

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Fredon Raei

Heard on: Wednesday, 16 October 2019

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

Committee: HH Graham White (Chairman)
Mrs Judith Glover (Accountant)
Mrs Lorna Jacobs (Lay)

Legal Adviser: Mr Andrew Granville Stafford

Persons present

and capacity: Mr Fredon Raei (Member)
Ms Harriet Gilchrist (ACCA Case Presenter)
Miss Rachael Davies (Hearings Officer)

Observers: None

Outcome: Allegations 1(a), 1(b), 1(c), 1(d), 1(e), 1(f)(i), 1(f)(ii),
1(f)(iii) and 1(g)(i) found proved.
Exclusion from Membership
Costs of £7,500

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INTRODUCTION AND PRELIMINARY MATTERS

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Mr Fredon Raei.
2. The Committee had before it a bundle of documents (pages 1 to 660), an additional bundle (pages 1 to 16), and an email that Mr Raei sent to ACCA on 14 October 2019 with attachments.

ALLEGATIONS AND BRIEF BACKGROUND

3. The allegations faced by Mr Raei were as follows. By consent, Allegation 1(d) was amended by the inclusion of the word 'adequate':

Allegation 1

Between approximately 1 May 2008 and 30 April 2017, Mr Fredon Raei:

- (a) Continued to act for Company A, knowing that Company A was under declaring VAT;
- (b) Failed to report under declaration of VAT by Company A to HMRC and submit a Suspicious Activity Report to the National Crime Agency or its predecessor agency the Serious Organised Crime Agency;
- (c) Failed to comply with any or all of Regulations 7, 8, 19, 20 and 21 of the Money Laundering Regulations 2007 then in force;
- (d) Failed to retain an adequate file of working papers for Company A;
- (e) Mr Fredon Raei's conduct as set out at 1(a) - 1(b) above was contrary to the Fundamental Principle of Professional Behaviour (as applicable between 2008 - 2017);
- (f) Mr Fredon Raei's conduct as set out at 1 (c) - 1 (d) above was contrary to:

- (i) the Fundamental Principle of Professional Competence and Due Care (as applicable between 2008 - 2017);
- (ii) Section 3.8 of ACCA's Code of Ethics and Conduct (as applicable between 2008 - 2010);
- (iii) Section B2 of ACCA's Code of Ethics and Conduct (as applicable between 2011 - 2017).

(g) By reason of his conduct at 1(a) - 1(f) above, Mr Fredon Raei is:

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

4. Mr Raei was admitted as a member of ACCA in 1987, and as a fellow in 1992. He is sole practitioner in Raei & Co (the firm). The firm acted as accountants for Company A, preparing its VAT returns and annual accounts between 1 May 2008 to 30 April 2017.
5. In 2015, HMRC opened an investigation in to Company A. The HMRC enquiry established that Company A had not recorded all of its sales and that VAT had been underpaid as a result.
6. As a result of this finding, the VAT enquiry into Company A was escalated by HMRC to a PN160 investigation on 27 March 2017. The PN160 procedure is instigated when HMRC suspect conduct involving dishonesty.
7. HMRC subsequently assessed Company A as liable to pay [AMOUNT REDACTED] in unpaid tax, and levied a Civil Evasion Penalty of [AMOUNT REDACTED].
8. ACCA's case was that Mr Raei knew that Company A was under-declaring its VAT liability, and nonetheless continued to act as accountant for the

company (Allegation 1(a)). ACCA relied on the following in support of that allegation:

Meeting with HMRC on 11 May 2017

Mr Raei attended the PN160 meeting with his client, a director of Company A, on 11 May 2017. In a letter to ACCA dated 30 July 2018, HMRC said that Mr Raei stated his firm had identified the under-declaration of VAT by Company A as early as 2007, and had discussed it with the directors of the company. Mr Raei had told HMRC that his firm told Company A to make a disclosure to HMRC to address the problem. Company A did not comply with his firm's request, and the situation was compounded not only by Company A continuing its fraud, but also by the fact that Mr Raei's firm continued to prepare and/or submit VAT returns for several years in the knowledge that those returns were incorrect.

Email to HMRC on 26 May 2017

In this email to HMRC, Mr Raei explained that his firm had accounted for the under-declared VAT but Company A had refused to pay it. He said that when preparing Company A's accounts, the turnover had been recorded properly and the 'potential VAT liability was credited to other creditors in the balance sheet each year.'

Letter from Mr Raei to ACCA on 26 October 2017

ACCA wrote to Mr Raei on 2 October 2018, and he responded on 26 October 2018. In that letter Mr Raei said as follows:

'My firm prepared the VAT returns every quarter and did the bookkeeping. We made a cash control account in order to establish the correct takings each quarter and calculated the 'output tax' based on the income in the cash control account We advised the client to pay the correct amount and at the same time inserted the correct amount of the VAT payable into the accounts which is described as

'taxation and social security' each year and we have been doing this every year, as we produced the account.'

'We returned VAT workings and any records back to our client. We have been able to print the accounts for the company from the first year of trading to 30-04-2016 and we also enclose herewith the VAT account showing the initial years the amount of VAT was underpaid, but when it became substantial, we became very impatient and told him that we were not happy about this situation and that we had a moral obligation and unable to continue to act for him in 2016.'

'We then sent the schedule of under-declaration to HMRC and they accepted it and what happened after that, we have no information.'

'Since May 2017 we have contacted HMRC and disclosed to them the amount of [AMOUNT REDACTED] VAT under-declared by our client, our relationship with the client broke down and he left my firm without paying our fees and the last account we prepared for him was for year ending 30-04-2016.'

'We advised our client that he should pay the VAT we calculated every time we did the VAT workings.'

'Our client was not under-declaring the VAT, as a matter of fact, we have declared the correct amount of VAT for him, but he simply did not pay it.'

'The VAT return we have prepared for our client was correct and the director of the company altered it and paid the lesser amount.'

'We did not do anything wrong and prepared the accounts and the VAT return based on generally accepted accountancy principal and left it to our client to pay and the fact that he did not pay the correct amount, it is his fault and not ours.'

Email to ACCA from Mr Raei on 8 January 2019

ACCA wrote a follow-up letter to Mr Raei on 20 November 2018, and he responded on 8 January 2019 by email, in which he said as follows:

'In practice not just my firm, all other accountants in the UK use different tools in order to establish the correct takings and we were provided with taking records and they were correct, but in order to make sure that they were complete as well as correct, we prepared a cash control account to establish the correct amount of takings and as a matter of fact, all our workings are accepted by HMRC and it agreed with their findings from third party sources (such as reports from credit card companies reports).'

'We started to act for him on 01/03/2007 trading as a sole trader . . . later on he incorporated his business and we continued to act for him. The first account for [Company A] was prepared for the period ending 31/10/2008 and he was registered for VAT with effect from 01/05/2008...Last account prepared was 30/04/2016 date of cessation of relationship with our client...'

'My involvement was to advise the client that he should pay VAT according to our computation and failure to do so will carry penalty and interest and I had to make sure that the correct amount of VAT was calculated and reported to HMRC every year in the accounts, but the quarterly VAT return was sent by the client himself.'

'As far as we are concerned, we have reported the amount of under declaration of VAT to HMRC and settled his unpaid income tax and we believe we have carried out our duty and no need to do any further reporting.'

Email to ACCA from Mr Raei on 6 February 2019

ACCA wrote a further letter to Mr Raei on 30 January 2019, to which he responded on 6 February 2019. He said:

'We would like to point out that we were doing bookkeeping for our client up to the point that the VAT was sent manually and we prepared the VAT return and sent it to our client and when we sent it to him, he must have changed it and sent the incorrect return, however when we realised this (we don't know the exact date), we prepared the account again, the way it should be and reported the correct amount of VAT liability in the accounts to HMRC which was down to them to pick it up.'

'When the electronic system was introduced, we refused to continue to do their bookkeeping and our client did his own bookkeeping and gave us the figure to transmit, but when we came to the end of the year and prepared accounts and found out that he was still underpaying the VAT, and this was in 2014, we told him verbally we were unable to continue to act for him and effectively we stopped acting for him and declared all the amount of VAT underpaid to HMRC.'

Letter to ACCA from Mr Raei on 7 June 2019

In a further letter to ACCA on 7 June 2019, Mr Raei said:

'I attach herewith a schedule of the workings for under declared amount of VAT from the inception of trading of [Company A] to year ending 30/04/2016, whereby [AMOUNT REDACTED] was reported to HMRC as under declared VAT.'

'I prepared this schedule every year and I wrote to our client after 30/04/2010, when the amount of VAT was only [AMOUNT REDACTED] and warned him then, that he needed to pay the VAT and complete a Form 652 and asked him to pay.'

'As I was doing the VAT, when I reached 30/04/2012, the amount of VAT was compounding to [AMOUNT REDACTED] and again I completed another Form 652 and warned him to pay for the second time.'

'When I reached to year ending 30/04/2014 the amount of VAT escalated further to [AMOUNT REDACTED], I did the same again and warned him if he did not pay, I would report him to the 'serious crime office' for money laundering. He pleaded with me not to do this [REDACTED]

'Throughout all the above periods to 30/04/2016, I produced his account and accounted for any under declared sales and VAT and anticipated HMRC would pick this up.'

'Apparently HMRC picked this point up in their enquiry in 2015 and when I presented them with our workings and documentation they accepted it straight away. . . '

'With benefit of hindsight, my action seems to be that I was helping him not to pay his VAT, but let me assure you, this was certainly not my intention. . . perhaps I should have reported him in 2014 when the amount of VAT was compounded. I very much regret now my decision and I am extremely remorseful.'

9. ACCA relied on the "Professional Conduct in Relation to Taxation" factsheets which make it clear that, if a client is not addressing under payments of tax, the member should cease to act for that client.
10. ACCA further alleged that between approximately 1 May 2008 and 30 April 2017, he failed to report the under declaration of VAT to HMRC or submit a Suspicious Activity Report to the National Crime Agency or the Serious Organised Crime Agency (Allegation 1(b)). The SOCA took over from NCA on 7 October 2013.

11. ACCA case was that Mr Raei, having raised the question of under declaration with his client, should have sought his client's consent to report the matter to HMRC. If the client refused, he should have ceased to act.
12. Mr Raei also had a duty to make a Suspicious Activity Report to the appropriate authorities. The money laundering policy of Raei & Co states:

'A Suspicious Activity Report (SAR) will be made to the National Crime Agency (NCA) as soon as the knowledge or suspicion that criminal proceeds exist arises.'

13. ACCA also relied on Section 3.5 of ACCA's Code of Ethics and Conduct (as applicable between 2008 and 2010) and Section BI of ACCA's Code of Ethics and Conduct (as applicable between 2011 and 2017). These required Mr Raei to make a report to the appropriate money laundering authority if he suspected or became aware of tax evasion activities by a client.
14. ACCA alleged that Mr Raei failed to comply with Regulations 7, 8, 19, 20 and 21 of the Money Laundering Regulations 2007 (Allegation 1(c)). These Regulations require, amongst other things, an accountant to carry out identity checks on a new client (Regulation 7) and monitor the on-going relationship with the client (Regulation 8). Records evidencing compliance with these requirements must be kept for five years after the conclusion of the business relationship (Regulation 19).
15. Mr Raei told ACCA, in his email of 6 February 2019, that he had no records for this client in his possession, and that all the records were returned to the client. In the same email, he also said *'all paperwork was returned to him or our own records were destroyed due to lack of space.'*
16. In a subsequent letter to ACCA dated 7 June 2019, Mr Raei said he believed there had been a misunderstanding, and that he had kept his client's records. He had only returned bank statements, cheque stubs and invoices to Company A's liquidator. All other records and correspondence, he said, were kept in archive storage. He was therefore asked by ACCA, by

letter dated 30 July 2019, to produce his full client file for Company A, but he failed to do so.

17. Section 3.8 of ACCA's Code of Ethics and Conduct (as applicable from 2008 to 2010) and Section B2 of ACCA's Code of Ethics and Conduct (as applicable between 2011 and 2017) states that records must be kept for at least five years after the end of the client relationship.
18. Therefore, ACCA submitted that, due to his admission that he did not have the client records in his possession, and due to his failure to produce his full client file, Mr Raei had not keep an adequate file of working papers for Company A. He was therefore in breach of ACCA's Code of Ethics and Conduct and his own anti-money laundering policy (Allegation 1(d)).
19. Allegation 1(e) alleged that the matters set out at 1(a) and 1(b) amounted to a breach of the Fundamental Principle of Professional Behaviour. This Principle requires members to comply with relevant laws and regulations to avoid any action that discredits the profession.
20. Allegation 1(f) alleged that the matters set out at 1(c) and 1(d) amounted to a breach of the Fundamental Principle of Professional Competence and Due Care. This Principle requires a member to act diligently and in accordance with applicable technical and professional standards.

DECISIONS ON ALLEGATIONS AND REASONS

21. On 25 September 2019, a solicitor acting on behalf of Mr Raei wrote to ACCA indicating he admitted all the allegations and setting out submissions in mitigation. At the outset of the hearing Mr Raei admitted all the allegations.
22. Pursuant to Regulation 12(3) of the Complaints and Disciplinary Regulations ('CDR'), the Committee found the factual allegations, namely 1(a) to 1(f) inclusive, proved on the basis of those admissions, which reflect the evidence in the bundles.

23. The Committee considered the remaining Allegation 1(g), which alleged that Mr Raei's conduct amounted to misconduct or, alternatively, rendered him liable to disciplinary action under bye-law 8(a)(iii). The Committee considered the documents before it, the submissions of both parties and the advice of the Legal Adviser. The Committee bore in mind that Mr Raei accepted his actions amounted to misconduct, but that this was an issue for the Committee to determine as a matter of its judgment.
24. The Committee was satisfied that the matters proved in Allegations 1(a) to 1(f) involved serious breaches of Mr Raei's professional obligations in relation to money laundering and taxation. Moreover they were breaches which were repeated over a number of years. Mr Raei, himself, admitted to the Committee that he had made a serious error.
25. The Committee was in no doubt that the conduct in question has brought discredit on Mr Raei and the profession, and would be regarded as deplorable by fellow practitioners.
26. The Committee accordingly found Allegation 1(g)(i) proved. In the circumstances it was not necessary to consider the alternative in Allegation 1(g)(ii).

SANCTION AND REASONS

27. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive, but to protect the public, maintain confidence in the profession, and declare and uphold proper standards of conduct and behaviour. It took into account the submissions of the parties and the advice of the legal adviser.
28. The Committee was informed that there was one previous disciplinary finding made against Mr Raei. In 2006, Mr Raei was severely reprimanded and fined for failing to comply with an order of the Admissions & Licensing Committee.

29. The Committee was provided with a number of references and testimonials on Mr Raei's behalf.
30. In his submissions in mitigation, Mr Raei emphasised that the director of Company A had pleaded with him to continue acting as the Company's accountant, and had made promises about securing funding to enable the under-payments to be rectified. He accepted that he should have ignored these pleas, refused to act for the Company and report the matter to SOCA/NCA. His failure to do so was a significant error of judgment which he regretted. He gave the Committee evidence about a more recent case when he had taken action in respect of a client who was failing to declare his income. He stressed that he had co-operated with HMRC's investigation into Company A, and the Revenue had accepted the figures for under-declared tax that he had supplied. He apologised to the Committee and said he appreciated the seriousness of matters found against him.
31. He had been a Member of ACCA for over 30 years and he told the Committee he enjoyed a good reputation. He stressed this was a one-off episode and it would not be repeated again.
32. Having found that Mr Raei's actions amounted to misconduct, taking no further action was clearly not appropriate. The Committee therefore considered the available sanctions in ascending order of seriousness.
33. It took into account his admissions to the allegations and his co-operation with ACCA, as well as HMRC. The Committee accepted that Mr Raei was remorseful, although, in its view, this was at least in part triggered by a realisation of the difficult position he now finds himself in.
34. However, the under-declaration of tax in this case was significant. The amount of it, and therefore the potential loss to the taxpayer, exceeded £50,000. Although on the one hand the Committee could accept Mr Raei was trying to assist his client, his loyalty was entirely misguided. He had completely failed to maintain his professional independence.

35. Furthermore, and of particular significance in the Committee's view, he continued doing so for a number of years. The failure to act appropriately, having appreciated the client was under-declaring its VAT liability, was repeated year after year until it was discovered by HMRC.
36. An aggravating factor is that accountants occupy a position of trust in relation to taxation and the Money Laundering Regulations. Mr Raei had repeatedly breached that trust.
37. In those circumstances, the Committee considered that neither an admonishment nor a reprimand would adequately reflect the public interest.
38. The misconduct in this case amounted to deliberate and serious departures from both professional standards and legal requirements. It was an abuse of a position of trust, continued over a lengthy period of time, and impacted the public in that it enabled his client to continue underpaying tax. It was aggravated by the fact that it commenced only a relatively short time after Mr Raei had previously been found guilty of misconduct by the Disciplinary Committee. A severe reprimand was not, in the Committee's view, an appropriate or proportionate sanction in this case.
39. The Committee recognised the impact an order of exclusion was likely to have on the staff and clients of Mr Raei's firm. However, the Committee considered that the conduct in question was fundamentally incompatible with continued membership of ACCA. Therefore, pursuant to CDR 13(1)(c), Mr Raei is excluded from membership of ACCA.
40. The Committee did not consider it was necessary, under CDR 13(1)(c), to specify an extended period in which no application for re-admission may be made.

COSTS AND REASONS

41. ACCA applied for costs in the sum of £11,303.86. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing (Tabled Additional Bundle 1). Mr Raei

chose not to provide the Committee with any detailed information as to his means.

42. The Committee considered that, in principle, a costs order should be made in favour of ACCA. It took into account the submissions of both parties. The costs schedule had been prepared on the basis that the case would last two days. Having concluded the case in one day, it was appropriate to reduce the sum accordingly.
43. The Committee considered that the appropriate order was that Mr Raei pay ACCA's costs in the sum of £7,500.

EFFECTIVE DATE OF ORDER

44. The Committee did not consider it was necessary in the interests of the public for the order of exclusion to come into immediate effect. The order will come into effect from the date of expiry of the appeal period, namely after 21 days from service of this written statement of the Committee's reasons for its decision, unless Mr Raei gives notice of appeal in accordance with the Appeal Regulations prior to that.

HH Graham White
Chairman
16 October 2019