

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Akilan Selvathiraviam

Heard on: Tuesday, 5 February 2020

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

Committee: Mr Michael Cann (Chair)
Mr Arif Kamal (Accountant)
Mr Andrew Skelton (Lay)

Legal Adviser: Mr Andrew Granville Stafford

Persons present

and capacity: Mrs Helen Easterbrook (Counsel on behalf of ACCA)
Mr Jonathan Lionel (Hearings Officer)

Observers: None

Outcome: Excluded from membership with immediate effect. No
application for re-admission be considered until expiry of
5 years after effective date of order.

Costs: Costs of £6,160.74

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INTRODUCTION AND PRELIMINARY MATTERS

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Mr Selvathiraviam.
2. The Committee had before it a bundle of documents (40 pages), and a Service Bundle (9 pages).

PROCEEDING IN ABSENCE

3. Mr Selvathiraviam did not attend the hearing and was not represented.
4. Notice of today's hearing was sent by email to Mr Selvathiraviam on 6 January 2020. There has been no response to the notice. A follow up email was sent on 30 January 2020, and again, there was no response. ACCA proved delivery receipts showing that both emails had been delivered to the email address provided to ACCA by Mr Selvathiraviam.
5. The Hearings Officer tried to contact Mr Selvathiraviam by telephone on 4 February 2020, but the number held by ACCA for Mr Selvathiraviam did not connect.
6. The Committee was satisfied that the requirements of Regulations 10(1) and 22(5) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations ('CDR') as to service had been complied with.
7. Having satisfied itself that service had been effected in accordance with the rules, the Committee went on to consider whether to proceed in the absence of Mr Selvathiraviam. The Committee bore in mind that the discretion to do so must be exercised with care and caution.
8. The Committee considered that no useful purpose would be served by an adjournment. There has been no recent engagement from Mr Selvathiraviam, albeit he is aware of the disciplinary process, because he has responded to correspondence from ACCA (see paragraph 21 below). He has not applied for an adjournment. The allegation relates to a conviction for a criminal offence and, therefore, there is a public interest in dealing with it expeditiously. The Committee therefore decided to proceed in Mr Selvathiraviam's absence.

AMENDMENT

9. Pursuant to CDR 10(5), the Committee amended a typographical error in Allegation 2. The amendment was to change the wording from 'By reason of his conduct at 1(a)' to 'By reason of his conduct at 2(a)'. The Committee considered there was no prejudice to Mr Selvathiraviam by making the amendment.

ALLEGATIONS AND BRIEF BACKGROUND

10. Mr Selvathiraviam was admitted as a member of ACCA in 2012, and as a fellow in 2017.
11. The allegations faced by Mr Selvathiraviam, as amended, were as follows.

Allegation 1

- (a) On 3 July 2017, Mr Akilan Selvathiraviam was convicted of fraud by abuse of position at Highbury Corner Magistrates' Court which is discreditable to the Association or the accountancy profession.
- (b) By reason of his conduct at 1(a) above, Mr Akilan Selvathiraviam is liable to disciplinary action pursuant to bye-law 8(a)(ix).

Allegation 2

- (a) Mr Akilan Selvathiraviam failed to bring promptly to the attention of ACCA that he may have become liable to disciplinary action by reason of having been convicted of fraud by abuse of position on 3 July 2017, pursuant to bye-law 10(b).
 - (b) By reason of his conduct at 2(a) above, Mr Akilan Selvathiraviam is liable to disciplinary action pursuant to bye-law 8(a)(iii).
12. On 3 July 2017, Mr Selvathiraviam was convicted at Highbury Corner Magistrates' Court of one offence of fraud by abuse of position, contrary to Section 4 of the Fraud Act 2006.
 13. The Magistrates committed Mr Selvathiraviam to the Crown Court for sentencing. He was sentenced by Her Honour Judge Greenberg QC sitting at Wood Green Crown Court on 23 August 2017.
 14. In her sentencing remarks, the judge said that over a substantial period of time, Mr Selvathiraviam had fraudulently cashed 36 cheques, obtaining a total

of £32,995.99 by deception. The judge described this as campaign of dishonesty. He defrauded Company A for whom he worked as an accountant and, therefore, had abused a position of trust.

15. The judge said Mr Selvathiraviam falsified cheques, forged signatures on them and cashed them. Although Company A was the immediate victim, that company had been reimbursed by Bank B so the loss has been borne by the bank.
16. The dishonesty came to light on 20 February 2017, when it was noticed that an unusually large number of cheques had been issued. When confronted by his employer he made full admissions as he did when interviewed by the police. [PRIVATE].
17. The judge accepted that Mr Selvathiraviam was remorseful [PRIVATE.] He had no previous convictions and had led a respectable and constructive life prior to this offending. The judge gave Mr Selvathiraviam a full one-third discount on his sentence due to his early admission of guilt.
18. The judge sentenced Mr Selvathiraviam to 20 months' imprisonment, suspended for two years. He was ordered to carry out unpaid work of 200 hours to be completed by 23 August 2018.
19. In addition, he was ordered to pay £32,995.99 compensation to [Bank B] and a victim surcharge of £140.
20. On 20 February 2019, ACCA wrote to Mr Selvathiraviam and asked him to set out the circumstances of his conviction and explain why he had failed to notify ACCA of it.
21. Mr Selvathiraviam replied on 29 April 2019 saying:

'I would like to first apology to you for the very long delay in my response. Reason for delay in my response was [PRIVATE.]

In terms of the actual convicted on 23 August 2017 at Wood Green Crown Court. I was very much saddened by the act. As a professional I should never have done this in any circumstance. I would like to take this opportunity to apologise to everyone in ACCA board. Reason I have not reported this to ACCA I was not in any way of unintentional [sic]. It was a genuine mistake by me.

Please accept my apologies regarding this matter.'

22. ACCA's case was that the conviction is discreditable to ACCA and to the profession and, therefore, renders him liable to disciplinary action. Under Bye-law 8(a)(ix) a member is liable to disciplinary action if they have, before a court of competent jurisdiction in the United Kingdom or elsewhere, pleaded guilty to, or been found guilty of, any offence discreditable to the Association or to the accountancy profession.
23. ACCA further alleged that Mr Selvathiraviam failed to promptly inform ACCA of the conviction and this also renders him liable to disciplinary action. Bye-law 10(b) states:

'Subject to any legislative or other legal obligation to the contrary, it shall be for every member and for any person to whom these bye-laws relate to bring promptly to the attention of the Secretary any facts or matters indicating that a member or relevant firm or registered student may have become liable to disciplinary action (including any facts or matters relating to himself or itself).'

DECISIONS ON ALLEGATIONS AND REASONS

24. The Committee considered the documents before it, the submissions of Mrs Easterbrook on behalf of ACCA and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA, and the standard to be applied is proof on the balance of probabilities.
25. The Committee had sight of the certificate of conviction issued by HM Courts and Tribunal Service and signed by an officer of the court. Under Bye-law 8(e), a copy of the certificate or memorandum of conviction given in the criminal proceedings is conclusive proof of the conviction and of any facts and matters found, as the case may be.
26. The Committee was in no doubt that these convictions for an offence of fraud is discreditable to the Association and the accountancy profession. Mr Selvathiraviam had used his position as a qualified accountant to issue and cash forged cheques. The conviction resulted in a lengthy sentence of imprisonment, albeit the sentence was suspended. It is self-evident that a conviction for fraud brings discredit to a professional accountant. The Committee therefore found Allegation 1(a) proved.
27. This therefore renders Mr Selvathiraviam liable to disciplinary action under Bye-law 8(a)(ix). Allegation 1(b) was therefore also proved.

28. The Committee had regard to Mr Selvathiraviam's letter to ACCA dated 29 April 2019. Mr Selvathiraviam did not dispute that he failed to bring this to the attention of ACCA. ACCA only found out about the conviction because it was informed of it by the CPS. The Committee was therefore satisfied that Mr Selvathiraviam had breached Bye-law 10(b) and was liable to disciplinary action under Bye-law 8(a)(iii).
29. Accordingly, the Committee found Allegations 2(a) and 2(b) proved.

SANCTION AND REASONS

30. 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.
31. Having found that Mr Selvathiraviam'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.
32. The Committee took into account that no previous disciplinary findings had been made against Mr Selvathiraviam. The Committee noted that the loss to the bank had been repaid and an early admission of guilt had been made. He apologised to the Association in his letter of 29 April 2019. That apart the Committee considered there was little by way of mitigation.
33. This was a serious criminal offence committed over a significant period of time. It was clearly premeditated. The offending was compounded by the fact it was committed whilst acting as an accountant for Company A and whilst occupying a position of trust.
34. The Committee was in no doubt that admonishing, reprimanding or severely reprimanding Mr Selvathiraviam would be insufficient to mark the gravity of these allegations. Mr Selvathiraviam had committed a serious offence of dishonesty and had also failed in his obligations to his professional regulator.
35. Given its nature, the Committee considered the conviction was fundamentally incompatible with continued membership of the Association. The reputation of the profession would be diminished if any sanction less than exclusion were imposed.

36. The Committee's obligation to protect the public and maintain confidence in the profession would not be satisfied if Mr Selvathiraviam remained a member of the Association.
37. Therefore, pursuant to CDR 13(1)(c), Mr Selvathiraviam is excluded from membership of ACCA. The Committee further ordered that no application for re-admission may be considered until the expiry of a period of five years from the effective date of the order.

COSTS AND REASONS

38. ACCA applied for costs in the sum of £6,160.74. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing (Additional Bundle (1) pages 1 to 4).
39. The Committee had no information about Mr Selvathiraviam's financial circumstances. The Committee was informed that a financial means form had been sent to Mr Selvathiraviam but he had not returned it.
40. The Committee considered that, in principle, a costs order should be made in favour of ACCA, and it was satisfied that the costs claimed had been reasonably incurred and appropriate.
41. The Committee determined that the appropriate order was that Mr Selvathiraviam pay ACCA's costs in the sum of £6,160.74.

EFFECTIVE DATE OF ORDER

42. The Committee determined that it would be in the interests of the public for the order to take immediate effect. Therefore, pursuant to Regulation 20 of the Disciplinary Regulation, the order removing Mr Selvathiraviam from membership will take effect immediately.

Michael Cann
Chair
5 February 2020

