

Hearing

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Mansour Ghatineh FCCA

Heard on: Wednesday, 13 March 2019

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

Committee: Mr James Kellock (Chairman),
Mr Martin Davis (Accountant) and
Mr Garrett O'Reilly (Lay)

Legal Adviser: Mr Conor Heaney

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case Presenter)
Ms Anna Packowska (Hearings Officer)

Summary: **Member severely reprimanded and pay a fine of
£1,000. Member to pay costs of £8,000.**

1. The Committee heard Allegations of misconduct against Mr Ghatineh. Mr Jowett appeared for ACCA. Mr Ghatineh was present, and represented himself.
2. The Committee had a Bundle numbering pages A-P and 1-96, and an Additional Bundle (1) numbering pages 1-20.

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ALLEGATIONS/BRIEF BACKGROUND

3. Mr Ghatineh, a Fellow of the Association, is a sole practitioner at Landon Seamer ('the firm') and holds an ACCA practising certificate with audit qualification.
4. On 14 and 15 May 2018, a Senior Compliance Officer ('SCO') of ACCA conducted a monitoring visit to the firm. He found that the firm had made payments to Companies House from the firm's client account on behalf of its clients, totalling £2,783.65 in excess of the total amount of monies held, on behalf of the firm's clients to fund such payments. In addition, the SCO found that the firm had made payments from the client account to, or on behalf of, Client A, totalling £495.54 in excess of the total amount of monies held, on behalf of client A. The SCO also found that the firm had a 'suspense account' which disclosed that it had received in 2017 the sum of £2,250 from HMRC. Mr Ghatineh was unable to explain why this sum had been received by the firm from the HMRC.
5. In light of the above, Mr Ghatineh faced the following Allegations:

Allegation 1

- (a) Mansour Ghatineh, a member of ACCA, caused or permitted to be withdrawn from his firm's client bank account:-
 - i. Sometime in the period 23 May 2011 and 17 May 2018 payments totaling £2,783.65 to Companies House on behalf of clients in excess of the total amount of monies held on behalf of clients to fund such payments.
 - ii. Sometime in the period 1 September 2012 and 30 November 2015 payments totaling £495.54 to or on behalf of Client A in excess of the total amount of monies held on behalf of Client A.

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- (b) Mansour Ghatineh, a member of ACCA, failed to maintain accurate records and controls so as to show clearly the monies his firm Landon Seamer had received or held on account of its clients namely an amount of £2,250 received from HMRC on or about 3 March 2017.
- (c) Mansour Ghatineh's conduct as set out in Allegation 1(a) and or 1(b) above was:
 - i. Contrary to section 270.2 (c) and or section 270.27 of the ACCA Code of Ethics and Conduct;
 - ii. Contrary to Section 150.1 of the Fundamental Principle of Behavior (as applicable from 2011 to 2018).

Allegation 2

By reason of his conduct Mansour Ghatineh is:

- (a) Guilty of misconduct in respect of any or all of the matters set out at 1(a)(i), 1(a)(ii) or 1(b) or 1 (c), pursuant to bye-law 8(a)(i); or
- (b) Liable to disciplinary action in respect of any or all of the matters set out at 1(a)(i), 1(a)(ii) or 1(b) or 1 (c), pursuant to bye-law 8(a)(iii).

DECISION ON FACTS/ALLEGATIONS AND REASONS

- 6. At the outset of the proceedings, Mr Ghatineh admitted Allegation 1. The Committee announced that, accordingly, this Allegation was proved by admission.

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7. Mr Jowett, on behalf of ACCA, submitted that, in respect of Allegation 2, Mr Ghatineh's actions amounted to misconduct. He submitted that, while the case did not give rise to any suggestion of lack of integrity on his part, Mr Ghatineh had failed to properly account for sums belonging to clients held in the firm's client account. Further, that there had been a very substantial delay in dealing with the monies received from the HMRC, although he had correctly placed the monies in a suspense account initially.
8. Mr Ghatineh addressed the Committee. He set out his professional career and confirmed that he had worked with the firm for forty years. From 1987 until 2016, Mr Ghatineh had been in partnership, but had assumed the role of a sole practitioner in 2016, following the death of his partner. Whilst explaining that his partner in the firm would usually have dealt with reconciliations, Mr Ghatineh fully accepted responsibility for the unsatisfactory handling of client monies by the firm. He stated that this had been an historical issue and that, once the deficiencies had been pointed out to him by the SCO at the monitoring visit, he had taken immediate steps to rectify matters. Mr Ghatineh told the Committee that the firm had approximately 250 clients. With regard to the client account following the monitoring visit, all staff at the firm had been given strict instructions that no payment should be made from an individual client account unless there were cleared funds in that account. Mr Ghatineh told the Committee that client balances were extracted monthly, reconciliations of client accounts happened on a fortnightly basis, and he now monitored the situation daily.
9. Mr Ghatineh stressed that no loss had been caused to any client. He had transferred funds from the office to the client account immediately after the issues with client monies had been identified by the SCO. Mr Ghatineh accepted that the monies received from the HMRC had been held for an unacceptably long period of time, and that he had subsequently returned the sum to the HMRC when his attempts to attribute it to a client had been unsuccessful, despite correspondence with his bank and HMRC.

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10. The Committee considered that Mr Ghatineh had, rightly, accepted responsibility, even though from 2011 to 2016, his partner had been managing client funds on behalf of the firm. The Committee considered that Mr Ghatineh had acted in an unhurried and, at worst, neglectful manner with regard to the handling of client monies. It noted that the sums concerned were small, having regard to the overall number of clients on the firm's books. The Committee agreed with Mr Jowett's submission that there was no evidence that Mr Ghatineh had benefitted financially from what had occurred, nor was there any evidence that any loss had been caused to any client of the firm, or that he had acted fraudulently. The Committee accepted that Mr Ghatineh had acted in a timely and appropriate fashion, once the deficiencies with respect to the client account were pointed out to him by the SCO. The Committee did not consider that Mr Ghatineh had acted in a deplorable or reprehensible manner in the discharge of his professional obligations. It did not consider that the high threshold had been crossed to establish misconduct.
11. Mr Ghatineh had accepted, before the Committee that he had not acted promptly enough, nor had he met the standard expected, and had made payments in excess of the total amount of monies held, on behalf of a client of the firm to fund such payments. The Committee had found that Mr Ghatineh's actions had breached sections 270.2(c) and 270.27 of the ACCA Code of Ethics and Conduct, and that he had breached section 150.1 of the Fundamental Principle of Behaviour (as applicable from 2011 to 2018). Accordingly, the Committee was satisfied that Mr Ghatineh was liable to disciplinary action.
12. The Committee therefore found Allegation 2(a) not proved and Allegation 2(b) proved.

SANCTION AND REASONS

13. The Committee heard a submission from Mr Jowett on the question of sanction. He provided the Committee with the decision of a Disciplinary

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Committee of ACCA which, in February 2017, found that Mr Ghatineh had acted with a lack of integrity in respect of the withdrawal from the firm, for his own use, of clients' money. There was no finding of dishonesty before that Committee, but Mr Ghatineh was found by that Committee to have been guilty of misconduct. Mr Ghatineh's actions, dated back to 2013/2014 in those proceedings, which resulted in the making of a Severe Reprimand against him.

14. Mr Jowett stated that ACCA considered the length of time over which Mr Ghatineh had failed to address the deficiencies in the client account, to amount to an aggravating factor. The absence of evidence that there was any loss to clients and some evidence of insight, in Mr Jowett's submission, could be considered as mitigating factors. Mr Jowett did not address the Committee directly on the appropriate sanction to impose, but reminded the Committee that it could impose a fine either on its own, or in conjunction with any other available sanction.
15. In his submission to the Committee, Mr Ghatineh described his appearance before the previous Disciplinary Committee as 'an error of judgement' on his part and that, in the intervening years, the firm's client account had been run properly.
16. The Committee considered very carefully the parties' submissions, and accepted the Legal Adviser's advice. The Committee had regard to ACCA's Guidance for Disciplinary Sanctions, with effect from 1 January 2019 ('the Guidance').
17. In considering what, if any, sanction to impose, the Committee had regard to the principle of proportionality, and the need to balance the public interest against Mr Ghatineh's interests. The Committee also bore in mind that the purpose of a sanction was not to be punitive, but to protect members of the public, maintain public confidence in the profession and ACCA, and to declare and uphold proper standards of conduct and performance.

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18. The Committee considered the following as mitigating factors:

- There was no evidence that Mr Ghatineh had benefited personally;
- There was no evidence of loss to clients of the firm;
- There was no evidence that Mr Ghatineh had acted fraudulently, dishonestly or with a lack of integrity;
- Mr Ghatineh had made an early admission, at the outset of the hearing, as to the facts;
- There was cooperation on Mr Ghatineh's part, in relation to the investigation into his conduct by ACCA;
- There was evidence of some insight by Mr Ghatineh that he had not acted, in the proper operation of the firm's client account, in a timely fashion or to the standard to be expected.

19. The Committee then considered the aggravating features:

- There was a very relevant disciplinary history. The Committee accepted that the Allegations it had to consider were of a less serious magnitude to those dealt with in February 2017. However, the Committee could not lose sight of the fact that Mr Ghatineh faced a regulatory complaint that, for a second time, he had mishandled, and had failed to properly account, for client monies held by the firm;
- It was not clear to the Committee as to why the anomalies which formed the basis of the present Allegations were not picked up until May 2018, when the monitoring visit took place. In any event, Mr Ghatineh had failed to take any corrective steps to rectify the deficiencies in the client account after he had been sanctioned, in February 2017, in respect of broadly similar conduct. He had only

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acted in May 2018, some fifteen months having passed since his appearance before a Disciplinary Committee of ACCA.

20. The Committee considered that, having regard to Mr Ghatineh's admission to the unsatisfactory handling of client monies, it would be inappropriate to conclude the matter by taking no further action.
21. The Committee considered that some of the factors that would entitle it to impose an Admonishment were present. The Committee, however, considered that the public would be insufficiently protected, having regard to the relevant disciplinary history which involved broadly similar conduct in respect of the handling of clients' funds.
22. The Committee then considered those factors, identified in the Guidance, on the question of a Reprimand. The Committee considered such a sanction would be inappropriate having regard to the period over which the deficiencies in the firm's client account had remained unaddressed. This was compounded by Mr Ghatineh's failure to take remedial action after he had appeared before a Disciplinary Committee in February 2017, namely that he did not run the client account properly from February 2017 until May 2018.
23. The Committee next turned to address those factors, listed in the Guidance, which would be present for the imposition of a Severe Reprimand. Mr Ghatineh did not have a previous good record. He had not provided any references. In addition, the deficiencies identified had endured over a considerable period and were not isolated. However, the Committee considered that the present Allegations were less serious than those for which Mr Ghatineh had previously been sanctioned. There was no evidence of loss to any client of the firm. In addition, there was evidence that Mr Ghatineh had now implemented procedures, immediately after the monitoring visit, to ensure the proper functioning of the client account in the future. He had extensively engaged and cooperated with ACCA in respect of the operation of the firm's client account in these proceedings, and in the previous hearing before the Disciplinary Committee. The Committee considered that, as a

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result, Mr Ghatineh was insightful of his failings. It also considered that the risk of repetition of the behaviour that had given rise to the Allegations was low. For these reasons, the Committee considered that the appropriate and proportionate sanction to impose was a Severe Reprimand. The Committee also considered that the public interest, and the need to uphold proper standards of conduct, required Mr Ghatineh to be fined in the sum of £1,000.

COSTS AND REASONS

24. The Committee was provided by Mr Jowett with Tabled Additional (1) and (2), numbering pages 97-100. Mr Jowett applied for costs in the sum of £8,603.84.
25. Mr Ghatineh had not provided the Committee with a statement of his financial means, and did not give a clear picture of his current financial resources. He told the Committee that he had rent salaries and other business costs to pay. Mr Ghatineh stated that he may be required to take out loan finance and/or use savings, if he was required to pay costs in the sum sought.
26. ACCA had been successful in the proceedings that it had brought against Mr Ghatineh. It was entitled to its costs which it considered was a reasonable sum for work reasonably undertaken. The Committee was prepared to make some revision downwards in respect of the time taken up at the hearing. The Committee considered that it was appropriate to order that Mr Ghatineh pay ACCA the sum of £8,000 in costs.

ORDER

27. The Committee therefore ordered that Mr Ghatineh be Severely Reprimanded and fined in the sum of £1,000. Further, the Committee ordered that Mr Ghatineh pay ACCA the sum of £8,000 in costs.

Mr James Kellock
Chairman
13 March 2019

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