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DECISION RECORD

AGENT	Ramona Martinovici
COMPLAINT NUMBER/S	CMP-42684 and CAS-03699-J3J7
DECISION	Barring for three years
DATE OF DECISION	27 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 (RMAs) or former registered migration agents (FRMAs) (paragraph 316(1)(d)).
4. In performing its function under paragraph 316(1)(c), the Authority may start, or complete, an investigation of a complaint about a person at a time when he or she is no longer a RMA (paragraph 316(1A)).
5. Section 311A(1) of the Act provides that the Authority may decide to bar a FRMA from being a RMA 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 RMA, if it is satisfied that the subject matter of the complaint is made out.

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AGENT BACKGROUND

Agent Registration

6. The FRMA was first registered as a migration agent on 29 May 2013, and was allocated the migration agent registration number (MARN) 1383584. The FRMA's registration had been renewed annually until 28 May 2023. The FRMA did not renew her registration and ceased to be a RMA on 29 May 2024.
7. While registered as a migration agent, the Register listed the FRMA's trading name as Australia Wide International Education with an Australian Business Number of 64221669016.

Prior disciplinary action

8. No disciplinary action has previously been taken against the FRMA.

BACKGROUND

Allegations – the Authority's investigation

9. The Authority received two complaints about the FRMA's conduct as a RMA from:
 - Mr AF- CMP-42684, received on 2 March 2019.
 - Ms DT - CAS-03699-J3J7, received on 7 June 2021.
10. The complaints about the FRMA were in relation to her provision of immigration assistance within the meaning of section 276 of the Act.
11. The allegations about the FRMA's conduct as a RMA forming the subject matter of the complaints are that she:
 - Knowingly submitted a nomination application without the specified accompanying documents.
 - Did not have a sound working knowledge of the relevant migration legislation and due regard for her clients' dependence on her knowledge.
 - Did not act on the instructions of her client and failed to lodge a visa application after she had been engaged and paid to do so.
 - Did not act competently and in the legitimate interest of her clients, causing unnecessary delay, cost and/or anguish to her clients.
 - Did not provide to a signed Agreement for Service and Fees.
 - Did not provide evidence from her client file about dealings with her client.

CMP-42684 – Mr AF

12. In summary, Mr AF alleged that:
 - In April 2018, the FRMA was engaged to provide advice to Mr AF on permanent visa options for Australia, including an application for a Temporary Skill Shortage (subclass 482) visa.

- On 6 November 2018, Mr AF received a Notice of Intention to Consider Cancellation (NOICC) in relation to his Temporary Work (subclass 457) visa. The FRMA was engaged to submit a response to the Department on his behalf, for a fee of \$300.
- On 10 November 2018, the FRMA lodged a business sponsorship nomination application on behalf of Company S, nominating Mr AF for a Welder (First Class) position.
- On 13 November 2018, the FRMA lodged a subclass 482 visa application on behalf of Mr AF.
- On 13 November 2018, the FRMA submitted a response to the NOICC to the Department, however they did not provide Mr AF with an opportunity to review the response prior to it being submitted.
- Mr AF asked the FRMA on numerous occasions to provide a copy of the response to the NOICC, but she did not facilitate this request.
- On 7 December 2018, the Department refused Company S's nomination application because Company S did not satisfy the Labour Market Testing (LMT) requirement. Only one advertisement for the nominated position was provided (not two advertisements as required by the *Migration Regulations 1994* (the Regulations)).
- The FRMA failed to properly advise Company S of the LMT requirements.
- Also on 7 December 2018, the Department sent to the FRMA a notice under section 57 of the Act, requesting confirmation of Mr AF's intentions in relation to his subclass 482 visa application, as there was no approved (linked) nomination application. The FRMA did not advise Mr AF of this letter, nor did she advise him of his options, or obtain his instructions, prior to submitting a response to the Department. The FRMA's response to the Department only provided two invoices and did not provide an explanation regarding the relevance of those invoices.
- On 6 January 2019, the FRMA lodged a second nomination application with the Department on behalf of Company S. She did not provide any updates on the progress or outcome of the second nomination application to Mr AF or to Company S.
- On 6 February 2019, the Department refused Mr AF's subclass 482 visa application. If the FRMA had consulted with Mr AF after receiving the section 57 notice on 7 December 2018, he would have instructed her to act in a manner different to the actions she subsequently took. Specifically, he would have instructed her to either withdraw his application, or to provide more detailed information to the Department.
- The FRMA told Mr AF that he had a valid visa when his subclass 457 visa had already ceased.
- The FRMA did not respond to several requests by Mr AF for copies of the visa applications and related documents that she lodged with the Department on his behalf.

CAS-03699-J3J7 – Ms DT

13. In summary, Ms DT alleged:

- In 2019, the FRMA was engaged to lodge a Partner visa application on behalf of Ms DT.

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- On 17 September 2019, the FRMA sent Ms DT a contract confirming the services to be performed and the applicable fees.
- On 25 September 2019, the FRMA advised Ms DT that if she made full payment to her during that week, she could upload the visa application on the following weekend.
- Ms DT paid the FRMA a total of \$11,615 in the following instalments:
 - 30 September 2019 - \$1800
 - 16 October 2019 - \$2100
 - 10 February 2020 - \$7715
- After the above payments were made, the FRMA advised Ms DT that she had lodged the Partner visa application, when she had not actually done so. From thereon, the FRMA continued to advise and indicate that she had lodged the visa application with the Department.
- When Ms DT repeatedly asked the FRMA to provide her with acknowledgment of lodgement for the Partner visa application, she advised Ms DT that she would no longer represent her.
- On 24 May 2021, Ms DT contacted the Department to enquire about her Partner visa application. She was advised by the Department that there was no record of any Partner visa having been lodged.
- After being advised by the Department that no Partner visa application had been lodged, Ms DT contacted the FRMA. She advised Ms DT that she had not lodged the Partner visa application because she had 'suspected' that Ms DT would not pass the character test and that she had not received sufficient documentation from Ms DT.
- On 27 May 2021, the FRMA provided Ms DT with a refund totaling \$11,165 in two payments of \$7715 and \$3450.

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

14. On 17 June 2020, the Authority sent a section 308 notice to the then registered FRMA, requiring her to answer questions in relation to Mr AF's allegation and to provide a copy of the Agreement for Service and Fees.
15. On 17 July 2020 and 5 August 2020, the FRMA provided submissions to the Authority in response to the section 308 notice.
16. On 7 August 2020, the Authority sent a second section 308 notice to the then registered FRMA requiring her to answer additional questions and to provide a full copy of the Agreement for Services and Fee.
17. On 21 August 2020, 23 September 2020 and 18 January 2021, the FRMA and her legal representative provided submissions to the Authority in response to the section 308 notice.
18. On 28 June 2021, the Authority sent a section 308 notice to the then registered FRMA, requiring her to answer questions in relation to Ms DT's allegation and to provide a copy of her client file for Ms DT.
19. On 26 July 2021, 4 August 2021 and 5 August 2021, the FRMA provided submissions to the Authority in response to the section 308 notice relating to Ms DT.

Notice under section 309 of the Act

20. On 24 April 2024, the Authority sent a section 309 notice to the then registered FRMA, advising that the Authority was considering cautioning, or suspending or cancelling her registration under section 303(1) of the Act.
21. On 24 May 2024, the then registered FRMA provided submissions to the Authority in response to the section 309 notice.
22. The FRMA stated:
 - Mr AF was informed at all times about the progress of the applications in due time.
 - Mr AF had review rights and she offered to represent him at review, which he declined.
 - Mr AF's visa cancellation had nothing to do with the visa application she submitted.
 - Mr AF was aware of the risk prior to her starting her representation.
 - If Mr AF and the sponsor had gathered the documents earlier as per her instructions, the situation would have probably been different.
 - The sponsor's representative was notified correctly in relation to the LMT requirements and she followed up with her on multiple occasions. The company's accountant was also familiar with the process and what needed to be done.
 - The plan was to lodge a new sponsorship/nomination and withdraw the previous visa application.
 - Ms DT's husband sent incomplete information in relation to his previous marriages, which was required in order to lodge the Partner visa application.
 - She always acted in accordance with both her clients' instructions
 - She will not be renewing her migration agent registration as she no longer wants to be part of the industry.

Notice under section 311D of the Act (section 311D notice)

23. On 3 July 2024, the Authority sent a section 311D notice to the FRMA advising that the Authority was considering barring her from being a RMA for a period of up to five years pursuant to section 311A in Division 4A of Part 3 of the Act.
24. On 30 July 2024, the FRMA provided submissions in response to the Authority's section 311D notice.
25. In her response, the FRMA did not provide any additional information that had not already been provided to the Authority, and highlighted that there have been several emails and supporting documents previously sent to the Authority in relation to the matters.

THE AUTHORITY'S INVESTIGATION

Evidence and other material

26. In reaching the findings of fact discussed in this decision record, the Authority considered the following evidence:
- Documents contained in the Authority's complaint files CMP-42684 and CAS-03699-J3J7.
 - Information held on departmental records in relation to the matters raised in the complaints.
 - Information held by the Authority in relation to the FRMA.
 - Information provided by the FRMA to the Authority in response to the section 308, 309 and 311D notices.

Finding on material questions of facts

27. Having regard to the relevant evidence before the Authority, I am satisfied that:
- the subject matter of the complaints made by Mr AF and Ms DT have been made out; and
 - while registered, the FRMA failed to comply with her obligations under the former Code¹.
28. My findings and full reasons for the decision are set out below.

Provision of Immigration Assistance

29. The FRMA has never disputed that both Mr AF and Ms DT were her clients and she provided immigration assistance to both individuals when she was a RMA. As such, I find that Mr AF and Ms DT's complaints relate to the FRMA's provision of immigration assistance as defined in section 276 of the Act.

The subject matter of the complaint

Lack of knowledge of the Migration Act, Regulations and other legislation relating to migration procedures

30. In respect to Mr AF, the Authority alleged that the FRMA failed to demonstrate competence, which was reflected through a deficient working knowledge of the Act and the Regulations, specifically:
- Section 82 of the Act – When visas cease to be in effect.
 - Clause 010.511 of Schedule 2 of the Regulations.
 - Subclause 482.212(1) of Schedule 2 of the Regulations.
 - Regulation 2.15 of the Regulations – Response to invitation to give additional information or comments – prescribed periods.

¹ The former Code of Conduct for registered migration agents being Schedule 2 to the *Migration Agents Regulations 1998*, as in force prior to 1 March 2022

31. On 5 December 2018, Mr AF's subclass 457 visa was cancelled and he became an unlawful non-citizen. The visa cancellation notification letter was sent to the FRMA, as his appointed RMA.
32. The Authority asked the FRMA to confirm what immigration advice (if any) she provided to Mr AF about his immigration status at the time his visa was cancelled.
33. On 21 August 2020, the FRMA responded to the Authority and advised the following:

'Mr. AF was not unlawful, due to the fact that he (and his family) had a valid Bridging A visa, as a consequence of the 482 visa application, visa which was valid for another 4 weeks after the refusal, time when he was eligible to apply to AAT for review'.
34. This statement confirms that the FRMA was not aware that the Bridging A visa ceased at the time Mr AF's subclass 457 visa was cancelled, demonstrating a lack of knowledge of the Act and Regulations.
35. Based on this statement, and with no evidence to the contrary, I am satisfied that the FRMA also provided the same incorrect immigration advice to Mr AF, resulting in his extended period of unlawfulness.
36. The possible adverse consequences of an extended period of unlawfulness on a client are considered significant. During this period, Mr AF was in a vulnerable position and at risk of working unlawfully, being subject to restricted immigration pathways, and being detained and removed from Australia.
37. On 23 September 2020, via correspondence received from the FRMA's legal representative, she conceded that after Mr AF's subclass 457 visa was cancelled, she was under the misapprehension that the Bridging A visa (associated with the pending subclass 482 visa application) would come into effect.
38. Furthermore, the Authority notes that the Department's visa cancellation notification letter which was sent to the FRMA, included the following statement:

'If you have made a further substantive visa application since your visa was granted, any Bridging A, B or C visa you were granted in relation to that application has also ceased'.
39. The Authority is concerned that despite being advised of this information in writing by the Department, the FRMA was still under the misapprehension that the Bridging A visa would come into effect after the subclass 457 visa was cancelled. This demonstrates a lack of competence and diligence.
40. On 7 December 2018, the Department sent the FRMA a section 57 notice advising that Mr AF's subclass 482 visa application could not be approved as there was no approved (linked) nomination. The letter requested confirmation of Mr AF's intention in regards to his visa application, such as withdrawal of the visa application or otherwise.
41. Mr AF alleges that the FRMA did not consult with him, or obtain his instruction prior to the FRMA submitting a response to the Department.
42. The FRMA asserted that she discussed the section 57 notice with Mr AF and advised him that the Department should be informed of the following:
 - That the first nomination was refused and a new application had been lodged;
 - Request that the SAF levy paid on the first nomination be substituted for the subsequent application;

- That the subsequent application is compliant; and
 - Background on Mr AF and his family so as to engage a consideration on the basis of hardship principle.
43. It is noted that the FRMA has not provided any evidence to the Authority to support her assertion above.
44. Departmental records show that on 7 January 2019, the FRMA sent an email to the Department, stating:
- 'The first Nomination has been refused and a new application has been lodged. On the new invoice we were asked to repay the full SAF levy again, even if we have already paid it at the time of lodgement of the 1st nomination. The payment for a secondary Nomination application has been processed -please see attached. Could you please transfer the SAF payment to the new nomination application and link it to the same visa application?'*
45. The FRMA's email to the Department shows that she was not aware that a new nomination application cannot be linked to an existing visa application, as per clause 482.212(1) of the Regulations.
46. On 23 September 2020, the FRMA's legal representative wrote to the Authority and advised:
- 'I note that Ms Martinovici attempted to link a fresh nomination to an existing subclass 482 visa application. This cannot be done, and Ms Martinovici concedes her mistake in this instance...'*
47. Based on the evidence before the Authority, I am satisfied that the FRMA provided inaccurate immigration advice to Mr AF in relation to linking his subclass 482 visa application to a new nomination application.
48. Furthermore, the Authority notes that the Department specifically advised the FRMA in the section 57 notice dated 7 December 2018, that Mr AF's visa application could not be linked to a new nomination application. It is concerning that despite the FRMA being advised of this information in writing, she still proceeded to provide incorrect advice to Mr AF and requested the Department to link the new nomination application to his existing visa application. This demonstrates a further lack of competence and diligence by the FRMA.
49. The section 57 notice sent to the FRMA provided the prescribed timeframe of 28 days to respond.
50. On 7 January 2019, the FRMA responded to the section 57 notice, outside of the prescribed timeframe.
51. On 7 August 2020, the Authority sent the FRMA a second section 308 notice and brought to her attention the late response provided to the Department, outside of the 28 day prescribed timeframe.
52. On 21 August 2020, the FRMA responded to the Authority, stating:
- 'Regarding the 28 day time frame response, considering the public holidays, I have responded within the 28 days...'*
53. The Authority notes that the FRMA's statement above is not accurate. The Departmental Procedural Advice Manual 3 (PAM3) - Code of Procedure - Notification Requirements, which provided guidance on calculating time periods for responding to such Notices. The instructions state:
- 'A 'day' or a 'calendar day' is any day and included public holidays, Saturdays and Sundays'.*

54. Based on all that is discussed above, I find that the FRMA demonstrated a lack of knowledge of the Act and Regulations which affected her ability to provide accurate and timely advice to Mr AF, contrary to **clause 2.3** of the former Code.
55. The FRMA's conduct gave rise to Mr AF remaining unlawful in the Australian community for an extended period of time, having his subclass 482 visa application refused, losing the opportunity of a permanent residency pathway and having to depart Australia.
56. As such I find that the FRMA failed to deal with Mr AF and Company S competently, diligently and fairly, contrary to **clause 2.1(b)** of the former Code. She also failed to act in their legitimate interests, contrary to **clause 2.1(a)** of the former Code.

Failed to submit specified accompanying documents

57. On 10 November 2018, the FRMA submitted a nomination application on behalf of Company S. The evidence of LMT required at the time was at least two published advertisements. The nomination application submitted by the FRMA contained only one advertisement, which did not include the required details of the position.
58. On 7 August 2020, the Authority asked the FRMA to explain why she did not provide the prescribed LMT requirements as outlined in section 140GBA of the Act.
59. In her response to the Authority, the FRMA advised:
- She experienced difficulties communicating the LMT evidence requirements to Company S.
 - Company S made a mistake in advertising the position which was not in line with the LMT evidence requirements.
 - As the Department was considering cancellation of Mr AF's subclass 457 visa at the time she *'assessed that lodgement of a nomination application (even if defective) and associated visa application was required.'*
60. Based on the evidence provided by the FRMA, I am satisfied that she had knowledge of the LMT requirements and communicated this to the sponsor's representative.
61. Despite this knowledge, the FRMA submitted the nomination application, fully aware that it was incomplete and did not include the specified accompanying documents.
62. On 7 December 2018, the Department refused the nomination application because the LMT conditions under section 140GBA of the Act were not satisfied.
63. I note the FRMA's claimed justification for knowingly lodging a deficient application, that the Department was considering cancelling Mr AF's subclass 457 visa. However it was not a reasonable or appropriate course of action for a RMA to take.
64. Based on the information before me, I find that the FRMA submitted the first nomination application without the specified accompany documentation, contrary to **clause 2.21** of the former Code.

Failure to Provide Agreement for Services and Fees and Misleading the Authority

65. On 17 June 2020, the Authority sent the FRMA a section 308 notice requesting a copy of the Agreement for Services and Fees for Mr AF. The FRMA did not provide a copy of this agreement, as required under the section 308 of the Act.

66. On 29 July 2020, the Authority wrote to the FRMA reminding her to provide a copy of the Agreement for Services and Fees.
67. On 5 August 2020, the FRMA provided the Authority with one page of an Agreement for Services and Fees document signed by Mr AF on the 23 April 2018. She advised:
- 'Unfortunately with all presentation forms he sent me just the last pages, sometimes stating that he had issues with his computer, sometimes the documents being sent by a friend.'*
68. On 7 August, a second section 308 notice was sent to the FRMA requesting a full copy of the Agreement for Service and Fees. She did not provide a copy of this agreement.
69. On 1 December, the Authority wrote to the FRMA's appointed solicitor, again requesting a full copy of the Agreement for Services and Fees.
70. On 18 January 2021, the FRMA advised the Authority that she did not provide an Agreement for Service and Fees to Mr AF in relation to his subclass 482 visa application.
71. She advised that an Agreement for Services and Fees document was in place with Mr AF for other prior and unrelated immigration assistance.
72. The FRMA provided a copy of the Agreement for Services and Fees. The document was unsigned and partially dated with '*.../04/2018*'.
73. A review of this document's properties shows that the document was first created on 15 December 2020 by Ramona Martinovici.
74. Based on the document's properties and the FRMA's inconsistent responses to the Authority, I am satisfied that Mr AF was never provided with an Agreement for Service and Fee. As such I find the FRMA in breach of **clause 5.2(c)** of the former Code.
75. The FRMA did not comply with the section 308 notice within the specified timeframe, as she failed to provide the Agreement for Service and Fee when initially requested. If the FRMA did not have an Agreement for Service and Fee in place for Mr AF, then she should have advised the Authority of this. Instead, she attempted to cover up her failings and eventually produced an unsigned document that was created long after she was engaged to provide the service to Mr AF.
76. I therefore find that the FRMA failed to act in accordance with the law and mislead the Authority, contrary to **clause 2.1(a) and 2.9A** of the Former Code.

Failed to act in accordance with client's instructions and in a timely manner

77. The Authority alleges that the FRMA failed to lodge a Partner visa application on behalf of Ms DT after she had been engaged and paid to do so.
78. Ms DT alleges that on 10 February 2020, the FRMA advised her that '*all materials were ready*' and requested payment of \$7715 for the visa application charge (VAC).
79. On 10 February 2020, Ms DT made a payment of \$7715 to the FRMA for the VAC. The Authority notes that by this date, Ms DT had made all required payments to the FRMA as outlined in the agreement.
80. Ms DT alleges that a few weeks later, the FRMA advised Ms DT's partner, Mr AJ, that she had submitted the Partner visa application to the Department and '*the bridging visa was granted*'. She also alleges that the FRMA advised her on several occasions that the Partner visa application was with the Department and awaiting their further advice.

81. The FRMA asserts that she never advised Ms DT that she had lodged the Partner visa application with the Department.
82. In the FRMA's response to the section 308 and 309 notices, she advised the Authority that she did not lodge the Partner visa application because Mr AJ had provided incomplete information in relation to his former relationships. The FRMA advised that she requested the '*outstanding information*' from Ms DT and Mr AJ on multiple occasions.
83. On 4 January 2020, the FRMA commenced the Partner visa application in her ImmiAccount. No information was entered into the application (such as biodata) until 23 May 2021. The application was never submitted to the Department.
84. On 23 May, the FRMA sent Mr AJ a text message asking him to provide her with further information.
85. On 24 May 2021, Mr AJ responded to the FRMA stating:
'I'll check though my paperwork today, please check too as this information was provided prior to lodgement of the partner visa'.
86. Based on the information before me, I do not accept the FRMA's assertion that she did not lodge the Partner visa application because she was waiting on further information from Ms DT and Mr AJ. Instead, I am satisfied that the FRMA did not lodge the application as a result of her own failings.
87. The FRMAs has failed to act in the legitimate interest of Ms DT and in accordance with her instructions. Her actions (or lack thereof) demonstrates her failings to deal with Ms DT competently, diligently and fairly and resulted in significant delays in the lodgement of her Partner visa application. As such, I find the FRMA acted in contrary to **clause 2.1(a), 2.1(b) and 2.8(b) and 2.18** of the Former Code.

Failed to keep the client fully informed and maintain proper records

88. On 28 June 2020, the Authority sent the FRMA a section 308 notice requiring her to provide evidence that she kept Ms DT fully informed of the progress of the Partner visa application. The notice also required the FRMA to provide the full client file.
89. The only evidence the FRMA provided to the Authority, regarding progress updates to Ms DT (or Mr AJ) were:
 - Screenshots of a text message conversation between the FRMA and Mr AJ, dated 23 to 25 May 2021, in which she advised him that she still require outstanding information from him.
 - An email from the FRMA sent to Mr AJ on 26 May 2021, advising that she was still waiting on the outstanding information from him in relation to the Partner visa application.
90. The Authority notes that the FRMA did not provide any documentation or evidence to show that she provided Ms DT with updates on her Partner visa application between 10 February 2020 (when Ms DT made the final VAC payment to you) and 23 May 2021.
91. The FRMA also did not provide evidence of her multiple requests to Ms DT (and Mr AJ) for the outstanding information, as she asserted.
92. The following information before the Authority indicates that Ms DT (and Mr AJ) were under the impression that the FRMA had lodged the Partner visa application with the Department.

- On 21 May 2021, Ms DT contacted the Department to enquire about her Partner visa application, which she understood had been lodged.
- On 24 May 2021, Mr AJ responded to the FRMA's text message requesting further information, stating:
'...please check too as this information was provided prior to the lodgement of the partner visa'.
- Ms DT provided a copy of a text message conversation which she alleges took place in May 2021, between the FRMA and Mr AJ. Within the conversation, Mr AJ asks the FRMA to send him *'any official documents regarding the bridging visa and the partner visa'*.

93. Despite the FRMA asserting that she never advised Ms DT that she had lodged the Partner visa application, she has not provided any evidence or documentation showing that she kept Ms DT fully informed about the progress (or lack thereof) of the application. Based on what Ms DT has alleged, departmental records, and with no evidence on the contrary, I find that the FRMA failed to keep Ms DT fully informed about her immigration matters, contrary to **clause 2.8(c)** of the former Code.
94. The section 308 notice required the FRMA to provide copies of the full client file. The client files did not have any file notes of oral communications that the FRMA had with Ms DT and Mr AJ, nor were there copies of any written communication. Therefore, I also find that the FRMA failed to maintain proper records in respect to Ms DT, in breach of **clause 6.1** of the former Code.
95. It follows that I find that the subject matter of the complaints in regard to Mr AF and Ms DT have been made out.
96. According I am satisfied that the FRMA breached her obligations under clauses **2.1(a), 2.1(b), 2.3, 2.8(b), 2.8(c), 2.9A, 2.18, 2.21, 5.2(c)** and **6.1** of the former Code.

CONSIDERATION OF WHETHER OR NOT TO BAR THE FRMA

97. In reaching my conclusion with respect to being satisfied that the subject matter of the complaint is made out, I have considered the strength of evidence and the level of satisfaction required in accordance with the potential the serious consequences for the FRMA and the subject of the decision in terms of her livelihood or reputation.
98. In deciding whether or not to bar the FRMA under subsection 311A(1) of the Act, I have taken into account all of the circumstance of the complaints, including the following.

Seriousness of behaviour

99. In reaching a decision that a barring sanction under subsection 311A(1) of the Act is appropriate in this case, I have taken the following factors into account.
100. As a registered migration agent, the FRMA was obligated under the Code to possess and maintain a high standard of conduct in order to maintain the reputation and integrity of the migration advice profession.

101. The FRMA has demonstrated behaviour of a serious nature, which was negligent, incompetent and unfair to her clients. I am satisfied that the FRMA has acted with a significant degree of indifference towards her clients, the Authority and her obligations as a member of the migration advice progression. I am further satisfied that if the FRMA were to be registered again, vulnerable consumers would be subject to her unprofessional conduct.
102. I consider that the FRMA's behaviour:
- Has resulted in significant delays, cost and/or anguish to her clients.
 - Has breached multiple clauses of the former Code, indicating systemic poor practice.
 - Has shown a blatant disregard or significant degree of indifference to her professional responsibilities, her clients, and the Authority.
 - Has, or is likely to have an adverse impact or undermine the reputation of the migration advice profession.
103. Applying these factors, I have determined that a barring decision is appropriate as the FRMA had engaged in conduct that resulted in significant costs, delay and/or anguish for two of her clients. For Mr AF, the FRMA's actions resulted in him unknowingly residing in Australia unlawfully for an extended period and him losing the opportunity of a permanent residency pathway. Mr AF's visa application was refused due to the FRMA's errors and poor judgement, and ultimately resulted in him and his family having to depart Australia. For Ms DT, the Agent's actions, or lack thereof, resulted in a significant delay in the lodgement of a Partner visa application and additional costs and anguish associated with this process.

Aggravating factors

104. I consider the FRMA's conduct falls well below the standards expected of a RMA, particularly her apparent indifference towards her obligations to her clients and the Department. I find the following are aggravating factors that increase the severity of sanction:
- The FRMA demonstrated a lack of knowledge of the Act and Regulations and has provided inaccurate advice to her client, despite the Department advising her to the facts in the notification letters.
 - The FRMA did not accept responsibilities for her actions and attributed blame on Mr AF, Ms DT and their respective sponsors.
 - The FRMA knowingly submitted an application with the Department without the specified accompanying documents.
 - The FRMA has demonstrated misconduct of a serious nature by failing to deal with her clients competently, diligently and fairly. This has resulted in her clients suffering significant detriment due to the FRMA's incompetence, incurring the loss of a permanent visa pathway, financial loss, departure from Australia, and a significant delay in achieving an immigration outcome.
 - The FRMA has demonstrated a poor standard of immigration assistance and communication with her clients, which was contrary to the FRMA's obligations when she was a RMA.
 - Based on the timing of the FRMA's decision to not renew her migration agent registration, this could be construed as an attempt to avoid disciplinary action.

105. I am satisfied that the FRMA's conduct has the potential to tarnish the reputation of the migration advice profession, and would be viewed by other RMA's within the profession as unacceptable.
106. I consider the FRMA's conduct falls short of the standard expected of a RMA, and that the conduct poses a serious risk to migration consumers and to the integrity of the migration advice profession.

Mitigating Factors

107. In respect to the section 308, section 309 and section 311D notices, the FRMA included the following mitigating factors which are considered prior to a disciplinary decision being made:
 - She conceded her mistake in relation to the ceasing of the Bridging visa A at the time the subclass 457 visa was cancelled, and attempting to link a new nomination to the existing subclass 482 visa application.
 - She fully refunded the cost of fees to Ms DT.
 - She no longer wishes to be part of the migration advice industry.
108. I have considered the FRMA's claim regarding her mistakes. Whilst I appreciate her willingness to acknowledge some of her mistakes, her actions nevertheless had serious consequences for her clients. As a result of her mistakes, Mr AF remained unlawful in the community for an extended period, and his subclass 482 visa application was refused.
109. I have considered that the FRMA refunded the fees to Ms DT. I accept that this reduced the additional financial burden placed on Ms DT, however did nothing to address the significant delay or anguish that resulted from the FRMA failing to lodge her Partner visa application.
110. In considering whether a disciplinary decision would affect the FRMA's earning capacity, her ability to find future employment, and livelihood, I note that she decided not to renew her registration and voluntarily leave the industry. In her response to the section 309 and 311D notices, the FRMA did not raise any concerns in relation to future employment or her livelihood. I am therefore satisfied barring the FRMA from future registration should and would not have a bearing on any of these factors.
111. I have also considered FRMA's past conduct whilst she was a RMA and note that in 11 years of practicing, she has had no disciplinary action taken against her.

Consumer Protection

112. 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.
113. The behaviour demonstrated by the FRMA falls short of the standards expected of RMAs. I consider that the FRMA poses a serious risk to consumers if she was registered as a migration agent. I am satisfied that if the FRMA were to practice as a RMA, she would not demonstrate the requisite skills expected of a RMA. I therefore consider that a disciplinary decision is warranted to address the conduct that is subject of this decision, and in the interests of consumer protection.
114. I expect that a decision to sanction the FRMA would more likely than not deter other RMAs from engaging in a similar practice and ensure that public confidence in the migration agent industry is maintained.

DECISION

115. I have decided to bar the FRMA from being registered as a migration agent for a period of three (3) years that starts when she is taken to have been given this notice under section 332H of the Act, and ends at the expiration of three years after this date.

Yours sincerely

Office of the Migration Agents Registration Authority
Department of Home Affairs

APPENDIX A: TERMS USED FOR REFERENCE

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

AAT	The Administrative Appeals Tribunal
BVA	Bridging Visa A
MARN	Migration Agent Registration Number
RMA	Registered Migration Agent
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
Section 311D Notice	Notice issued by the Authority under section 311D of the Act
The Act	<i>The Migration Act 1958</i>
The Regulations	<i>Migration Regulations 1994</i>
The FRMA	Romona Martinovici
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