

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Okoth Allan Okumu

Heard on: Monday, 25 March 2019

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

Committee: Suzan Matthews (Chairman)
Arif Kamal (Accountant)
Helen Kitchen (Lay)

Legal Adviser: Michael Conor Heaney (Legal Adviser)

Persons present

and capacity: Mr Barnaby Hone (ACCA Case Presenter)
Ms Pamela Ramphal (Hearings Officer)

OUTCOME: **Removal from Student Register, with immediate effect**
Costs of £6500.00 to be paid by Mr Okumu

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

1. The Committee met to consider an Allegation of misconduct against Mr Okoth Allan Okumu. The Committee had before it a hearing bundle numbering pages A-I and 1-97 and a service bundle numbering pages 1-16. ACCA was represented by Mr Barnaby Hone. Mr Okumu was neither present nor represented.

SERVICE OF PROCEEDINGS IN ABSENCE

2. Mr Okumu, in an email to ACCA dated 5 October 2018, requested that all correspondence concerning this matter be sent to a notified email address. Notice of the hearing, together with requisite documentation, was sent by ACCA on 18 February 2019 to that email address. The Committee was satisfied that Mr Okumu had been served with the documents required by regulation 10(1) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('the Regulations') in accordance with regulation 22.

PROCEEDING IN ABSENCE

3. In an email to ACCA dated 6 March 2019, Mr Okumu stated that he was content for the hearing to take place in his absence.
4. The Committee accepted the advice of the Legal Adviser. It was satisfied that Mr Okumu had chosen not to participate in the hearing and that an adjournment would serve no useful purpose. Mr Okumu had provided detailed responses to his employers and ACCA in relation to his actions to which the Committee could have regard. The Committee determined that Mr Okumu had absented himself voluntarily from the hearing. The Committee also considered that there was a strong public interest in the hearing taking place and that it was fair and appropriate to proceed in his absence.

ALLEGATION

1. On any date between 30 April 2018 and 14 May 2018, Mr Okoth Allan Okumu whilst employed by Company A (Kenya);

- a. Took approximately KES 800,000 in cash from Company A for his and/or another's personal use without permission;
- b. Mr Okumu's conduct in respect of 1(a) was:
 - i. Dishonest, in that Mr Okumu knew that the cash detailed 1(a) above was intended for the business expenses of Company A; and
 - ii. Contrary to the Fundamental Principle of Integrity (as applicable in 2018);
- c. By reason of his conduct in respect of 1(a) and/or 1(b) above, Mr Okumu is guilty of misconduct pursuant to by-law 8(a)(i).

BRIEF BACKGROUND

- 5. Mr Okumu first registered as a student of ACCA on 14 November 2007.
- 6. At the relevant time, Mr Okumu was employed as an accountant with Company A.
- 7. On 30 April 2018, before going on leave, Person A, Company A's Chief Finance Officer, handed Mr Okumu 902,155 KES (Kenyan Shillings). The money was given to Mr Okumu, in Person A's absence, for the day to day use of the company and for the payment of work permit fees for two Company A employees.
- 8. On 15 May 2018, Mr Okumu wrote a letter to the Group Manager of the company in which he confirmed that he had been given 902,155 KES as petty cash by Person A before Person A went on leave. Mr Okumu in his letter stated:

'I had a very close friend of mine who was really in need and I decided to help him with a sum of 800,000 [KES] with the hope that it will be refunded within 3 days, unfortunately my friend was unable to pay me back as agreed.'

9. Mr Okumu, in his letter, explained that his friend was unable to pay back the money as agreed. Mr Okumu offered to pay back the money over a period of five months and fully admitted that his actions amounted to gross misconduct.
10. On 4 June 2018, Mr Okumu was summarily dismissed from his employment with Company A. On 18 June 2018, ACCA received a referral in respect of Mr Okumu from Company A.

DECISION ON FACTS/ALLEGATION AND REASONS

Allegation 1(a): proved

11. Mr Okumu in his letter dated 15 May 2018, fully admitted making use of the money entrusted to him for the benefit of a third party without Company A's permission. He had accepted that his actions were unprofessional and amounted to gross misconduct. The Committee found this Allegation proved in accordance with regulation 12(3)(b) of the Regulations. The Committee also noted the witness statements from Person A and Person B, the company's HR manager and administrator, which confirmed Mr Okumu's admission.

Allegation 1(b): proved

12. Mr Okumu had accepted that he had been given money, by his employer, for a particular purpose. He had given this money to a third party without his employer's permission. The circumstances in which the money had been agreed to have been returned to Mr Okumu, to the Committee's mind, were immaterial. The Committee was satisfied that Mr Okumu's actions, that he

had admitted, were dishonest and would be regarded as being dishonest by ordinary and decent people. His conduct also, to the Committee's mind, lacked integrity.

Allegation 1(c): proved

13. The Committee then considered whether Mr Okumu was guilty of misconduct as a result of any of its findings of fact.

14. In the view of the Committee, Mr Okumu's actions as admitted by him were serious and crossed the threshold of misconduct. He had fallen far short of the standards expected of him as a student of ACCA. Mr Okumu was employed as an accountant with Company A. He had abused the trust reposed in him by his employer. He had given money that was intended for the good running of Company A to a friend to pay off a bank loan. The Committee considered that Mr Okumu's actions were reprehensible and deplorable. He had brought discredit to himself, the Association and to the accountancy profession as a whole.

15. On the basis of Mr Okumu's admissions, the evidence before it and the Committee's finding on misconduct, the Committee found Allegation 1 proved in its entirety on the balance of probabilities.

SANCTION AND REASONS

16. The Committee was informed that Mr Okumu had no previous disciplinary findings against him.

17. The Committee considered ACCA's Guidance for Disciplinary Sanctions, with effect from 1 January 2019 ('the Guidance'), in particular those sections dealing with dishonesty and removal from the student register. In considering what sanction to impose, the Committee had regard to the principle of proportionality and the need to balance the public interest against Mr Okumu'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.

18. Mr Okumu gave a detailed explanation for his actions in the correspondence referred to and accepted that his actions were wrong. In an email to ACCA dated 5 October 2018, Mr Okumu stated:

'I have really regretted so much on my actions [REDACT]. I invested over 7 years just studying ACCA sometimes sitting only one paper per year... People do mistakes... I plead that you consider my case and allow me continue with ACCA. I would like to assure you that once I get into employment again I will first pay back [Company A]... I wish I could reverse the whole situation.'

19. When considering the appropriate sanction, the Committee considered the aggravating and mitigating factors in the case.

20. The Committee first considered the mitigating factors. The Committee noted the absence of a previous disciplinary history. It also noted that Mr Okumu had been employed for a period of time by Company A as an accountant and had handled smaller amounts of money previously without incident. Mr Okumu had also shown insight into the seriousness and wrongfulness of his actions. Mr Okumu had outlined personal mitigation. The Committee noted, however, that there was no acknowledgement, on Mr Okumu's part, of the likelihood that his misconduct could have in undermining public confidence in the accountancy profession as a whole.

21. The Committee then considered the aggravating factors. The Committee concluded, in accordance with section F of the Guidance, that in furnishing money with which he was entrusted to a third party without permission, Mr Okumu's actions were very serious. His actions were directly connected to his employment as an accountant in the company he worked for and the evidence was that the money had not been repaid by Mr Okumu. As a result, there was evidence of actual loss sustained by Company A.

22. Having regard to the serious nature of the Allegation found proved, the Committee was not satisfied that the public interest would be upheld or protected by taking no further action or by the imposition of an Admonishment or a Reprimand. These sanctions would not be sufficient in the circumstances of this case.
23. The Committee then turned to look very carefully at the issue of whether a Severe Reprimand would adequately protect the public. While some factors could be identified in the Guidance that would permit the imposition of a Severe Reprimand, the Committee was of the view that Mr Okumu's actions were so serious as to be fundamentally incompatible with his remaining on the student register. The Committee also reminded itself that the Guidance and decided authority made plain that, where a finding of dishonesty had been made out, exceptional circumstances were required if any sanction less than removal from the student register was to be imposed.
24. The Committee did not consider that the mitigation offered by Mr Okumu was so remarkable as to amount to exceptional circumstances which would entitle the Committee to consider a lesser sanction than removal. Mr Okumu had intentionally given money belonging to his employer to a friend for the purpose of paying off a debt. He had acted in a seriously reprehensible manner. He had been entrusted, as an accountant, with money by his employer and had handed this money to a friend for an unauthorised purpose. Such behaviour struck at the bedrock of the accountancy profession. Further, it represented a serious and fundamental departure from the standards to be expected of students of ACCA. The Committee therefore decided that the only proportionate sanction which would adequately uphold and protect the public interest, in the face of such action, would be to remove Mr Okumu from the student register. A removal order, in the Committee's estimation, was also necessary in order to maintain public confidence in the accountancy profession and ACCA in its regulatory function and in order to declare and uphold proper standards of conduct and performance.

COSTS AND REASONS

25. ACCA furnished a Tabled Additional bundle (1) numbering pages 98-99 and a Tabled Additional bundle (2) numbering pages 100-101. ACCA claimed costs in the sum of £7567.94. Mr Okumu had not submitted a Statement of Financial Position.

26. It seemed to the Committee that the costs claimed by ACCA, in connection with the costs claimed for the hearing, were somewhat on the high side. ACCA recognised that downward allowance would be justified for the conclusion of the hearing in half a day. The hearing had concluded in half a day. The Committee decided therefore that the costs for the hearing should be reduced accordingly and therefore ordered that Mr Okumu should pay £6500 in costs to ACCA.

EFFECTIVE DATE OF ORDER

27. The Committee ordered that the Order, in light of its findings in respect of dishonesty and the public interest, should take effect immediately.

HH Suzan Matthews QC

Chairman

25 March 2019