

CONSENT ORDERS HEARING

THE CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Patrick John Bermingham

Heard on: Monday, 18 February 2019

Location: The Adelphi, 1-11 John Adam Street, London WC2N
6AU

Committee: Mrs Helen Carter-Shaw (Chairman)

Legal Adviser: Mr Robin Havard

Outcome: **Severe Reprimand**
Costs to be paid to ACCA in the sum of £4,128.50

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INTRODUCTION

1. The Committee considered a draft Consent Order in respect of Mr Patrick John Bermingham. The matter was listed to be considered on the basis of documents only. Neither Mr Bermingham nor ACCA were present or represented.

SERVICE

2. The Committee had before it the draft Consent Order, signed by Mr Bermingham, and a signatory on behalf of ACCA, together with supporting documents in a bundle, numbering A to G and 1 to 21, and a service bundle numbering 1 to 10.
3. The Committee was satisfied that Mr Bermingham had been properly notified of the meeting by a letter dated 30 January 2019.

BRIEF BACKGROUND

4. It was alleged by ACCA, and Mr Bermingham admitted, that Bermingham and Company, a company in which he was sole practitioner, had been disciplined by another professional body, namely the Institute of Certified Public Accountants in Ireland ("CPA") on 30 May 2018, and therefore, pursuant to bye-law 8(a)(vi), he was liable to disciplinary action.
5. The details were set out in the attached draft Consent Order. ACCA's Investigating Officer and Mr Bermingham had agreed the form of order which proposed a severe reprimand should be made together with an order for costs

DECISION ON FACTS AND REASONS

6. In accordance with Regulation 8 of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, as amended, the Committee has the power to approve or reject the draft Consent Order, or to recommend amendments. The Committee can only reject a signed draft Consent Order if

it is of the view that the admitted breaches would more likely than not result in exclusion from membership.

7. The Committee was satisfied that there was a case to answer and that it was appropriate to deal with the complaint by way of a Consent Order. The Committee considered that the Investigating Officer had followed the correct procedure.
8. The Committee considered the bundle of evidence and, on the basis of the admissions, found the facts proved. It considered that the admitted facts, and Mr Bermingham's actions justified disciplinary action under bye-law 8(v).
9. Mr Bermingham became an ACCA member on 14 April 1994. He became an ACCA Fellow on 14 April 1999. He is a sole practitioner practicing under the style of Bermingham and Company. He holds a practising certificate with audit qualification.
10. Bermingham and Co was severely reprimanded by the Institute of Certified Public Accountants in Ireland on 30 May 2018, for the failure to carry out its audit work according to the auditing and ethical standards, issued by the Financial Reporting Council, and the Institute's Code of Ethics, in respect of Client A, for the years ended 31 December 2013 and 2014.
11. The CPA ordered that Bermingham and Co be:
 - Severely reprimanded;
 - Fined €15,000;
 - Pay costs of €10,000; and
 - Subject to two conditions in respect of their audit work

12. Client A was a company limited by guarantee, and a registered charity which provided support and counselling to those bereaved by suicide, as well as to those who were suicidal. It was established in 2006 by Person A, and received state funding from the Health Service Executive.
13. On 29 July 2016, Client A was placed in liquidation and is the subject of an investigation by the Office of the Director of Corporate Enforcement in Ireland.
14. Mr Bermingham had provided a response admitting the allegations.
15. As stated, in light of the facts set out above and by his own admission, Mr Bermingham is liable to disciplinary action pursuant to bye-law 8(a)(vi), by virtue of his firm, of which he is the sole practitioner, being disciplined by another professional body, namely CPA, on 30 May 2018.

SANCTION AND REASONS

16. In deciding whether to approve the proposed sanction of a severe reprimand, the Committee had considered the Guidance to Disciplinary Sanctions ("the Guidance") to include the key principles relating to the public interest and the need to uphold proper standards of conduct. The Committee also considered whether the proposed sanction was appropriate, proportionate and sufficient.
17. In reaching its decision, the Committee had noted the following aggravating features as identified by ACCA:
 - By being publicly disciplined by another body, Mr Bermingham has brought discredit to himself, ACCA and the accountancy profession;
 - The conduct which led to Mr Bermingham being disciplined by CPA was of a serious nature, and fell below the standards expected of a qualified ACCA member;
 - The high-profile nature of Client A.

18. In deciding that a severe reprimand is the most suitable sanction, the Committee had also noted that ACCA had taken into consideration paragraphs C4.1 to C4.5 of the Guidance, and noted the following mitigating factors as identified by ACCA:

- Mr Bermingham and his firm had a previous good record;
- Mr Bermingham has shown a genuine expression of regret;
- The misconduct was not intentional and is no longer continuing, though Mr Bermingham did act recklessly;
- Mr Bermingham has shown insight into his failings;
- There has been no repetition of the conduct — it was isolated to Client A;
- Mr Bermingham has taken corrective steps to ensure the conduct is not repeated;
- Mr Bermingham fully co-operated with the investigation and regulatory process;
- The Institute of Certified Public Accountants in Ireland has already sanctioned Mr Bermingham and placed conditions on his audit licence.

19. These conditions provide a further safeguard against repetition of the behaviour that gave rise to the disciplinary action being taken.

20. In all the circumstances, the Committee was satisfied that the sanction of severe reprimand was appropriate, and that exclusion would be disproportionate.

21. The order for costs appeared appropriate although, taking account of Mr Bermingham's remarks as to his current financial situation, he can liaise with ACCA, with regard to the basis on which such costs are to be paid.

22. Accordingly, the Committee approved the attached Consent Order. In summary:

- a. Mr Bermingham shall be severely reprimanded; and
- b. Mr Bermingham shall pay costs of £4,128.50 to ACCA

Mrs Helen Carter-Shaw
Chairman
18 February 2019