

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Ms Nadia Chase

Heard on: Wednesday, 22 May 2019

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

Committee: Mr John Wilson (Chairman)
Mr Michael Lamb (Lay)
Mr Alastair Papps (Lay)

Legal Adviser: Mrs Fiona Barnett (Legal Adviser)

Persons present

and capacity: Mr Barnaby Hone (Case Presenter on behalf of ACCA)
Mr Richard Lorkin (Hearings Officer)

Observers: None

Summary

Exclusion from membership with immediate effect
No application for readmission may be made for 5 years
Costs of £6,800
Interim order rescinded

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SERVICE OF PAPERS

1. Ms Chase was neither present nor represented.
2. The Committee had before it a Service Bundle numbering pages 1 – 18.
3. The documents within the Service Bundle showed that notice of this hearing dated 17 April 2019 and accompanying documentation was sent to Ms Chase by email on 17 April 2019, to her email address as shown on ACCA's register.
4. The Committee was satisfied that proper notice of this hearing had been given and that service had been effected in accordance with Regulations 10 and 22 of the Complaints and Disciplinary Regulations 2014, ("CDR"), (as amended 1 January 2019).

PROCEEDING IN ABSENCE

5. Mr Hone submitted that the Committee should proceed in the absence of Ms Chase. He referred the Committee to correspondence from Ms Chase, dated 17 January 2019, in which she stated that in her view, [Private]. Mr Hone submitted that Ms Chase had disengaged, shown no willingness to participate in these proceedings, and would not be likely to attend on a future date.
6. In reaching its decision, the Committee accepted the advice of the Legal Adviser. It bore in mind that whilst it has a discretion to commence and conduct proceedings in the absence of the member, it should exercise that discretion with the utmost care and caution. The Committee had regard to the factors set out by Lord Bingham in the case of *R v Jones 2002 UKHL 5* and the case of *General Medical Council v Adeogba and Visvardis 2016 EWCA Civ 162*.

7. The Committee bore in mind that in addition to sending the notice by email to Ms Chase's email address, ACCA took further steps to inform her of the hearing by sending the notice to her at [Private], and it was delivered there. Ms Chase should therefore be aware of the hearing.
8. Ms Chase has made limited contact throughout the proceedings with ACCA, save to inform ACCA that she did not wish to be contacted, and that any contact should be made via her barrister, (who has confirmed that he has no instructions from her in relation to this matter). The Committee's view was that she has chosen to disengage from this process. Consequently, adjourning the hearing to give her another opportunity to attend would not be likely to result in her participation on a future date.
9. The Committee also bore in mind that the events to which this hearing relates occurred several years ago. There is therefore a pressing public interest in concluding these proceedings expeditiously.
10. The Committee acknowledged that if it proceeded in the absence of Ms Chase there may be some prejudice to her. However, having borne in mind the above factors, and the public interest in concluding regulatory matters expeditiously, the Committee was satisfied that the factors in favour of proceeding outweighed any consequential prejudice to Ms Chase.
11. The Committee therefore decided that it was fair and reasonable to proceed in the absence of Ms Chase. The Committee would ensure that it took appropriate steps to ensure the hearing was fair and would draw no adverse inference from Ms Chase's absence.

ALLEGATIONS

Allegation 1

(a) On 13 July 2018 Ms Nadia Chase was convicted of:

- i. fraud by abuse of position;
- ii. theft by employee,
- iii. disguise/convert/transfer removed criminal property;

at Isleworth Crown Court which is discreditable to the Association or the accountancy profession;

(b) By reason of her conduct at 1(a) above, Ms Nadia Chase is liable to disciplinary action pursuant to bye-law 8(a)(ix).

Allegation 2

(a) Ms Nadia Chase failed to bring promptly to the attention of ACCA that she may have become liable to disciplinary action, by reason of having been convicted of the matters set out at 1(a)(i)-(iii) on 13 July 2018, pursuant to bye-law 10(b).

(b) By reason of her conduct at 2(a) above, Ms Nadia Chase is:

- (i) Guilty of misconduct pursuant to bye-law 8(a)(i); or
- (ii) Liable to disciplinary action pursuant to bye-law 8 (a)(iii).

BRIEF BACKGROUND

12. Ms Chase was employed by Company A in 2011 initially as an Assistant Finance Officer, and became the Finance Officer in 2014. Company A is a charity organisation funded by the London Borough of Kensington and Chelsea, and the Arts Council for the promotion of Carnival Arts. Company

A provides financial management for Company B, which is its trading subsidiary; Company B runs Company C which is a community arts venue.

13. Company A and Company B, each had their own bank accounts, and Ms Chase had access to these during her employment. Over a period of two years from March 2014 to November 2016, Ms Chase made 530 separate transactions, transferring money to the value of £784,262.56 from the bank accounts of Company A and Company B into four personal accounts she held with HSBC and Nat West. These transactions were made under the guise of sending money to service providers, suppliers, and HMRC.
14. Ms Chase left Company A in December 2015 but worked on a freelance basis while Company A looked for a new accountancy firm. The new firm started in October 2016. There was a handover period during which time Ms Chase delayed in handing over documents and accounts to the new firm.
15. Company A subsequently received a letter from HMRC requesting outstanding monies which included fines for non-payment. The new accountants investigated this matter further and identified further financial irregularities.
16. Ms Chase was arrested. During the search of her home, financial documents belonging to Company A and B including invoices, tax returns, and letters from HMRC requesting outstanding payments were seized.
17. Ms Chase was charged with the offences set out in allegation 1(a). She pleaded guilty to fraud and transferring criminal property. She denied the theft offence but was found guilty. She was sentenced on 13 July 2018 to 6 years imprisonment.
18. In its consideration of this matter, the Committee had before it a bundle of papers numbering pages 1 to 78.

DECISION ON ALLEGATIONS AND REASONS

19. The Committee accepted the advice of the Legal Adviser. In reaching its decisions, it reminded itself that the burden of proof rests with ACCA, and that the standard of proof is the civil standard, which is the balance of probabilities.

Allegation 1(a) – found proved

20. The Committee was satisfied, having considered the certificate of conviction from Isleworth Crown Court, that Ms Chase was convicted of fraud by abuse of position, theft by employee, and disguise/convert/transfer criminal property as set out in Allegation 1(a).

21. The Committee was also satisfied that Ms Chase's conviction for theft was discreditable to the Association and the profession of accountancy. These were serious offences of dishonesty involving an abuse of her position of trust, for which she had been sentenced to six years imprisonment. The Committee therefore found this matter proved.

Allegation 1(b) – liable to disciplinary action – found proved

22. The Committee's findings in Allegation 1(a) rendered Ms Chase liable to disciplinary action in accordance with Bye-law 8(a)(ix).

Allegation 2(a) – found proved

23. Bye-law 10(b) places an obligation on a member to bring promptly to the attention of ACCA any matter indicating that she may have become liable to disciplinary action.

24. Mr Hone accepted that there was no direct evidence before the Committee to support this allegation. However, he submitted that ACCA was under a duty to act fairly and place all relevant correspondence before the Committee. He referred the Committee to correspondence from which, he

submitted, the Committee could infer that Ms Chase had not promptly brought the matter to ACCA's attention.

25. The Committee accepted Mr Hone's submission that ACCA was under a duty to put all relevant correspondence before it. Further, it carefully examined the correspondence within the bundle, from which it was apparent that ACCA first wrote to Ms Chase about this matter in May 2017, when she was the subject of a criminal investigation. She was told at that time that ACCA's investigation would be deferred until the outcome of the criminal proceedings. After Ms Chase's conviction, ACCA wrote a series of letters to her in [Private], from 8 October 2018 onwards, and it was apparent, from the content of the letters, that she had not replied to any of them. The only correspondence received from her was correspondence (referred to earlier in this decision) that she was of the view that ACCA was harassing her.

26. In the Committee's view, in the light of Ms Chase's attitude to correspondence with/from ACCA, and her clear intention not to co-operate, it was reasonable to infer that she had not promptly informed them that she may have become liable to disciplinary action. The Committee was satisfied, on the balance of probabilities, that this charge was proved by way of this inference.

Allegation 2(b)(i) - misconduct found

27. The Committee decided that Ms Chase's failure to inform ACCA that she may be liable to disciplinary action was conduct which fell seriously short of the standards expected of her. Although ACCA had received information about the investigation/conviction from other sources, her failure to inform ACCA gave rise to a risk that this matter may not have come to their attention, and may not have been investigated. A failure to investigate this matter could have been seriously damaging to the reputation of ACCA.

Allegation 2(b)(ii) – not considered

28. Having found that Ms Chase was guilty of misconduct in relation to Allegation 2(a), the Committee was not required to consider Allegation 2(b)(ii).

SANCTIONS AND REASONS

29. The Committee accepted the advice of the Legal Adviser who referred the Committee to ACCA's current Guidance on Disciplinary Sanctions, (DSG). It bore in mind that it must act proportionately at this stage, balancing the member's interests against the public interest, and that any sanction imposed must be no more than necessary to meet the purpose of a disciplinary sanction.
30. The Committee identified a number of aggravating factors: Ms Chase had stolen from her employer and in doing so she had abused her position of trust. Her fraud was calculated and carried out systematically on more than 500 occasions over a prolonged period of time. She stole a significant sum of money from which she derived personal benefit, and also stole documents from company premises to cover up her offending.
31. The Committee was provided with the sentencing remarks of His Honour Judge Denniss. It was apparent from the sentencing remarks that Ms Chase had caused "considerable harm" to Company C, the existence of which was now threatened as a result of her fraud and dishonesty, because the Company was being pursued by HMRC for large sums in outstanding taxes. Ms Chase had shown no remorse for her actions in the criminal or regulatory proceedings, nor had she shown any insight into the seriousness of them. In the Committee's view, the matters proved were very serious and at the highest end of the scale of dishonesty offences.
32. The Committee also considered whether there were any mitigating factors. It was told by Mr Hone that there were no previous disciplinary findings against Mr Chase. It accepted that this was a mitigating factor.

33. The Committee first considered whether to conclude this case without taking further action but decided that to do so would not uphold the public interest.
34. The Committee next considered, in ascending order, whether an Admonishment or Reprimand would be an appropriate and proportionate sanction in this case. It decided that neither of these sanctions would be sufficient to uphold the public interest, given the serious nature of the offences for which Ms Chase had been convicted.
35. The Committee next considered whether a Severe Reprimand would be an appropriate and proportionate sanction. In so doing, it had regard to the factors set out at paragraph C4 of the Guidance. In the absence of any response from Ms Chase, the Committee decided that a Severe Reprimand would not be appropriate. There was no evidence of any insight or remorse which would persuade the Committee that Ms Chase did not present an on-going risk to the public. Further, a Severe Reprimand would not be sufficient to meet the seriousness of the case in all the circumstances, given the significant number and extent of the aggravating factors and the absence of any compelling mitigation.
36. The Committee then considered Exclusion. The Committee was satisfied that Ms Chase's conviction, which involved numerous matters of dishonesty, amounted to a serious departure from the standards expected of an ACCA member. Ms Chase had abused her position of trust by repeatedly stealing from her employer. She had concealed documentation to hide her fraud, and had moved money out of the United Kingdom. Furthermore, in the absence of any response from her, the Committee could not be satisfied that she had any remorse for her actions, or insight into them and could not therefore conclude that she would not behave in a similar way in the future. The Committee also bore in mind that Ms Chase had not fulfilled her obligations to ACCA having not promptly informed them that she may have become liable to disciplinary action.

37. The Committee had concluded, at paragraph 31 above, that the aggravating factors brought this case into the highest end of the scale of dishonesty. When considering whether Exclusion was an appropriate and proportionate sanction, the Committee had regard to all of the aggravating factors, and balanced these against the mitigating factors. However, the mitigation was very limited, and not related directly to the facts proved.

38. The Committee reminded itself of paragraphs E2.1 and 2.2 of the DSG, which state:

“Dishonesty, even when it does not result in direct harm and/or loss, or is related to matters outside the professional sphere undermines trust and confidence in the profession....The public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. The reputation of ACCA and the accountancy profession is built upon the public being able to rely on a member to do the right thing in difficult circumstances. It is a cornerstone of the public value which an accountant brings”.

39. For these reasons, the Committee concluded that Ms Chase’s conduct as proved was fundamentally incompatible with continued ACCA membership.

40. Taking into account the seriousness of the case and balancing the interests of Ms Chase, the interests of ACCA and the public interest, the Committee concluded that Exclusion was the only appropriate sanction in the circumstances of this case. This was the only sanction which would send a proper message to Ms Chase, the profession and the public about the standards expected of an accountant. No other sanction would be sufficient to maintain confidence in the profession, uphold proper standards of conduct and protect the public.

41. The Committee therefore ordered that Ms Chase be excluded from ACCA membership.

42. The Committee also ordered that given the serious nature of the offences for which Ms Chase was convicted, no application for readmission may be considered until the expiry of 5 years from the effective date of the order, pursuant to Regulation 13(12) CDR. This also accords with the general principle set out in the case of *CHRE v (1) GDC and (2) Fleischmann [2005] EWHC 87 (Admin)*, in which Mr Justice Newman stated:

“As a general principle, where a practitioner had been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he had satisfactorily completed his sentence. Only circumstances which plainly justified a different course should permit otherwise, such as a period of disqualification from driving, or time allowed for the payment of a fine”

COSTS AND REASONS

43. Mr Hone applied for costs in the sum of £8,910, and provided the Committee with an additional bundle numbering pages 79 to 80.

44. In reaching its decision, the Committee carefully considered the costs breakdown. It bore in mind that the hearing had lasted approximately half a day, but costs for a full day had been requested. The Committee made an adjustment to compensate for this, and decided that £6,800 was an appropriate amount in costs.

45. The Committee ordered that Ms Chase pay ACCA £6,800 in costs.

EFFECTIVE DATE OF ORDER

46. The Committee ordered, given the seriousness of the matters proved, that this Order shall take place immediately in the interests of the public, in accordance with Regulation 20(1)(b) CDR. Its view was that this was necessary to ensure that public confidence is maintained in ACCA and in

the accountancy profession, and to ensure that proper standards of conduct are upheld.

INTERIM ORDER

47. The Committee ordered that the interim order relating to these matters be rescinded, pursuant to Regulation 12(5)(b) CDR.

Mr John Wilson
Chairman
22 May 2019