that was in breach of the Code of Conduct for registered migration agents and/or erred in finding that the applicant is not a person of integrity or otherwise not a fit and proper person to give immigration assistance within the meaning of s 303(1)(f) of the *Migration Act 1958*.

3. The errors by the Authority were in part because:

(a) Evidence provided to the Authority by the applicant was not taken into account or the Authority erred by placing no or insufficient weight on that evidence.

(b) The Authority made findings of fact without any or any probative or sufficient evidence: for example, findings concerning access to private information of the applicant’s clients by staff of the adjacent accounting firm; findings concerning the applicant’s engagement in an appeal lodged with the Administrative Appeals Tribunal; findings concerning the applicant’s use of statements of service; and findings concerning the timing of the creation of the applicant’s file notes.

(c) The Authority did not have all the material facts, which relevantly included copies of the applicant’s service agreements in 2012 and 2013.

(d) The Authority failed to properly or fairly investigate the error by the applicant in sending duplicate copies of service agreements, rather than the applicant’s original service agreements in 2012 and 2013.

(e) The Authority erred by taking into account irrelevant matters, including charges against the applicant that have been dismissed (with costs) in March 2012.

³⁵ Exhibit 1, T Documents, T1, page 3.

³⁶ Exhibit 1, T Documents, T1, page 7.

³⁷ Exhibit 1, T Documents, T1, page 8.

- (f) The Authority erred in finding that the applicant seriously departed from his professional financial obligations; which it found raised concerns about his management of client funds because it did so:
 - (i) relying on its own (erroneous) assumption about the future treatment of funds by the Applicant;
 - (ii) placing no or insufficient weight on the applicant's acknowledgment and concession with respect to the treatment of identified funds (placed into an operating account and held there for about an hour until withdrawn).
 - (g) The Authority made findings of fraud, deceit, dishonesty, misleading or deceptive conduct, and criminal conduct contrary to the evidence or where, having regard to the material before the Authority and in all the circumstances, those finding[s] were erroneous (as a matter of fact and law) and/or improper.
 - (h) Further, the Authority erred by using those findings (findings it made in error) to support other findings of fraud, deceit, dishonesty or misleading or deceptive conduct and/or in finding the applicant engaged in "a pattern of deceptive behavior in his written submissions".
 - (i) The Authority erred by taking into consideration irrelevant matters, including "concerns" about the applicant that were not the subject of any findings against the applicant.
 - (j) The Authority erred by making findings ... concerning the applicant's general record keeping practices based on a small sampling of his client files and the applicant's responses with respect to those the subject of the Authority's notices.
 - (k) The Authority erred by finding that the applicant's conduct fell within the major classification of the complaint for the purpose of the appropriate discipline response and that his conduct included aggravated factors material to that response.
 - (l) The Authority erred by failing to give any or giving insufficient weight to the mitigating factors advanced by the applicant.
 - (m) The decision maker made findings that were, in view of the material before the decision maker and all the circumstances, erroneous and/or improper.
4. The correct or preferable decision of the Authority was to caution the applicant to impose a short period of suspension (in the order of three months) on him and to require him to undertake supervised tuition."

ACT AND REGULATIONS

11. Section 303 of the Act states³⁸:

"303 Disciplining registered migration agents

- (1) The Migration Agents Registration Authority may:
 - (a) cancel the registration of a registered migration agent by removing his or her name from the register; or
 - (b) suspend his or her registration; or
 - (c) caution him or her;
 if it becomes satisfied that:

³⁸ Act No. 62 of 1958 as amended, taking into account amendments up to *Migration Amendment (Regulation of Migration Agents) Act 2020*, registered 3 September 2020, start date 11 August 2020.

- (d) the agent’s application for registration was known by the agent to be false or misleading in a material particular; or
- (e) the agent becomes bankrupt; or
- (f) the agent is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance; or
- (g) an individual related by employment to the agent is not a person of integrity; or
- (h) the agent has not complied with the Code of Conduct prescribed under section 314.

Note: If the Authority is considering making a decision under this section, it must invite the registered migration agent to make a submission: see sections 309 and 310.
Unpaid registration status charge

- (2) The Authority may also suspend the registration of a registered migration agent if any registration status charge payable by him or her remains unpaid after the time when it becomes due for payment.”

12. Other than a change to remove one of the notes³⁹ after sub-paragraph 303(1)(h) of the Act, that section has not otherwise changed since Act No. 48 of 2004⁴⁰.

13. Section 314 of the Act states:

“314 Code of Conduct for migration agents

- (1) The regulations may prescribe a Code of Conduct for migration agents.
- (2) A registered migration agent must conduct himself or herself in accordance with the prescribed Code of Conduct.”

14. In the *Migration Agents Regulations 1998* (Cth)⁴¹, regulation 8 states:

“8 Code of Conduct

For subsection 314(1) of the Act, the Code of Conduct is set out in Schedule 2.”

15. The decision by the Respondent to cancel the Applicant’s registration dated 14 February 2019⁴² referred to the Code of Conduct for Registered Migration Agents (“the Code”)⁴³ as

³⁹ The notes previously stated: “Note 1: The Authority is required to caution a registered agent or cancel or suspend a registered migration agent’s registration in certain circumstances: see Division 3AA. Note 2: If the Authority is considering making a decision under this section, it must invite the registered migration agent to make a submission: see sections 309 and 310.”

⁴⁰ s 303.....ad No 85, 1992; am No 205, 1997; No 48, 2004; No 71, 2020.

⁴¹ SR 1998 No. 53 Regulations as amended, taking into account amendments up to *Migration Agents Amendment (Regulation of Migration Agents) Regulations 2020* (Cth), registered 28 August 2020, start date 11 August 2020.

⁴² Exhibit 1, T Documents, T2, pages 11-13.

⁴³ The Code of Conduct in Schedule 2 was previously amended by Act No. 106 of 2012: Schedule 2.....am No 69, 1999; No 64, 2000; No 309, 2000; No 143, 2001; No 346, 2002; No

at 18 April 2017, clauses 2.1, 2.4, 2.9A, 2.23, 3.1, 5.2, 5.5, 6.1, 6.1A, 7.1, 7.1A and 7.2⁴⁴, with the Applicant making admission as to clause 3.2A(b)⁴⁵ and the Respondent also referring to clause 2.9⁴⁶:

“Part 2 – Standards of profession conduct

- 2.1 A registered migration agent must always:
- (a) act in accordance with the law (including, for an agent operating as an agent in a country other than Australia, the law of that country) and the legitimate interests of his or her client; and
 - (b) deal with his or her client competently, diligently and fairly. However, a registered migration agent operating as an agent in a country other than Australia will not be taken to have failed to comply with the Code if the law of that country prevents the agent from operating in compliance with the Code. ...
- 2.4 A registered migration agent must have due regard to a client's dependence on the agent's knowledge and experience. ...
- 2.9 A registered migration agent must not make statements in support of an application under the Migration Act or Migration Regulations, or encourage the making of statements, which he or she knows or believes to be misleading or inaccurate.
- 2.9A In communicating with, or otherwise providing information to, the Authority, a registered migration agent must not mislead or deceive the Authority, whether directly or by withholding relevant information. ...
- 2.23 A registered migration agent must take all reasonable steps to maintain the reputation and integrity of the migration advice profession. ...

Part 3 – Obligations to clients

- 3.1 A registered migration agent has a duty to preserve the confidentiality of his or her clients. ...
- 3.2A Once a registered migration agent has agreed to work for a client, but before commencing that work, the agent must:
- (a) provide the client with a copy of the consumer guide; and
 - (b) make a record that the copy has been provided.
- Note: The consumer guide is a document produced by the Authority with information about the migration advice profession, the functions of the Authority, the legislation regulating the profession, what a client can reasonably expect from a registered migration agent, and complaint procedures.

Part 5 – Fees and charges ...

- 5.2 A registered migration agent must:
- (a) before starting work for a client, give the client:

129, 2004; No 391, 2004; No 131, 2005; No 249, 2006; No 250, 2011; No 106, 2012; F2017L00437; F2020L01000. The Migration Services Agreement as to Ms Kiranjeet Kaur was signed on 1 May 2012 (V2, T7, page 745), with there being no change to the relevant Code of Conduct provisions (2.1, 2.4, 2.9A, 2.23, 3.1, 5.2, 5.5, 6.1, 6.1A, 7.1, 7.1A and 7.2) at that time.

⁴⁴ Exhibit 1, T Documents, T2, pages 11 and 13.

⁴⁵ Exhibit 39, Applicant's Closing Submissions dated 15 May 2020, page 92, paragraph 229(c).

⁴⁶ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 15, paragraph 2.37.

- (i) an estimate of charges in the form of fees for each hour or each service to be performed, and disbursements that the agent is likely to incur as part of the services to be performed; and
- (ii) an estimate of the time likely to be taken in performing the services; and
- (b) as soon as possible after receiving instructions, obtain written acceptance by the client, if possible, of:
 - (i) the estimate of fees; and
 - (ii) the estimate of the time likely to be taken in performing the services; and
- (c) give the client written confirmation (an **Agreement for Services and Fees**) of:
 - (i) the services to be performed; and
 - (ii) the fees for the services; and
 - (iii) the disbursements that the agent is likely to incur as part of the services; and
- (d) give the client written notice of any material change to the estimated cost of providing a service, and the total likely cost because of the change, as soon as the agent becomes aware of the likelihood of a change occurring. ...

5.5 A registered migration agent must be aware of the effect of section 313 of the Act, and act on the basis that:

- (a) the agent is not entitled to be paid a fee or other reward for giving immigration assistance to a client unless the agent gives the client a statement of services that is consistent with the services, fees and disbursements in the Agreement for Services and Fees mentioned in clause 5.2; and

Note: The statement of services may be an itemised invoice or account. See clause 7.2 and 7.4.

- (b) a statement of services must set out:
 - (i) particulars of each service performed; and
 - (ii) the charge made in respect of each such service; and
- (c) a client is entitled by the Act to recover the amount of a payment as a debt due to him or her if he or she:
 - (i) made the payment to the agent for giving immigration assistance; and
 - (ii) did not receive a statement of services before making the payment; and
 - (iii) does not receive a statement of services within 28 days after a final decision is made about the visa application, cancellation review application, nomination or sponsorship to which the immigration assistance related.

Part 6 – Record keeping and management

6.1 A registered migration agent must maintain proper records that can be made available for inspection on request by the Authority, including files containing:

- (a) a copy of each client's application; and
- (b) copies of each written communication between:
 - (i) the client and the agent; and
 - (ii) the agent and any relevant statutory authority; and

- (iii) the agent and the Department regarding the client; and
 - (c) file notes of every substantive or material oral communication between:
 - (i) the client and the agent; and
 - (ii) the agent and an official of any relevant statutory authority; and
 - (iii) the agent and the Department regarding the client.
- 6.1A A registered migration agent must keep the records mentioned in clause 6.1 for a period of 7 years after the date of the last action on the file for the client. ...

Part 7 – Financial duties

- 7.1 Subject to clause 7.1B, a registered migration agent must keep separate accounts with a financial institution for:
- (a) the agent’s operating expenses (the **operating account**); and
 - (b) money paid by clients to the agent for fees and disbursements (the **clients’ account**).
- 7.1A The words ‘clients’ account’ must be included in the name of the financial institution account mentioned in paragraph 7.1(b). ...
- 7.2 A registered migration agent must hold, in the clients’ account, an amount of money paid by a client for an agreed block of work until:
- (a) the agent has completed the services that comprise the block of work; and
 - (b) an invoice has been issued to the client for the services performed in accordance with the Agreement for Services and Fees mentioned in clause 5.2, showing:
 - (i) each service performed; and
 - (ii) the fee for each service. ... ”

CONSIDERATION

16. The Respondent in submissions identifies the following sub-issues⁴⁷ relating to the complaints referred to in the notice to the Applicant as to cancellation dated 14 February 2019⁴⁸.

Service agreements

17. The Respondent submits that the Applicant created false service agreements at some time after 18 September 2013⁴⁹, in response to the communications from the Department dated 9 December 2015, 17 December 2015 and 24 February 2016⁵⁰, with the intention of

⁴⁷ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, pages 2-3, paragraph 1.3(a).
⁴⁸ Exhibit 1, T Documents, V1, T2, pages 11-13.
⁴⁹ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 4, paragraph 2.2(a).
⁵⁰ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 5, paragraph 2.5.

misleading the Respondent about the authenticity of the service agreements, in that the documents referred to a name for the Department which had not yet come into existence on the execution date of the agreements⁵¹. The Respondent submits that the Applicant created particular service agreement documents with the intention of misleading the Respondent about the authenticity of the service agreements, in an attempt to support the false statements made in the Applicant's December 2018 and August 2019 statutory declarations in relation to back-dating agreements⁵².

18. Further, the Respondent submits that the Applicant made false statements in the Applicant's December 2018 and August 2019 statutory declarations by claiming that particular clients attended the Applicant's offices to re-sign agreements⁵³. The Respondent also submits that the Applicant gave false oral evidence by reiterating the false statements made in the December 2018 and August 2019 statutory declarations, by stating that Ms Kiranjeet Kaur attended the Applicant's offices to re-date a 1 May 2012 agreement⁵⁴.

19. The Applicant provided copies of the following documents⁵⁵ in response to the communications to the Applicant dated 9 December 2015, 17 December 2015 and 24 February 2016⁵⁶:

- “(a) Ms Kamalpreet Kaur, dated 18 March 2013⁵⁷;
- (b) Ms Mandeep Kaur, dated 22 June 2012⁵⁸;
- (c) Mr Vikramkumar Patel, dated 29 May 2013⁵⁹;
- (d) Ms Ameena Unnisa, dated 12 June 2013⁶⁰; and
- (e) Ms Amritpal Kaur, dated 12 October 2012⁶¹.”

20. Exhibit 1 to the Applicant's August 2019 statutory declaration⁶² included copies of service agreements which referred to “DIMA”, as the abbreviation for the then Department. From

⁵¹ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 4, paragraph 2.2(a).

⁵² Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 4, paragraph 2.2(d).

⁵³ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 4, paragraph 2.2(b).

⁵⁴ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 4, paragraph 2.2(c).

⁵⁵ Exhibit 1, T Documents, V1, T3, pages 119-184.

⁵⁶ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 5, paragraphs 2.5-2.6.

⁵⁷ Exhibit 1, T Documents, V1, T3, 207-212.

⁵⁸ Exhibit 1, T Documents, V1, T3, 213-218.

⁵⁹ Exhibit 1, T Documents, V1, T3, 219-224.

⁶⁰ Exhibit 1, T Documents, V1, T3, 225-230.

⁶¹ Exhibit 1, T Documents, V1, T3, 231-236.

⁶² Exhibit 5, Applicant's Statement dated 29 August 2019.

2007 to 2013 the Department was the Department of Immigration and Citizenship⁶³. In this regard, the Applicant stated relevantly⁶⁴:

“I redated the same as the old agreement because they’re still continuing clients. If I’ve taken them with a new date on the cost agreement my understanding is I don’t have a new cost agreement to start with. I haven’t been appointed to do anything else. This is to do with the old agreement.”

21. The Applicant further stated⁶⁵:

“It’s not backdating because the service has been performed two years prior. How can I go and amend an old service agreement. I’ve not entered into a new agreement. It’s basically and purely adjusting and fixing the old agreement. That’s not a new appointment. New appointment you’ll have the current date.”

22. The Applicant was asked⁶⁶:

“You state that you arranged for your client to return to the offices of Choice Migration to execute new service agreements? Correct, yes.”

23. The Applicant was further asked⁶⁷:

“Okay. When was it re-dated? That would have been in the screenshot that I gave you, which is – I think it’s 2015. ...
Which date are you referring to, Mr Bebawy? On that screenshot there you will see a couple of dates, one is 21 January 15. ...
So it was redated on 21 January 2015 or the document? It’s modified on that day. The date was modified, so when the date – when did the client come to the office and ... ? The day of the modification, basically on that day.”

24. The Respondent submitted that the Applicant did not make an effort to explain that the documents had been back-dated until the Applicant provided the response to the section 309 Notice dated 10 October 2018⁶⁸.

⁶³ Exhibit 22, Commonwealth, *Gazette: Administrative Arrangements Order*, No S 17, 30 January 2007.

⁶⁴ Resumed Hearing Day 6, Transcript, page 178, lines 21-25.

⁶⁵ Resumed Hearing Day 6, Transcript, page 178, lines 39-43.

⁶⁶ Resumed Hearing Day 6, Transcript, page 159, lines 38-39.

⁶⁷ Resumed Hearing Day 6, Transcript, page 164, lines 45-46; page 165 lines 22-23, 31-35.

⁶⁸ Exhibit 1, T Documents, T3, pages 119-236.

25. The Respondent submitted that the Applicant, in all the circumstances, therefore breached clauses 2.1, 2.4, 2.9A and 2.23 of the Code⁶⁹. Further, the Respondent submitted that back-dating the documents may constitute an offence in accordance with s 137.2 of the *Criminal Code Act 1995* (Cth), Schedule⁷⁰. The Respondent further refers to a potential offence against s 430 of the *Criminal Code Act 1899* (Qld), Schedule⁷¹. The Respondent quotes from the decision in *Queensland Law Society v Bax* [1998] QCA 089 per McPherson JA, where a solicitor was struck off for back-dating documents. The Applicant states⁷²:

“233 The respondent’s attack on the applicant’s character has already been the subject of extensive submission in response. The most pressing issue for the applicant is that of his backdating service agreements. On that, it is submitted that the Tribunal should accept that he was motivated by a desire to correct agreements that had erroneously or misleadingly included the sponsor’s nomination fee to meet the concerns earlier raised by the Department over his service agreements. Further to that, the Tribunal should find that the issue had been raised with him by the Department on multiple files. This innocent motive distinguishes this case from *Attorney-General v Bax* [1999] 2 Qd R 9, where the solicitor has relevantly backdated a deed of loan and mortgage with the intention of misleading a creditors’ meeting about the date of execution of that mortgage. The applicant’s motive was to replace the original service agreement with another that met the Department’s concerns. It was not to gain any advantage or to otherwise mislead the Department.

234 It is submitted that, in these circumstances, a finding of breach of the Code of Conduct is warranted but that the Tribunal should not find that the applicant is not a person of integrity or otherwise not a fit and proper person to give immigration assistance. (cf. *Kraues v Migration Agents Registration Authority* [2016] AATA 1086, [104].”

Evidence

26. The Respondent submits that the Applicant “ ... intentionally made false statements in a number of statutory declarations made under the *Oaths Act 1867* (Qld) ... ”⁷³ as to fraud charges⁷⁴, office closure⁷⁵ and when work was performed⁷⁶.

⁶⁹ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020 page 8, paragraph 2.18.

⁷⁰ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 8, paragraph 2.18.

⁷¹ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 8, paragraph 2.18.

⁷² Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 93, paragraphs 233-234.

⁷³ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 15, paragraph 2.33.

⁷⁴ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 15, paragraphs 2.35-2.37.

⁷⁵ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 16, paragraphs 2.38-2.41.

⁷⁶ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, pages 16-17, paragraphs 2.42-2.44.

27. As to whether the Applicant had been charged with “fraud charges”, the Respondent submits that the Applicant intended to mislead the Respondent in that regard, in breach of clause 2.9 or, in the alternative, clause 2.9A of the Code⁷⁷. The Respondent referred to the Applicant’s June 2018 statutory declaration⁷⁸, in which the Applicant denied allegations made by Mr Laiq Hussain that the Applicant was involved in “many fraud cases and face[d] court many times”⁷⁹. The Respondent further referred to the Applicant’s December 2018 statutory declaration in which the Applicant stated⁸⁰:

“In the June Declaration at paragraph 7.5.6, [the Applicant] states that he: (a) “[is] not being investigated”; (b) “ha[s] never been investigated or charged with fraud”; and (c) “ha[s] not been involved in Court proceedings other than in my representative capacity as a migration agent acting for clients of Choice Migration.” The statement at (a) was plainly correct. The statement at (b) is ambiguous and [the Applicant] intended to convey to the Department that he has never been investigated or charged with anything that amounted to fraud – in that sense, the proceedings against [the Applicant] did not concern fraud because they were not made out and, in fact, were dropped against [the Applicant]. And the statement at (c) again, is ambiguous in that the earlier proceedings against [the Applicant] were without any factual basis and dismissed before trial or hearing, so were excluded from what [the Applicant] considered “Court proceedings”.”

28. The Applicant states relevantly⁸¹:

“The respondent had been kept informed at the relevant time, of the charges against the applicant and of their ultimate dismissal. In this context – the extraordinary circumstances in which those charges were dismissed (with costs) and [the Applicant’s] earlier disclosure to the respondent – ... it is submitted, understandable that the applicant was robust in his initial response to the respondent. [The Applicant’s] earlier disclosure of the matter to the respondent and his subsequent correction and explanation, in this proceeding, is inconsistent with the submission that he was intentionally misleading the respondent in his first statement. ... ”

29. As to references to “office closure”⁸² in the statutory declarations, as referred to above, the Respondent submits that while “ ... the Applicant declared that his offices were closed

⁷⁷ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 15, paragraph 2.37.

⁷⁸ Exhibit 1, T Documents, V9, T349, pages 3042-3066.

⁷⁹ Exhibit 1, T Documents, V9, T349, page 3065, paragraph 7.5.6.

⁸⁰ Exhibit 1, T Documents, V1, T4, pages 262, paragraph 98.

⁸¹ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 33, paragraph 77.

⁸² Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 16, paragraphs 2.38-2.41.

between late December 2016 and 11 January 2017 ...”, an application for nomination was lodged by the Applicant on 10 January 2017⁸³. The Applicant was asked⁸⁴:

“ ... your evidence was that you came back to the office on 11 January? --- Correct.

But this document indicates that that’s not correct and that you lodged an application on 10 January? --- I would have broken my holiday, basically, to go and do the specific task. That’s exactly what I’ve done, if I’ve been asked – even during holiday, if we have been asked by the client to go, basically, and do something urgent, I would break the holiday, if I am still on the coast.”

30. As to when work was performed⁸⁵, as referred to above, the Respondent submits that, contrary to the Applicant’s evidence that “ ... all work had already been performed on the date the service agreements were signed ... ”; the service agreements for Ms Kiranjeet Kaur, Mr Pradeep Kumar and Mr Riaz Hussein were signed before their applications were lodged⁸⁶.

31. The Applicant stated, in relation to Ms Kiranjeet Kaur, that⁸⁷:

“ ... the applicant’s evidence⁸⁸ was to the effect that the work the subject of services to be provided had been performed, and all that remained to happen was actual lodgment [by] the applicant – which would not occur until he received payment – and any consequential follow-up matters in response to requests for information from the Department of Immigration and Border Protection⁸⁹, which was a complimentary service that was not always necessary⁹⁰ ... ”

32. The Applicant gave similar evidence in relation to Mr Pradeep Kumar⁹¹ and Mr Riaz Hussain⁹². The Applicant further stated⁹³:

⁸³ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 16, paragraphs 2.38-2.39.

⁸⁴ Resumed Hearing Day 5, Transcript, page 142, lines 44-45; page 143, lines 1-6.

⁸⁵ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, pages 16-17, paragraphs 2.42-2.44.

⁸⁶ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, pages 16-17, paragraphs 2.42 and 2.44.

⁸⁷ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 36, paragraph 84.

⁸⁸ Resumed Hearing Day 3, Transcript, page 11, line 15; page 16, line 13.

⁸⁹ For example, Resumed Hearing Day 3, Transcript, page 14, lines 37-46.

⁹⁰ Resumed Hearing Day 3, Transcript, page 15, lines 23-31; page 16, lines 9-13.

⁹¹ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 45, paragraph 100.

⁹² Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 45, paragraph 107.

⁹³ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, pages 45-46, paragraphs 101 and 104.

“The material difference between the applicant and the respondent’s solicitor ... was whether the applicant was correct to view his professional services as complete once he had interviewed the client and prepared the relevant documents to the point that they were ready for lodgment. The applicant did not deny that, after the documents were ready or lodged, he was required, from time to time, to answer further inquiries from the Department. It is apparent that the applicant viewed this *after* attendance on such matters as an administrative function ... and not part of his professional work. ... Whatever the correct legal characterisation, this difference of opinion between the applicant and respondent’s solicitor does not mean that the applicant was intentionally lying or fabricating his evidence when responding to the respondent’s inquiries or when he gave evidence to the Tribunal. ... ”

Advertising

33. The Respondent submits that on 24 September 2019, after the cancellation of the Applicant’s registration on 14 February 2019⁹⁴, a website “True Local”, which is an online directory of Australian businesses, included an advertisement for “Mofid Bebawy Migration Agent”⁹⁵. That website included an advertisement that stated: “Mofid Bebawy is a senior migration agent & director at Choice Migration Australia with many years of experience providing professional migration advice to many clients”⁹⁶. The internet website also stated that appointments were available and featured contact details for Choice Migration, including address and business phone number⁹⁷. The evidence was that the internet site featured a “tick” which indicated that the advertisement was a ‘managed listing’⁹⁸.
34. The Applicant stated that he did not create that website listing⁹⁹ and that all of his advertisements have been “closed down”¹⁰⁰ and “disconnected”¹⁰¹. The Applicant further stated that he was not familiar with the website listing process, stating¹⁰²: “I don’t know how it works, I never tried to look at it – I don’t know”.

⁹⁴ Exhibit 1, T Documents, T3, pages 119-236.

⁹⁵ Exhibit 25, Bundle of Screenshots from ‘truelocal’.

⁹⁶ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 20, paragraph 2.61.

⁹⁷ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 20, paragraph 2.61.

⁹⁸ As accessed on 30 March 2020.

⁹⁹ Hearing Day 1 Transcript, page 70, lines 28 and 30.

¹⁰⁰ Hearing Day 1 Transcript, page 72, lines 27-28.

¹⁰¹ Hearing Day 1 Transcript, page 70, lines 30-35.

¹⁰² Resumed Hearing Day 2 Transcript, page 4, lines 22-23.

35. The Respondent submits that advertising is a “serious matter that goes to the question of whether the Applicant is otherwise a fit and proper person to be a registered migration agent”¹⁰³.

Fees

36. The Respondent submits that the Applicant received fees for providing immigration services to which he was not entitled¹⁰⁴, in that the Applicant did not give the respective clients a statement of service as required by section 313 of the Act and clause 5.5 of the Code¹⁰⁵. The Respondent states that the Applicant did not give the clients statement of services specifying the particulars of each service to be performed and the charge in respect of each service as respectively required by clause 5.5 of the Code¹⁰⁶.

37. Section 313 of the Act states:

- “Persons charged for services to be given detailed statement of services**
- (1) A registered migration agent is not entitled to be paid a fee or other reward for giving immigration assistance to another person (the ***assisted person***) unless the agent gives the assisted person a statement of services.
 - (2) A statement of services must set out:
 - (a) particulars of each service performed; and
 - (b) the charge made in respect of each such service.
 - (3) An assisted person may recover the amount of a payment as a debt due to him or her if he or she:
 - (a) made the payment to a registered migration agent for giving immigration assistance; and
 - (b) did not receive a statement of services before making the payment; and
 - (c) does not receive a statement of services within the period worked out in accordance with the regulations.
 - (4) This section does not apply to the giving of immigration legal assistance by a lawyer.”

¹⁰³ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 20, paragraph 2.63.

¹⁰⁴ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 20, paragraph 2.65.

¹⁰⁵ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 20, paragraph 2.65.

¹⁰⁶ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 20, paragraph 2.68.

38. The Applicant stated¹⁰⁷:

“In Exhibit 4 (the applicant’s statement of facts, issues and contentions dated 29 August 2019) the applicant accepts that he had not issued statements of services to his clients within section 313 of the Act. The applicant had, during the relevant time the subject of the issues before the Tribunal, proceeded on the basis that he could amalgamate his client agreement and his statement of services.

In his evidence, the applicant explained his earlier position that the statement of service could be included in an amalgamated document with the service agreement. On 3 March 2020¹⁰⁸, the applicant did suggest that his early service agreement templates met the requirements of the Code of Conduct¹⁰⁹. But that evidence was later clarified when he accepted that it did not¹¹⁰. That evidence was to the effect that he had obtained legal advice on the issue and had made changes to his practice¹¹¹. ...”

39. The Respondent submits further that the evidence identifies that the Applicant does not have a “sound working knowledge of the Act and Regulations in relation to his fees for providing immigration assistance and the legal effect of a Form 956 as required by clause 2.3” of the Code¹¹². The Respondent states that the Applicant’s client files did not contain statements of service which detail the services performed and the hours of work undertaken¹¹³. The Respondent submits that there should be satisfaction that particular fees were unreasonable, including because total fixed payments were received on the date the agreements were said to be executed, which was not the case, and where the breakdown of the hours worked, on the basis of an eight hour day, would have the Applicant charging at \$1,250 per hour for services¹¹⁴. The Respondent submits that the fees are unreasonable also in that they did not vary from case to case, with limited exceptions¹¹⁵ and prior to starting work the Applicant failed to provide an estimate of fees¹¹⁶.

¹⁰⁷ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, pages 53-54.

¹⁰⁸ The Applicant refers to the 3 March 2020 Transcript, however this reference appears to be to the 2 March 2020 Transcript.

¹⁰⁹ Resumed Hearing Day 4, Transcript, page 69, line 35; page71, line10.

¹¹⁰ Resumed Hearing Day 6, Transcript, page 197, lines 1-18, “I admitted I should have issued a statement of services account. I said that. I made it very clear, yes, it’s an error on my behalf”.

¹¹¹ Resumed Hearing Day 6, Transcript, page 197 lines 1-18.

¹¹² Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 25, paragraph 2.76.

¹¹³ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 25, paragraph 2.77.

¹¹⁴ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, pages 25-26, paragraph 2.78(a).

¹¹⁵ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 25, paragraph 2.78(b).

¹¹⁶ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 25, paragraph 2.78(c).

40. The Applicant states¹¹⁷:

“There is no statutory scale of fees for migration agents. By paragraph 5.1 of the Code of Conduct, the only requirement is that those fees are “reasonable in the circumstances of the case.”

The only evidence before the Tribunal concerning the reasonableness of the applicant’s fees comes from the applicant himself.

In cross-examination, the applicant denied that his fees for work carried out for Mrs Kaur amounted to an “unreasonable charge.” In his evidence, he explained that an application required a whole day to complete, which included two hours of his time with the client and required the client to separately complete “the other paper work” with the applicant’s assistant, and the fee charged varied taking into account the “complexity of the case”^[118].”

Records

41. The Respondent submits that the Applicant did not maintain proper records, in that client files supplied by the Applicant do not contain: a copy of each client’s application; copies of each written communication between the client and the agent; copies of each written communication between the agent and any relevant statutory authority; copies of each written communication between the agent and the Department; and file notes¹¹⁹. The Respondent provides the following as examples: the Applicant could not provide any file note of instructions to go into the office to file an application on 10 January 2017¹²⁰, instructions received from Mandeep Kaur¹²¹ and instructions from Mr Riaz Hussain to withdraw his sub-class 457 visa application¹²².

42. The Applicant stated relevantly that¹²³: “The applicant did not keep full file notes of material conversations the subject of instructions from each of the complainants.”

¹¹⁷ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 54, paragraphs 130-132.

¹¹⁸ Resumed Hearing Day 3 Transcript, page 88, lines 10-21.

¹¹⁹ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, pages 28 and 29, paragraph 2.91(a)-(c).

¹²⁰ Resumed Hearing Day 5, Transcript, page 142.

¹²¹ Exhibit 1, T Documents, T349, page 3053.

¹²² Exhibit 1, T Documents, T349, page 3063 and Resumed Hearing Day 5, Transcript, page 113.

¹²³ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 61, paragraph 148.

Clients' account

43. The Respondent submits that the Applicant did not keep client funds in a separate client account¹²⁴. The Respondent refers to a transaction history of an account held by the Applicant with Bendigo Bank, for which there were no transactions between 2011 and 2017¹²⁵. Further, the Respondent submits that that Bendigo Bank account does not have the words "Clients' Account" in the account name, as required by clause 7.1A of the Code¹²⁶.

44. The Applicant stated relevantly¹²⁷:

" ... the respondent ... fails to address – and demonstrate the error in – the Applicant's practice of completing all work, save incidental administrative tasks, before he received payment for his fees. And on the basis that he does not charge for those additional administrative matters, he does not deposit those fees in the client account."

Conduct under cross-examination

45. The Respondent submits that "[t]he Applicant was an uncooperative witness who refused to answer questions ..."¹²⁸, with the Respondent referring to particular transcript references as to the responses of the Applicant¹²⁹.

Complaint by Ms Kaur

46. By letter to the Respondent dated 23 September 2016, Ms Kiranjeet Kaur complained that the Applicant failed to provide her with 'satisfactory service' and charged unreasonable fees for that service¹³⁰. Ms Kaur stated that when her sub-class 186 visa application was lodged on 9 October 2014, the Applicant was fully aware of the fact that her sponsor was already in liquidation and no longer trading at the time, because the Applicant was also acting as the sponsor's accountant¹³¹.

¹²⁴ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 31, paragraph 2.99.

¹²⁵ Exhibit 21, Bendigo Bank Letters.

¹²⁶ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 31, paragraph 2.99.

¹²⁷ Exhibit 39, Applicant's Closing Submissions dated 15 May 2020, page 61, paragraph 150.

¹²⁸ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 31, paragraph 2.105.

¹²⁹ Resumed Hearing Day 3, Transcript, pages 22-24, Resumed Hearing Day 5, pages 108-109 and Resumed Hearing Day 6, pages 168-171.

¹³⁰ Exhibit 1, T Documents, T8 pages 1093-1094.

¹³¹ Exhibit 1, T Documents, T8, page 1093.

47. In that regard, the Applicant stated¹³²:

“The applicant is not and has never been a director of Choice Accounting Pty Ltd¹³³. The respective business conducted by Choice Accounting Pty Ltd and Choice Migration Australia Pty Ltd were separate and distinct, notwithstanding that they are operated within the same commercial premises¹³⁴ and that the applicant was, at the relevant time, employed by Choice Accounting as a senior tax consultant¹³⁵. ... ”

48. Ms Kaur further stated that the Applicant asked her to pay all fees in cash, totaling “almost \$90,000 in fees” since the Applicant first acted for Ms Kaur in respect of a sub-class 457 visa application and that the Applicant did not provide her with any receipts¹³⁶. Beyond that statement as to the amount, there is not further evidence, such as bank withdrawals, confirming that total amount.

49. The Applicant acted for Ms Kaur in respect of a long-stay temporary business visa (sub-class 457) application lodged on 26 May 2012 for which Ms Kaur signed a migration services agreement with the Applicant on 1 May 2012¹³⁷. The Applicant further acted for Ms Kaur in respect of a permanent employer sponsored or nominated visa (sub-class 186 application) application lodged on 9 October 2014 for which Ms Kaur signed a migration services agreement with the Applicant on 12 February 2014¹³⁸. The Applicant further acted for Ms Kaur in respect of a response to a notice of intention to consider cancellation (sub-class 186 cancellation) for which no agreement was signed¹³⁹.

50. The Applicant stated as to that evidence¹⁴⁰:

“The further complaints made by the respondent concerning the applicant’s provision of documents and disclosure of fees rely on the veracity of Mrs Kaur’s evidence. It should be rejected on that basis. She was not a witness

¹³² Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 66, paragraph 162.

¹³³ Hearing Day 1, Transcript, page 7, lines 6 – 15.

¹³⁴ Hearing Day 1, Transcript, page 37, lines 29 – 34; page 45, lines 22 – 32.

¹³⁵ Hearing Day 1, Transcript, page 33, lines 31 – 43.

¹³⁶ Exhibit 1, T Documents, T8, page 1094.

¹³⁷ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 32, paragraph 2.108(a).

¹³⁸ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 32, paragraph 2.108(b).

¹³⁹ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 32, paragraph 2.108(c).

¹⁴⁰ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 68, paragraph 169.

of truth and the Tribunal should not make any finding based on her evidence unless, as has been submitted, it is corroborated or it is against her interest.”

Complaint by Mr Kumar

51. The Applicant acted for Mr Pradeep Kumar in respect of a permanent employer sponsored or nominated visa (sub-class 187) application lodged on 24 July 2014¹⁴¹. Mr Kumar signed a migration services agreement with the Applicant on 1 March 2014¹⁴². There is a letter as to Mr Kumar dated 20 December 2016, which states that it is from the Department, which Mr Kumar provided to the Department¹⁴³. In the notice dated 14 February 2019¹⁴⁴ the Respondent stated relevantly¹⁴⁵:

“The [Applicant] denied that he had any involvement in the alleged bogus Notification of Grant letter provided to the Department by Mr Pradeep Kumar, which was alleged to have been prepared by the [Applicant], and subsequently provided to Mr Pradeep Kumar. The [Applicant’s] engagement by Mr Kumar ceased approximately two years prior to the date of the letter, 20 December 2016, and in that time the [Applicant] had no contact with Mr Kumar, nor did he prepare any visa application or nomination on his behalf to which the alleged bogus grant letter would relate.

Mr Kumar has provided the [Applicant] with a sworn Affidavit, dated 4 May 2018, advising that his complaint made to the Department relates to the conduct of a migration agent in India, and not to the [Applicant] or [the Applicant’s] business. The [Applicant] asserted that Mr Kumar’s sworn Affidavit clearly indicates that the allegation is against Mr Kumar’s migration agent in India rather than the [Applicant].”

52. The Respondent in the closing submissions filed 7 April 2020 referred only to the issues of fees and records¹⁴⁶, which are referred to separately above.

Complaints communicated by Sharma Lawyers

53. By letter to the Respondent dated 7 March 2017, N. K. Sharma of Sharma Lawyers complained, on behalf of Ms Kamla Devi, Ms Rajvinder Kaur, Ms Parmjeet Kaur and Ms

¹⁴¹ Exhibit 1, T Documents, V4, T65, page 1608.

¹⁴² Exhibit 1, T Documents, V2, T7, page 875.

¹⁴³ Exhibit 1, T Documents, T56, pages 1566-1569.

¹⁴⁴ Exhibit 1, T Documents, T2, pages 11-13.

¹⁴⁵ Exhibit 1, T Documents, T2, page 23, paragraphs 29-30.

¹⁴⁶ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 35, paragraph 2.116.

Manpreet Kaur Sidhu¹⁴⁷, that the Applicant 'charged each of these clients a very substantial/unreasonable amount in fees, and did not give them any receipt'¹⁴⁸. Sharma Lawyers further stated that the Applicant submitted sub-class 186 visa applications, despite being aware the sponsoring company had ceased trading, where the Applicant was a 'good friend of the owner of the restaurant and has also been their accountant'¹⁴⁹.

54. The Applicant lodged long stay temporary business (sub-class 457) visa applications and permanent employer sponsored or nominated (sub-class 186) visa applications for Ms Rajvinda Kaur, Ms Manpreet Kaur Sidhu, Ms Kamla Devi and Ms Parmjeet Kaur¹⁵⁰. The sponsor as to those applications was the Dahab Group Pty Ltd as trustee for the Dahab Family Trust trading as Galaxy Seafood Mediterranean Restaurant¹⁵¹. The Applicant was the migration agent for the Dahab Group¹⁵².
55. The visas for Ms Rajvinda Kaur, Ms Manpreet Kaur Sidhu, Ms Kamla Devi and Ms Parmjeet Kaur were cancelled on 26 August 2016, in that Galaxy Seafood Mediterranean Restaurant ceased trading in or about December 2015¹⁵³. The Galaxy Seafood Mediterranean Restaurant went into liquidation in February 2016 and the restaurant was sold in or about August 2016, although the complaint was that Ms Rajvinda Kaur, Ms Manpreet Kaur Sidhu, Ms Kamla Devi and Ms Parmjeet Kaur did not receive communication that the business had ceased trading¹⁵⁴.
56. The Applicant stated¹⁵⁵:

"I did not consider it was necessary to inform the Complainants of the Liquidation on the basis that:-
(a) Their sponsor was the Dahab Family Trust (not Dahab Group Pty Ltd);
(b) The Dahab Family Trust was continuing to trade Galaxy Restaurant;

¹⁴⁷ Exhibit 1, T Documents, T7, pages 500-501.

¹⁴⁸ Exhibit 1, T Documents, T7, page 500.

¹⁴⁹ Exhibit 1, T Documents, T7, page 500.

¹⁵⁰ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 35, paragraph 2.118.

¹⁵¹ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 35, paragraph 2.118.

¹⁵² Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 35, paragraph 2.118.

¹⁵³ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 35, paragraph 2.119.

¹⁵⁴ On 19 February 2016, the Federal Court of Australia placed Dahab Group into liquidation. See Exhibit 1, T Documents, T117, p 1822-1824; T221, p 2374-2376; T275, p 2723-2725; T152, p 2131-2132.

¹⁵⁵ Exhibit 1, T Documents, T7, page 474.

- (c) No Complainant had raised any concern with me that they were no longer employed. In fact, each of the Complainants continued to be gainfully employed by the Dahab Family Trust;
- (d) There was no suggestion that Dahab Star Pty Ltd (the new trustee) had been improperly appointed;
- (e) There was not, in my professional opinion, any breach of the *Migration Act 1958*;
- (f) OMB Solicitors, solicitors for the Dahab Family Trust, had advised the Dahab Family Trust that the change of trustee did not invalidate any prior agreement(s) between the Dahab Family Trust and third parties, including the Complainants. This was confirmed in writing by OMB Solicitors and provided to the Department in connection with further work undertaken by Choice Migration for the Complainants ... ”

57. The Applicant further stated¹⁵⁶:

“ ... The respondent did not call any evidence in support of its submission that the applicant knew that the relevant sponsor “was no longer trading” when lodging [the] visa application[s]¹⁵⁷. And it did not explain why it did not call any of that evidence, when plainly, if it was going to pursue these allegations, it would be expected to call that evidence. In consequence, the usual inference arises that all of that evidence would not have assisted the respondent’s case.”

Complaint by Mr Ormrod

58. By a “service complaint” generated by the Respondent on 13 June 2017, Mr Brett Andrew Ormrod complained that the Applicant “failed to submit important documents by [the] cut off date” for a Tribunal hearing and further failed to submit a request for an extension, despite Mr Ormrod following the matter up with the Applicant on two occasions¹⁵⁸. Mr Ormrod complained that as a consequence of that failure, the matter was not heard by the Tribunal¹⁵⁹.

59. The Applicant was appointed as migration agent for Mr Ritesh Gohil on 24 July 2015 in relation to a sub-class 457 visa application¹⁶⁰.

60. The Applicant stated¹⁶¹:

¹⁵⁶ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 72, paragraph 181.

¹⁵⁷ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, paragraph 2.120(b).

¹⁵⁸ Exhibit 1, T Documents, T350, page 3285.

¹⁵⁹ Exhibit 1, T Documents, T350, page 3285.

¹⁶⁰ Exhibit 1, T Documents, V9, T349, page 3110.

¹⁶¹ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 77, paragraph 191(a).

“[Mr] Ormrod and [Mr] Gohil were not, for the purposes of the relevant appeal to the Tribunal, the applicant’s “clients” (for the purposes of the Regulations and the Code of Conduct) because he was not engaged as a migration agent to act for them in that process. They had not signed a service agreement, he assisted them voluntarily, and he was not paid for any such assistance^[162]. ...”

61. The Respondent submits that “ ... the Applicant did not appreciate that he should have considered whether the interests of [Mr Gohil] and [Mr Ormrod] were aligned ... ”¹⁶³ and that “[a] competent migration agent would at least turn their mind to whether a conflict might arise but the Applicant failed to do so”¹⁶⁴.

62. The Applicant stated¹⁶⁵:

“ ... the applicant’s evidence reveals an appreciation of the issue of conflict and the appropriate response should a conflict arise. He relevantly gave evidence as follows^[166]: ...

Q. Okay. But you were acting for both the employee and the employer?

A. There is no conflict. It’s – every other – every other migration agent exactly the same. There’s nothing different here.

Q. But do you accept that the interests of the employer and employee might have been different?

A. Never been jeopardised. If there is any conflict I was removed from both case.

Q. Never been sorry, can you please repeat that answer?

A. There’s no jeopardise [*sic*] here between conflict of interest. I never actually – if I have conflict of interest I will withdraw from both application and retire basically.”

Complaint by Mr Kumar

63. The Applicant acted for Mr Manish Kumar as to the cancellation of his student (sub-class 573) visa and the application for a sub-class 457 temporary work visa¹⁶⁷. The sub-class 457 visa application was lodged on 25 July 2016¹⁶⁸.

¹⁶² Resumed Hearing Day 4, Transcript, page 77, lines 1 – 33.

¹⁶³ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 38, paragraph 2.124.

¹⁶⁴ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 39, paragraph 2.125.

¹⁶⁵ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 76, paragraph 189.

¹⁶⁶ Resumed Hearing Day 4, Transcript, page 74, lines 7 – 20.

¹⁶⁷ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 41, paragraph 2.138.

¹⁶⁸ Exhibit 1, T Documents, T471, page 3826.

64. By a three-page undated correspondence described as a “service complaint”¹⁶⁹, Mr Manish Kumar complained that the Applicant failed to inform him of the “risk of losing money or danger [of there being a] student visa cancellation” and the consequent three-year exclusion from further temporary visa applications¹⁷⁰. Mr Kumar further stated that the Applicant failed to act in accordance with instructions to lodge a sub-class 457 visa application for the “Facility Manager position” by instead specifying the position as “Customer service man[a]ger” without informing Mr Kumar¹⁷¹.

65. The Respondent submits that “the Applicant did not have a sound working knowledge of the Act and Regulations as required by clause 2.3 and did not act in the legitimate interest of his client as required by clause 2.1, as the application had no prospects and his clients incurred an application fee ... ”¹⁷². The Respondent further submits that the Applicant “ ... submitted false or misleading information by submitting that he was never engaged by [Mr Kumar to act in accordance with his Tribunal proceedings ... [in] breach of clause[s] 2.1, 2.9A and 2.23 of the Code”¹⁷³.

66. The Applicant was relevantly asked¹⁷⁴:

“So you didn’t provide any advice about the impact of a future cancellation of a student visa on the potential for the applicant’s 457 to succeed, did you? --- I did explain, and in length and details.”

67. The Applicant further stated¹⁷⁵:

“The applicant’s evidence was that in 2016, he was instructed that Mr Kumar was a customer service manager¹⁷⁶. In cross-examination, Mr Kumar accepted that it was in 2017 that his position had changed to facility manager¹⁷⁷. ...

Mr Kumar’s evidence ... was that he had become a facility manager in 2017 and it had been necessary to update the Department, accordingly. This

¹⁶⁹ Exhibit 1, T Documents, T402, pages 3595-3597.

¹⁷⁰ Exhibit 1, T Documents, T402, page 3595.

¹⁷¹ Exhibit 1, T Documents, T402, page 3596.

¹⁷² Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 45, paragraph 2.141(e).

¹⁷³ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 45, paragraph 2.141(f).

¹⁷⁴ Resumed Hearing Day 5, Transcript, page 137, lines 3-5.

¹⁷⁵ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, pages 86-87, paragraphs 214-215.

¹⁷⁶ Exhibit 1, T Documents, T131:6-32, T132:6-12.

¹⁷⁷ Exhibit 1, T Documents, T248:1-26.

evidence – which was confirmed in re-examination – sits uncomfortably with the respondent’s submission that the applicant was instructed to make an application describing Mr Kumar as a facility manager in 2016.”

68. The Applicant further stated¹⁷⁸:

“The applicant agreed with the question put to him in cross-examination that he was “familiar with that Code, and its requirements” and the need to undertake continuing professional development each year¹⁷⁹. That familiarity was borne out in cross-examination about the procedures of the respondent¹⁸⁰. The applicant has accepted that he has not complied with certain requirements of the Code of Conduct. It does not follow that he does not have a sound working knowledge of the Act and Regulations, and a capacity to provide accurate and timely advice, as required by clause 2.3 of the Code of Conduct. ...”

69. The Applicant also stated¹⁸¹:

“The applicant assisted Mr Kumar in the lodgment of an appeal to the Tribunal. The applicant was not engaged to act for Mr Kumar, but was volunteering his services in that regard¹⁸². Mr Kumar did not enter into a service agreement with the applicant for the appeal to the Tribunal and there was no suggestion that Mr Kumar would pay the applicant any fees for any such service¹⁸³. Mr Kumar’s grievance arose when the applicant later informed Mr Kumar that the applicant had not been engaged to appear before the Tribunal and, if Mr Kumar required representation, he would need to engage someone. The respondent submits that the applicant was engaged by Mr Kumar¹⁸⁴ because that was Mr [Kumar’s] “understanding of the nature of his relationship with the applicant at this time”. However, the unilateral subjective understanding of one party of the existence, or otherwise, of a contract is of no consequence and is not probative of the existence of any enforceable contract. The objective theory of contract remains fundamental in our legal system. ...”

¹⁷⁸ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 66, paragraph 160.

¹⁷⁹ Day 1, Transcript, page 64, line 43; page 65, line 7.

¹⁸⁰ For example, see Hearing Day 1, Transcript, page 78, lines 17 – 33, Resumed Hearing Day 2, page 5, line 39, page 6, line 23 and Resumed Hearing Day 5, page 148, lines 18 – 29.

¹⁸¹ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 82, paragraphs 207-208.

¹⁸² Exhibit 1, T Documents, T126:15 – 41, T128:40, T130:29 – 32.

¹⁸³ Exhibit 1, T Documents, T127:29 – 31.

¹⁸⁴ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 42, paragraph 2.139(b)-(c).

Complaint by Mr Hussain

70. By an undated two-page statement, Laiq and Raiz Hussain complained that the Applicant, in relation to a sub-class 457 visa application, ‘misrepresented’ the prospects of success and the sponsor’s ‘good standard’¹⁸⁵.
71. The Applicant acted for Mr Riaz Hussain as to an application for a temporary work (sub-class 457) visa, on nomination by JC Shree Sai Wealth Pty Ltd¹⁸⁶.
72. The Respondent submits that the Applicant¹⁸⁷:

“ ... made a representation to [Laiq Hussain] that [Riaz Hussain’s] visa application would succeed¹⁸⁸. On 15 December 2016, the date that the Applicant states he met with [Laiq Hussain], a nomination in respect of one of JC Shree’s employees [for which the Applicant acted as the registered migration agent] had been refused¹⁸⁹. This conduct amounts to a breach of clause 2.7(c) as the prospects of success were unjustified or unsubstantiated. The Respondent further submits that in these circumstances, the Applicant made a false statement in his June 2018 statutory declaration at [7.3.2] when he stated that he had “*previously assisted JC Shree’s employees to obtain Subclass 457 Visa Applications without any issue*”¹⁹⁰. This is a breach of clause 2.9 or in the alternative 2.9A.”

73. The Applicant states¹⁹¹:

“In cross-examination, the applicant gave evidence, consistent with his client agreement¹⁹², that he had considered Mr Riaz’s case was likely to meet the requirements of the Act and had a good chance of success. ... ”

74. The Applicant was asked¹⁹³:

¹⁸⁵ Exhibit 1, T Documents, T511, pages 4049 and 4050.

¹⁸⁶ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 46, paragraph 2.143.

¹⁸⁷ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 46, paragraph 2.144(b).

¹⁸⁸ Exhibit 1, T Documents, V12, T511, 4049.

¹⁸⁹ Exhibit 1, T Documents, V9, T349, 3065.

¹⁹⁰ Exhibit 1, T Documents, V12, T531, 4087.

¹⁹¹ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 90, paragraph 225.

¹⁹² Exhibit 1, T Documents, V9, page 3265.

¹⁹³ Resumed Hearing Day 5, Transcript, page 107, lines 32-46.

“... And the client’s case is likely to meet the requirements of the Act and regulations, has a good chance of success?---Exactly, yes... You state that – your [advice] was based on your knowledge of JC [Shree’s] position as a sponsor, is that correct?---Yes, as he was approved sponsor already. Okay. So this is as at – your knowledge as at 15 December?---Correct, yes. There was a good chance of success - - -?---He was an approved – because he’s got approval on the sponsorship itself, every employer has to go through the process and I was given a copy of the approval anyway.”

SECTION 303

75. As referred to above, in conclusion the Applicant expressly acknowledged actions contrary to the Code¹⁹⁴:

“ ... over the relevant period, the applicant:

- (a) did not enter into service agreements with Café Kathmandu Pty Ltd or Dahab Group Pty Ltd contrary to clause 5.2(c) of the Code of Conduct;
- (b) did not issue statements of service, contrary to section 313 of the Act and clause 5.5 of the Code of Conduct;
- (c) did not keep adequate file notes of important conversations with his clients and of their receipt of the consumer guide, contrary to clauses 6.1 and 3.2A(b) of the Code of Conduct;
- (d) backdated service agreement, in circumstances and for the subjective reason explained ... ”

76. As to the service agreements, the Respondent submitted that the Applicant breached clauses 2.1, 2.4, 2.9A and 2.23 of the Code¹⁹⁵: act in accordance with the law and the legitimate interests of the client and deal with the client competently, diligently and fairly (clause 2.1); have due regard to the client’s dependence on the Applicant’s knowledge and experience (clause 2.4); not mislead or deceive the Respondent whether directly or by withholding relevant information (clause 2.9A); and take all reasonable steps to maintain the reputation and integrity of the migration advice profession (clause 2.23). Having regard to the evidence, as referred to above, as to the service agreements, it is found that the Applicant did breach clauses 2.1, 2.4, and 2.23 of the Code: that the Applicant did not deal with the clients competently and/or diligently and did not take all reasonable steps to maintain the reputation of the profession as to the back-dating of the service agreements, where the clients were dependent on the Applicant’s knowledge and experience as their

¹⁹⁴ Exhibit 39, Applicant’s Closing Submissions dated 15 May 2020, page 92, paragraph 2.29.

¹⁹⁵ Exhibit 38, Respondent’s Closing Submissions dated 7 April 2020, page 8, paragraph 2.18.

agent. It is not found that the Applicant breached clause 2.9A of the Code, having regard to the evidence, as referred to above, where the Applicant's evidence was that the back-dating of the documents was to 'correct errors that have been identified on other files by the Department as to service agreements'¹⁹⁶ and where the back-dating was explained in response to the section 309 notice dated 10 October 2018¹⁹⁷.

77. As to the statements of service, having regard to the evidence, as referred to above, it is found that the Applicant did not give the relevant clients a statement of service as required by section 313 of the Act and clauses 5.2(c)¹⁹⁸ and 5.5 of the Code¹⁹⁹.
78. It is found, as to the keeping of full file materials, that the Applicant breached clauses 3.2A(b), 6.1 and 6.1A of the Code: before commencing work the Applicant must make a record that a copy of the consumer guide has been provided to the respective client (clause 3.2A(b)); maintain proper records that can be made available for inspection on request by the Respondent (clause 6.1); and maintain the records for a period of 7 years after the date of the last action on the file for the client (clause 6.1A).
79. It is found that the mandatory words required by clause 7.1A of the Code, in the Clients' Account, were not included in the bank documents as to the relevant account, therefore being a breach of clause 7.1A of the Code: the words 'clients' account' must be included in the name of the financial institution account.
80. It is not found that the Applicant intentionally made false statements in the statutory declarations as to fraud charges²⁰⁰, office closure²⁰¹ and when work was performed²⁰². The evidence as referred to above from the Applicant, as to the specific statements in that regard in the statutory declarations, is accepted as not being sufficient to breach clause 2.9 and/or 2.9A of the Code²⁰³: to make statements which the Applicant knows or believes to be

¹⁹⁶ Exhibit 39, Applicant's Closing Submissions dated 15 May 2020, page 93, paragraphs 233-234.

¹⁹⁷ Exhibit 1, T Documents, T3, pages 119-236.

¹⁹⁸ Exhibit 39, Applicant's Closing Submissions dated 15 May 2020, page 92, paragraph 229.

¹⁹⁹ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 20, paragraph 2.65 and Exhibit 39, page 92, paragraph 229.

²⁰⁰ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 15, paragraphs 2.35-2.37.

²⁰¹ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 16, paragraphs 2.38-2.41.

²⁰² Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, pages 16-17, paragraphs 2.42-2.44.

²⁰³ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 15, paragraph 2.37.

misleading or inaccurate (clause 2.9); and to mislead or deceive the Respondent, whether directly or by withholding relevant information (clause 2.9A).

81. It is not found that the Applicant was advertising after cancellation on the 'True Local' website²⁰⁴, having regard to the evidence referred to above.
82. Therefore, it is found that the Applicant breached clauses 2.1, 2.4, 2.23, 3.2A(b), 5.2(c), 5.5, 6.1, 6.1A and 7.1A of the Code. There is therefore satisfaction that the Applicant has not complied with the Code of Conduct prescribed under s 314 of the Act: s 303(1)(h) of the Act. The Applicant has also not given detailed statements of services to the relevant clients as required by s 313 of the Act²⁰⁵.
83. The Respondent further contends that the Applicant is also not a person of integrity or is otherwise not a fit and proper person to give immigration assistance²⁰⁶: s 303(1)(f) of the Act.
84. In *Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 it was stated at [26] per Deputy President McMahon that the concept of "integrity" essentially means "soundness of moral principle and character, uprightness, honesty"²⁰⁷.
85. In *Hughes and Vale Pty Ltd v State of New South Wales (No 2)* [1955] HCA 28; (1955) 93 CLR 127 it was relevantly stated at [9] per Dixon CJ, McTiernan and Webb JJ²⁰⁸:

"The expression "fit and proper person" is of course familiar enough as traditional words when used with reference to offices and perhaps vocations. But their very purpose is to give the widest scope for judgment and indeed for rejection. "Fit" (or "idoneus") with respect to an office is said to involve three things, honesty knowledge and ability: "honesty to execute it truly, without

²⁰⁴ Exhibit 25, screenshots from "truelocal".

²⁰⁵ Exhibit 39, Applicant's Closing Submissions dated 15 May 2020, page 92, paragraph 229.

²⁰⁶ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 46, paragraph 3.2.

²⁰⁷ See also *Lilienthal v Migration Agents Registration Authority* [2002] FCA 93 at [22] per Wilcox J; and *De Los Stantos-Aguilar and Migration Agents Registration Authority* [2016] AATA 295 at [79] per Senior Member Cotter.

²⁰⁸ Applied in *Woods v Migration Agents Registration Authority* [2004] FCA 1622 at [45] per Crennan J. See also *Vassiliou and Migration Agents Registration Authority* [2013] AATA 905 at [143]-[152] per Senior Member Handley; *Nguyen Migration Agents Registration Authority* [2012] AATA 925 at [24]-[32] per Senior Member O'Loughlin; *Volonski and Migration Agents Registration Authority* [2010] AATA 765 at [29]-[37] per Senior Member Bell.

malice affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it" - Coke."

86. In *Shi v Migration Agents Registration Authority* [2008] HCA 31 it was stated at [149] per Kiefel J (as Kiefel CJ then was):

"The topic with which s 303(1)(f) is concerned is not, however, one which identifies particular conduct, as is the case with respect to breaches of the Code of Conduct. The enquiry posed by the paragraph is a general one, and it may be considered by the Tribunal in that way. It does not limit an assessment of an agent's integrity and fitness to what has been conveyed by any breaches. There is no reason why the Tribunal's review should not extend to any information which sheds light upon the presence or absence of the necessary characteristics in the migration agent. The list in s 290(2) is not exhaustive."

87. In *Lilienthal v Migration Agents Registration Authority* [2002] FCA 93 it was stated at [24] per Wilcox J:

"The position may be compared with lawyers representing clients in a court. Lawyers are allowed to appear in court because of the desirability of litigants being represented by people trained in the law. Rules governing the conduct of lawyers are premised on that rationale. However, it is well understood that, in representing clients, a lawyer also owes duties to the court: to be frank, to avoid misleading the court and to assist in the efficient and expeditious disposal of the case. There is not thought to be any inconsistency between giving assistance to the court, in its carrying out its functions, and the primary obligation of the lawyer to represent the client. It seems to me this type of dual responsibility was being referred to in *Peng*."

88. In *Issa and Migrations Agents Registration Authority* [2017] AATA 1110 it was stated at [452] per Senior Member Taylor S.C.²⁰⁹:

"The criterion assumes a lack of integrity will preclude satisfaction of the agent's relevant fitness. It does not assume the necessary accuracy of the converse proposition – that a person who is not 'fit and proper' is necessarily lacking in integrity: see *Davies v Australian Securities Commission* [1995] FCA 1496; (1995) 59 FCR 221 per Hill J at 233. The concepts of integrity and fitness are, however, closely related. Honesty, character and uprightness are relevant to both characterisations:- *Peng* at [26]."

²⁰⁹ See also *Salomonn and Migration Agents Registration Authority* [2013] AATA 146 at [15]-[23] per Senior Member Britton.

89. In all the circumstances, it is not found that the Applicant is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance in accordance with s 303(1)(f) of the Act, beyond the Applicant's multiple breaches of the Code clauses 2.1, 2.4, 2.23, 3.2A(b), 5.2(c), 5.5, 6.1, 6.1A and 7.1A. Beyond those serious and numerous breaches of those clauses of the Code, there is not further evidence which is sufficient either singularly or in totality to additionally find that the Applicant is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance. That finding is further to the assessment of the Applicant's integrity and fitness, which has not been limited to what has been conveyed by the breaches of the Code²¹⁰. Further, the consideration of all the evidence has included a review 'extending to any information which 'sheds light' upon the presence or absence of the necessary characteristics of the Applicant'²¹¹.

DISCIPLINE

90. In *Kraues v Migration Agents Registration Authority* [2018] FCA 664 it was stated at [17] per Perry J that²¹²:

"Importantly, the purpose of the disciplinary powers conferred by s 303 is protection of the public and not punishment as such: *Shi* at [50] (Kirby J); see also by analogy *Smith v New South Wales Bar Association* [1992] HCA 36; (1992) 176 CLR 256 at 270 (Deane J)."

91. In *Narayanan and Migration Agents Registration Authority* [2006] AATA 353 at [132] per Senior Member Penglis, the following were stated to be relevant as to the sanction:

- The nature of the professional's breach, particularly whether the professional is acting in good faith during the commission of the breach;
- whether there were any factors that were beyond the professional's control and could have reasonably contributed to the professional's breach;
- the professional's willingness to accept that a breach may have occurred;
- the professional's efforts to rectify or mitigate the effect of the breach, where possible;
- whether the client sustained any loss as a result of the professional's breach;

²¹⁰ *Shi v Migration Agents Registration Authority* [2008] HCA 31 at [149] per Kiefel J.

²¹¹ *Shi v Migration Agents Registration Authority* [2008] HCA 31 at [149] per Kiefel J.

²¹² *Kraues v Migration Agents Registration Authority* [2018] FCA 664 at [17] per Perry J.

- the professional's actions, if any, to compensate the client for any loss arising out of the possible breach;
- the professional's record of prior disciplinary breaches;
- the professional's community and professional reputation;
- the extent to which any sanction may be harsh, unjust or oppressive in the circumstances taking into account the extent to which such a sanction would affect the professional's financial earning capacity and livelihood;
- the professional's co-operation with the disciplinary authority;
- whether a sanction, if any, would deter other professional[s] from similarly breaching their duties to a client; and
- whether a sanction, if any, will ensure that the public's confidence in the professional's industry will be maintained."

92. In *Re Altintas and Migration Agents Registration Authority* [2004] AATA 978 it was stated at [159] per Senior Member Dwyer:

"A suspension could be an appropriate sanction in two situations. The first is where a person has been found to be not a fit and proper person to give immigration assistance, but there is reason to believe that during a period of suspension, that circumstance will change, for example if he or she studies in an area where his or her knowledge has been found to be deficient. The second is where the person has not been found not to be a fit and proper person to give immigration assistance, but there are serious findings of concern about the person's breaches of the Code. In such a situation it may be considered that a period of suspension will impress upon the person the necessity to improve his or her conduct and practices as to compliance with the Code."

93. The second situation identified in *Re Altintas* is where the person has not been found not to be a fit and proper person to give immigration assistance, but there are serious findings or concern about the person's breaches of the Code. In *Re Altintas* there was consideration as to whether in such a situation it may be considered that a period of suspension will impress upon a person the necessity to improve his or her conduct and practices as to compliance with the Code.

94. The Applicant submits that the decision of 14 February 2019²¹³ should be set aside and that in substitution there should be a period of suspension of 18 months, with "the lifting of the suspension [being] conditional on any course the Tribunal might find appropriate, in the circumstances"²¹⁴. The Respondent submits that the decision to cancel the Applicant's

²¹³ Exhibit 1, T Documents, T2, pages 11-13.

²¹⁴ Exhibit 39, Applicant's Closing Submissions dated 15 May 2020, pages 95 and 96, paragraph 243.

registration under paragraph 303(1)(a) of the Act be affirmed²¹⁵. There are multiple breaches of the Code of Conduct (clauses 2.1, 2.4, 2.23, 3.2A(b), 5.2(c), 5.5, 6.1, 6.1A and 7.1A) indicating systemic poor practices. There are findings as to serious, repeated breaches of the Code. There is a history of complaints against the Applicant, as particularised. Section 292 of the Act states that an applicant whose registration has been cancelled under section 303 must not be registered within 5 years of the cancellation. Where there is not 'satisfaction' that the Applicant is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance, but where there are serious repeated breaches of the Code, a lengthy period of suspension will impress upon the Applicant the necessity to improve his conduct and practices as to compliance with the Code²¹⁶. As referred to above²¹⁷, the Applicant submits a suspension of 18 months from 14 February 2019 is appropriate²¹⁸. Having regard to the number of breaches of the Code it is found that a longer suspension than 18 months is appropriate. Section 311A of the Act states that the Respondent may decide to bar a former registered migration agent from being a registered migration agent for a period if, after investigating a complaint about him or her in relation to his or her provision of immigration assistance while he or she was a registered migration agent, it is satisfied that the subject matter of the complaint is made out, with the period not being more than 5 years starting on the day of the Respondent's decision. Where there is no finding that the Applicant is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance, the order as to cancellation (which has an equivalent statutory consequence of a 5 year suspension) will not be affirmed. Where there are serious repeated breaches of the Code, where cancellation results in a five-year period before further registration, in all the circumstances, there will be a bar from registration of the Applicant until 15 August 2021, that is no earlier than 2.5 years after 14 February 2019²¹⁹.

²¹⁵ Exhibit 38, Respondent's Closing Submissions dated 7 April 2020, page 51, paragraph 4.9. The Respondent refers to section 43(1)(a) of the *Administrative Appeals Tribunal Act 1975* (Cth) in that regard.

²¹⁶ *Re Altintas and Migration Agents Registration Authority* [2004] AATA 978 at [159] per Senior Member Dwyer.

²¹⁷ Exhibit 39, Applicant's Closing Submissions dated 15 May 2020, pages 95 and 96, paragraph 243.

²¹⁸ Exhibit 1, T Documents, T2, pages 11-13.

²¹⁹ Exhibit 1, T Documents, T2, pages 11-13.

DECISION

95. The reviewable decision of 14 February 2019 is varied with the Applicant being barred from being a registered migration agent until 15 August 2021.

I certify that the preceding 95 (ninety-five) paragraphs are a true copy of the reasons for the decision herein of Senior Member Katter

.....[SGD].....

Associate

Dated: 9 October 2020

Dates of hearing:	25, 26 September 2019, 27 February 2020, 2, 3, 4, 10 March 2020
Date final submissions filed:	4 June 2020
Counsel for the Applicant:	Mr C. Jennings
Solicitors for the Applicant:	Rose Litigation
Counsel for the Respondent:	Ms A. Wheatley (25, 26 September 2019)
Advocate for the Respondent:	Ms L. Crick
Solicitors for the Respondent:	Clayton Utz Lawyers