

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Ms Seema Khan

Heard on: Wednesday, 20 February 2019

Location: Chartered Institute of Arbitrators, 12 Bloomsbury Square,
London, WC1A 2LP (27 November 2018)
The Adelphi, 1 – 11 John Adam Street, London,
WC2N 6AU, (20 February 2019)

Committee: Mrs Judith Way (Chairman)
Mr Jonathan Beckerlegge (Accountant)
Mr Alastair Papps (Lay)

Legal Adviser: Mr Leighton Hughes (Legal Adviser)

Persons present

and capacity: Mrs Emily Healy-Howell (ACCA Case Presenter)
Ms Anna Packowska (Hearings Officer) (27 November
2018)
Mr Christopher Badoo (Hearings Officer) (20 February
2019)
Mr Ian Stern Q.C. (Counsel for Ms Khan)
Mr Peter Yirimambo (Solicitor for Ms Khan)

Summary: Severe reprimand
Ms Khan to pay £7,000 to ACCA by way of costs

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1. The Committee had bundles of papers paginated A-M, 1-159, 160-161 and 163-165 (not before the Committee until the sanction stage), together with on table papers paginated 1-6, and a service bundle paginated 1-19.
2. ACCA was represented by Mrs Emily Healy-Howell. Ms Khan was represented Mr Ian Stern Q.C.

THE ALLEGATION

Allegation 1

- (a) On 7 July 2016 Miss Seema Khan was convicted of two charges of executing or causing to be executed works of alteration to a Grade II listed building without listed building consent, contrary to sections 7, 9(2) and (4) of the Planning (Listed Buildings and Conservation Areas) Act 1990 at Hammersmith Magistrates Court, which is discreditable to the Association or the accountancy profession.
 - (b) By reason of her conduct at 1(a) above, Miss Seema Khan is liable to disciplinary action pursuant to bye-law 8(a)(ix).
3. At the outset of the hearing Mr Stern, on behalf of Ms Khan, admitted the allegation, save that it was not accepted that the conviction was discreditable to the Association or the accountancy profession.

THE BACKGROUND AND ACCA'S CASE

4. Ms Khan became a member of ACCA on 21 May 1992, and a Fellow of the Association on 21 May 1957. She does not hold any practising certificates.
5. On 7 July 2016 Ms Khan was convicted of four offences of executing, or causing to be executed, works of alteration to a Grade II listed building without listed building consent.

6. On 26 August 2016, an article in the Evening Standard referred to the conviction of Ms Khan and referred to her as a "chartered accountant,"
7. On 3 September 2016, an online article published by the Institute of Historic Building Conservation ("IHBC") referred to the conviction of Ms Khan and referred to her as a "Chartered Accountant.". The article noted "this was the biggest fine we have yet seen in the magistrates court."
8. Ms Khan appealed against her conviction and the sentence imposed. The appeal was heard in the Crown Court at Southwark on 25 August 2017. Ms Khan was successful in her appeal against two of the four charges, and successful in her appeal against sentence to the extent that her fines were reduced to a total sum of £15,500. The costs of the Magistrates' Court hearing, £15,194.62, ordered to be paid by Ms Khan, remained unchanged. Ms Khan was further ordered to pay the prosecution costs incurred by her appeal, in the sum of £8,738.
9. The transcript of the Appeal judgment and sentencing remarks, dated 25 August 2017, included the following comments:

"in our judgement, it is because despite the good character directions to which you are entitled the evidence you have given to us in this court was false."

"At times you appeared to revert to the defence, which we understand to have been given before the Magistrates, namely, that you were acting on professional advice, but your new defence is an entirely different one, namely that your professionals were acting on their own volition and without regard to your instructions. In our judgement, your confusion arose because your new evidence is false."

"You sent two emails in which you did mention the failure of the selling agent and your solicitor to tell you that it was listed, but you did not mention the fact

that your structural engineer and planning consultant had told you it was listed. This undermines your credibility."

10. ACCA's case was that the matters of which Ms Khan was convicted were serious and displayed a reckless disregard for the Grade II listed status of 9 [REDACTED]. Mrs Healy-Howell submitted that as the offences were publicly reported, and reference made to Ms Khan being a Chartered Accountant, her conduct had discredited and undermined ACCA and the accountancy profession.

Ms Khan's Case

11. Ms Khan did not give evidence at the fact-finding stage of the hearing. Mr Stern told the Committee that Ms Khan had been of good character prior to her 2016 conviction, and had not previously been the subject of regulatory proceedings. He told the Committee that the conviction had a profound effect upon her and her family; she was remorseful and had a deep sense of shame finding herself before her professional regulator.
12. Mr Stern provided the Committee with a detailed background to the offences, describing, first, the purchase of the property in 2013. It was in a poor state of repair, needing substantial renovation, and the Committee was told that Ms Khan and her husband first took advice from a chartered structural engineer and a planning consultant, before undertaking any work on the property. Mr Stern submitted that this was a clear indication that they intended to undertake work responsibly and in accordance with the appropriate planning considerations. Mr Stern submitted, in essence, that Ms Khan had placed undue reliance upon the advice of others which, on occasions, had been simply incorrect. He told the Committee that there had been a degree of uncertainty about what was affected by the listing in relation to the exterior of the property, but that Ms Khan had always acted in good faith.
13. Mr Stern reminded the Committee that the offences were of strict liability, therefore had not required any element of intent on the part of Ms Khan, and

were unrelated to the practice of accountancy. He submitted that the offences related to conduct 5 years ago, albeit that the convictions were recorded in July 2016, and the subject of an appeal in August 2017. He invited the Committee to conclude, in all the circumstances, that Ms Khan's conviction was not discreditable to the Association or the accountancy profession.

THE COMMITTEE'S DECISION ON THE ALLEGATIONS

14. The Committee found the allegation proved by way of, and to the qualified extent of, the admissions made on behalf of Ms Khan. It went on to consider the disputed issue of whether the conviction was discreditable to ACCA or to the accountancy profession.
15. The Committee carefully considered all of the evidence in the hearing bundle, and bore in mind the detailed oral submissions. It accepted the advice of the Legal Adviser.
16. The Committee acknowledged that the burden of proving the remaining issue in the allegation rested with ACCA, and that the standard of proof was on the balance of probabilities.
17. The two offences of which Ms Khan was convicted related to work unlawfully undertaken on a Grade II listed building, work that was found to have affected the character of a building of special architectural or historic interest, [REDACTED]. The Committee noted that the conviction was not related to the practice of accountancy. However, it was satisfied that any criminal conviction by a member of ACCA is serious, and is discreditable to the Association and the accountancy profession.
18. The Committee bore in mind the submissions of Mr Stern in relation to Ms Khan's culpability, but it could not overlook the clear sentencing remarks of Recorder Campbell Q.C. at the conclusion of the appeal hearing. In assessing the seriousness of the offences, the Court found that substantial damage had been done to the historic structure of the building that was protected by its Grade II listing. A second factor was the degree of financial gain they had

attempted to achieve. Ms Khan and her husband acted on advice, but it had been their decision. Further the degree of culpability was assessed as medium, which the Court considered to be the most important factor.

19. In all the circumstances, the Committee considered Ms Khan's conviction represented conduct that was a significant departure from the high standards expected of an ACCA member, and was conduct that was discreditable to her, ACCA and the Accountancy Profession. The conviction undermines confidence in ACCA, and impacts upon the trust that the public has a right to place in a member of ACCA and the accountancy profession. The Committee was satisfied that to characterise the conviction as other than discreditable would fail to uphold proper professional standards and would undermine public confidence in the profession and in the regulatory function of ACCA.
20. Accordingly, the Committee found the Allegation proved in its entirety.

SANCTION AND REASONS

21. Mrs Healy-Howell made no submission regarding a specific sanction, but drew the Committee's attention to ACCA's Guidance to Disciplinary Sanctions. She confirmed that there were no previous regulatory findings recorded against Ms Khan.
22. Mr Stern addressed the Committee briefly in relation to the facts giving rise to Ms Khan's conviction and then advanced personal mitigation. He submitted that the evidence before the Committee reduced the gravity of the conduct, demonstrated that her behaviour was entirely out of character, and amounted to powerful personal mitigation.
23. Mr Stern submitted that Ms Khan has developed a very successful career over 30 years, and has demonstrated a clear commitment to the accountancy profession and her clients. He stated that Ms Khan was extremely remorseful for the events giving rise to her conviction, and he reminded the Committee of Ms Khan's witness statement, submitting that it evidenced her great sense of

shame in finding herself before her regulator, and her otherwise positive good character.

24. Mr Stern referred to statements that speak to Ms Khan's character, and invited the Committee to find them to provide substantial mitigation.
25. In summary, Mr Stern submitted that the evidence before the Committee should enable it either to take no further action, or impose a sanction at the lower end of the scale.
26. The Committee had regard to ACCA's "Guidance For Disciplinary Sanctions", last updated in January 2019. The Committee was cognisant of the fact that the purpose of a sanction was not to punish Ms Khan further for her offending, even though a disciplinary sanction may seem to have that effect. It had, at the forefront of its considerations, the public interest, which includes not only the protection of members of the public, but also the maintenance of public confidence in the profession and in ACCA, and the declaring and upholding of proper standards of conduct and behaviour by members of the profession.
27. The Committee accepted the advice of the Legal Adviser that any sanction must be proportionate, and that the Committee should consider sanctions starting with the least restrictive and moving upwards.
28. The Committee considered that Ms Khan's conviction demonstrated behaviour that amounted to a significant departure from the standards expected of an ACCA member. Her conduct was aggravated by the degree of financial gain that she and her husband had attempted to achieve. There was no evidence of direct damage to the reputation of ACCA, but the Committee was satisfied that Ms Khan's behaviour had the clear potential to undermine public confidence in the profession and those seeking to join it as members.
29. The Committee found that Ms Khan's conduct was also aggravated by her having personally demonstrated little insight or remorse into, or appreciation of, the potential impact of her conviction upon the reputation of ACCA and the accountancy profession. Ms Khan did not give evidence before the Committee,

and it considered the focus in her statement was the impact of the conviction upon herself and her immediate family.

30. By way of mitigation, the Committee acknowledged Ms Khan's previous good character, her personal circumstances, and the four testimonials that spoke highly of her personal and professional qualities.
31. The Committee first considered taking no further action in this case. It was in no doubt that to do so would fail to mark the gravity of Ms Khan's behaviour and conviction, and would undermine confidence in ACCA as a regulator and the profession as a whole.
32. Having decided that it was necessary to impose a sanction in this case, it considered the question of sanction in ascending order, starting with the least restrictive.
33. The Committee considered carefully whether the appropriate and proportionate sanction in Ms Khan's case would be an Admonishment. It had regard to the factors identified in the Guidance for Disciplinary Sanctions, at C2.1, and was not satisfied that most of those factors were present. The Committee acknowledged that Ms Khan had admitted the fact of her conviction, but reminded itself that she had sought to argue that the conviction was not discreditable to the Association or the accountancy profession. It considered this further demonstrated a lack of meaningful insight into her failings. The Committee determined that, to impose an Admonishment, would not adequately reflect the seriousness of this case, nor would it suitably declare and uphold proper standards of conduct.
34. Adopting the same reasoning, the Committee concluded that a reprimand was not an appropriate sanction in Ms Khan's case. This was not conduct of a minor nature; the Committee considered that the conviction represented a significant departure from the standards expected of a member of ACCA. The Committee was mindful that the reputation of a profession, and professional body such as ACCA, is more important than the fortunes of any individual member.

Membership brings many benefits, but comes at the price of liability to sanctions, to maintain the reputation of the profession.

35. The Committee concluded that no sanction short of a severe reprimand was appropriate in this case. The Committee considered that a lesser sanction would fail properly to declare proper standards of professional behaviour and would seriously undermine public confidence in the profession and in ACCA as its regulator.

COSTS

36. ACCA claimed costs in the sum of, £8282.72, as set out in the costs schedules.
37. Mr Stern accepted that, in principle, a sum of costs was payable by Ms Khan, but he disputed that the sum claimed was fair and reasonable. He submitted that some allowance should also be made for the duplication of work claimed for Ms Khan, and the separate, but clearly overlapping case against her husband in the criminal proceedings.
38. The Committee had regard to ACCA's Guide to Costs Orders in disciplinary proceedings. The Committee had not received any evidence of Ms Khan's means. It was satisfied that the costs had been reasonably incurred and decided that it was appropriate to award costs but, accepting the apparent duplication of work claimed to have been undertaken, assessed the appropriate sum to be £7,000. Accordingly, the Committee ordered that Ms Khan pay the sum of £7,000 to ACCA by way of costs.

EFFECTIVE DATE OF ORDER

39. This order shall take effect from the date of the expiry of the appeal period unless Ms Khan gives notice of appeal prior to the expiry of that period, in which case it shall become effective as prescribed in the Appeal Regulations.

Mrs Judith Way
Chairman
20 February 2019