

HEARING

APPEAL COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr A

Heard on: Tuesday, 21 July 2020

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

Committee: Mr John Wilson (Chair)
Mrs Yvonne Walsh (Lay)
Mr Geoffrey Baines (Lay)

Legal Adviser: Mrs Fiona Barnett (Legal Adviser)

**Persons present
and capacity:** Mr A (Member)
Mr Benjamin Jowett (ACCA Case Presenter)
Ms Nkechi Onwuachi (Hearings Officer 1)
Ms Geraldine Murray (Hearings Officer 2)

Observers: Mrs Bnar Salar-Mecaj (ACCA staff member)

Summary: Decision of the ALC on 26 February 2020,
withdrawing Mr A's Audit qualification
be rescinded.

Any future re-application for audit registration by Mr A must be referred to the Admissions and Licensing Committee, which will not consider the application until he has attended a practical audit course approved by ACCA and passed paper P7 (or the equivalent level audit paper) of ACCA's professional qualification.

Costs to be paid by Mr A of £750.00

The Committee ordered that Mr A not be named in any publicity

BACKGROUND

1. Mr A is a sole practitioner in his firm, A and Co, ("the Firm"). The history of ACCA monitoring visits to the Firm is as follows:
 - a. On 29 March 1994, serious deficiencies were found in the standard of auditing;
 - b. On 05 April 2000, serious deficiencies were found, and Mr A was referred to ACCA's Admissions and Licensing Committee, which made a "hot review" order;
 - c. On 18 June 2002, significant improvements had been made in the standard of auditing and the Firm was released from the order at an Admissions and Licensing Committee hearing in October 2002;
 - d. On 29 January 2009, the Firm had not maintained the standard of auditing, and a warning was issued;
 - e. On 10 September 2013, the Firm had improved its audit procedures, although some deficiencies were found and issues about independence were identified. The Firm provided ACCA with an action plan.

2. ACCA carried out a follow-up monitoring visit on 26 June 2019. The compliance officer examined three audit files and found that the firm had not maintained a consistently satisfactory standard of audit work. On two of the three files inspected, the audit opinions were not adequately supported by the work performed and recorded. Mr A was then referred to the Admissions and Licensing Committee, (“ALC”) for a hearing.
3. The matter was initially due to be heard in November 2019. Mr A did not attend that hearing. However, the ALC decided not to proceed in his absence, given its concerns that he had not been able to access the link to the hearing documentation. The ALC adjourned and issued directions.
4. The matter was re-listed for hearing on 26 February 2020. Mr A applied in advance of the hearing for an adjournment, citing health issues and work commitments which had prevented him from preparing for the hearing. His application was opposed by ACCA and refused by the Chair; it was reconsidered by the ALC on the day of the hearing and further refused. Consequently, the hearing proceeded in Mr A’s absence.
5. The ALC was satisfied that Mr A had breached Global Practising Regulation 13(1) in that he failed to comply with the International Standards on Auditing (Ireland) in the conduct of audit work. It found that the breaches were “... *material when set against the background of previous unsatisfactory visits and the latest Report.*” The ALC ordered, pursuant to Authorisation Regulation 5(2)(f), that:
 - a. Mr A’s audit qualification be withdrawn, and
 - b. Any future re-application for audit registration by Mr A must be referred to the Admissions and Licensing Committee, which will not consider the application until he has attended a practical audit course approved by ACCA and passed paper P7 (or the equivalent level audit paper) of ACCA’s professional qualification.

GROUNDS OF APPEAL

6. On 13 March 2020, Mr A submitted an appeal notice. He confirmed that he wished to appeal against one or more of the orders of the ALC, which appeared to be the order withdrawing his audit certificate. His grounds of appeal were as follows:
 - a. The Committee made an error of fact or law which would have altered one or more of the orders made, (Appeal Regulation (AR) 5(3)(a)). He stated, *“My licence to audit had been relinquished in advance of the hearing and this was accepted and acknowledged by an ACCA officer”*
 - b. The Committee failed to take into account certain relevant evidence, which would have altered one or more of the orders made in the case, (AR 5(3)(c)). He stated, *“The documentary evidence submitted to support my request for a deferral/adjournment of the hearing was not considered. Or if it was the person did not understand it. Also, one of those sitting at the hearing stated that this was my second request for an adjournment which was incorrect.”*
 - c. The Committee’s order is disproportionate and/or unreasonable, (AR 5(3)(e)). In support of this ground, Mr A stated, *“Both jobs, (2 and 3), which were found to be unsatisfactory were deemed so on a very limited examination and some of the flaws suggested were incorrect. While one job has a turnover annually of approx. €3000, the expectations arising for compliance were disproportionate in the circumstances when viewed in parallel to the risks involved, if any”.*
7. ACCA provided a response to Mr A’s application for permission to appeal. ACCA’s submission was that the appeal did not have a real prospect of success on any of the grounds advanced.
8. The Application for permission to appeal was considered by a Chair on 20 April 2020. The Chair decided that the Committee failed to take into account relevant evidence about the adjournment history of the case which would have altered the Committee’s decision to hear the case in the absence of Mr A, (ground 5(3)(c)). The Chair based this decision on the fact that there had been reference

to Mr A making two adjournment applications, whereas he had in fact made only one application. The Chair concluded that there was a real prospect of success in relation to that ground, and consequently the other two grounds of appeal.

9. The Appeal Committee has convened today to hear Mr A's appeal in full. However, the Chair invited the parties to address the Committee initially in relation to the first ground of appeal only, (that the Committee made an error of fact or law which would have altered one or more of the orders made).
10. In considering this matter, the Committee had before it a bundle of papers numbering pages 1 to 177, an additional bundle, numbered pages 1 to 6 and a further additional bundle, numbered pages 1 to 4.

MR A'S EVIDENCE/SUBMISSIONS

11. Mr A gave evidence to the Committee. In relation to the first ground of appeal, he told the Committee that he surrendered his audit licence in good faith in the emails he sent to a member of ACCA staff. He said that he had dealt with the same ACCA member of staff throughout the proceedings, (Ms M) and that Ms M had never told him that he ought to pass his request to relinquish his licence to another department. He said that it made a difference to him to relinquish it voluntarily, rather than have it removed by an ALC which had refused his application for an adjournment. Mr A said that in his belief, his relinquishment of his audit licence had been accepted Ms M, whom he trusted to deal with it.

ACCA'S SUBMISSIONS

12. Mr Jowett, on behalf of ACCA, opposed the appeal and, in advance of the hearing, provided the Committee with a written submission dated 16 July 2020.
13. In relation to the ground pursued by Mr A under AR5(3)(a), Mr Jowett stated, (in his written submission), that this ground was vague and factually incorrect. He said that Mr A's audit licence was not surrendered in advance of the ALC hearing in February 2020, and that Mr A had produced no evidence to demonstrate that his request to relinquish his audit licence had been actioned.

Mr Jowett told the Committee that even if Mr A had surrendered his audit licence in advance of the ALC hearing, this would have made no difference in practice, as the Committee hearing would have still gone ahead, and the Committee would have made the same ancillary orders.

DECISION ON APPEAL AND REASONS

Appeal ground AR5(3)(a) – The Committee made an error of fact or law, which would have altered one or more of the Committee’s orders.

14. The Committee accepted the advice of the Legal Adviser.
15. Mr A’s position was that he had already relinquished his audit licence in advance of the ALC hearing on 26 February 2020; the issue of whether the audit licence had been relinquished was, therefore, a matter of fact which the Committee was required to determine on the balance of probabilities.
16. Mr A referred the Committee to two emails he sent to Ms M prior to the hearing. The Committee carefully considered these emails, the contents of which are set out below.
 - In Mr A’s email dated 24 February 2020 – he stated, *“I should like to formally surrender my current audit registration and have my current licence to audit removed.”*
 - In Mr A’s email dated 25 February 2020, he said, *“I am okay about relinquishing my current audit certificate and to continue to hold a practice certificate without a licence to audit.”*
17. Mr Jowett referred the Committee to an email dated 06 May 2020, sent by an ACCA Authorisation Officer in response to a query from Ms M. Ms M had asked whether Mr A’s practising certificate with audit qualification, and Firm audit certificate, had been relinquished by him prior to the ALC hearing. The Authorisation Officer stated,

“Mr A did not relinquish his practising certificate and audit qualification. Our records show that the firm's audit certificate was removed on 26 February 2020 and that Mr A's practising certificate and audit qualification was removed and replaced by a general practising certificate on 27 February 2020. Both of the above were as a result of the Admissions and Licensing Committee order of 26 February 2020.”

18. Mr Jowett had informed the Committee that it was not uncommon for ACCA members to relinquish their audit certificates in advance of ALC hearings. However, when questioned by the Committee, Mr Jowett accepted that there was no formal process or procedure in place, or any guidance issued by ACCA as to what process should be followed to enable an ACCA member to formally relinquish his/her audit certificate. The Committee found that this was contrary to Mr Jowett's assertion that a member cannot relinquish his/her audit licence until the application has been “processed” by ACCA.
19. In the Committee's view, Mr A's email of 24 February 2020 was clear and unambiguous. He made it clear that he formally surrendered his audit licence and audit certificate. In the absence of any formal process/procedure, or ACCA guidance for the relinquishing by a Member of an audit licence, the Committee was satisfied, on the balance of probabilities, that Mr A surrendered his audit licence and Firm's audit certificate when he sent the email to Ms M on 24 February 2020. The fact that ACCA queried this in correspondence with the Authorisations Department in May 2020 only serves to demonstrate, in the Committee's view, that there is uncertainty within the organisation about how this process works in practice.
20. The Committee, therefore, concluded that when the ALC made an order withdrawing Mr A's audit licence on 26 February 2020, they made an error of fact or law, which would have changed the order that they made. They had no power to withdraw an audit licence which had already been relinquished.
21. Having made this decision, the Committee reconvened and informed Mr A that in relation to his first ground of appeal, it was satisfied that this ground was made out. The Chair informed Mr A, by way of indication only, that in the

circumstances, the Committee was reminded to rescind the order of the ALC withdrawing his licence/Firm's audit certificate but was reminded to affirm the ancillary orders made by the ALC on 26 February 2020. The Committee invited Mr A to consider whether he wished to continue with the remaining grounds of his appeal.

22. Mr A confirmed that he no longer wished to pursue the second and third grounds of appeal.
23. The Committee therefore made the following order:

ORDER

24. The Committee ordered as follows:

That the decision of the ALC on 26 February 2020, withdrawing Mr A's audit qualification, be rescinded;

That the decision of the ALC on 26 February, under Authorisation Regulations 6(16), that any future re-application for audit registration by Mr A must be referred to the Admissions and Licensing Committee, which will not consider the application until he has attended a practical audit course approved by ACCA and passed paper P7 (or the equivalent level audit paper) of ACCA's professional qualification, is affirmed.

COSTS AND REASONS

25. Mr Jowett made an application for costs of £5,355. He said that if Mr A had attended the ALC hearing on 26 February 2020, he could have raised these issues which have been the subject of this appeal, and they could have been resolved then. He submitted that the decision of the ALC to refuse the application for adjournment was unimpeachable.
26. Mr A maintained that if the ALC had adjourned his case, then this appeal would not have been necessary. He said that the amount of costs requested was

“astonishing”, and that as a result of Covid 19, he currently had no income and no means to meet the costs requested.

27. The Committee bore in mind, when reaching its decision on costs, that Mr A succeeded in relation to one of his grounds of appeal but had consequently withdrawn the remaining two grounds of appeal.
28. Mr A had made clear, both in his grounds of appeal and before the Committee today, that he did not take issue with the ancillary orders made by the ALC on 26 February 2020; he took issue only with their decision to withdraw his licence. Given the Committee’s findings in relation to that issue today, the Committee’s decided it was reasonable to conclude that if the ALC had accepted that he had relinquished his licence, and not withdrawn it as they did, then Mr A may not have appealed that decision.
29. The Committee also took account of Mr A’s submissions about his means, and his current difficulty in paying any costs. It decided overall that the sum requested was excessive and should be discounted and that £750 was an appropriate and proportionate sum for Mr A to pay to ACCA in costs.
30. The Committee ordered that Mr A pay ACCA £750 in costs.

PUBLICITY

31. Mr Jowett submitted that the decision of the Appeal Committee should be published, and that Mr A should be named in the publicity as he has not established that any of the exceptions set out in paragraph 124 of the Guidance for Appeal Hearings applied.
32. He also said that there was no risk of repetition of the matters which had come before ACCA, and that in his view, these matters were not sufficiently serious to justify naming him in any publicity.

33. The Committee bore in mind the principle of open justice and reminded itself that it was a high bar for Mr A to establish that any of the exceptions which would justify not naming him in any publicity applied. It had regard to ACCA's Publicity Guidance and Guidance for Appeal Hearings.
34. The Committee was, therefore, satisfied that identifying him in any publicity may have an adverse impact on his health such that publication would be unduly harsh. It found that Mr A had established one of the exceptions which would justify not identifying him in post hearing publicity.
35. The Committee ordered that Mr A not be named in any publicity.

INTERIM ORDER

36. Mr Jowett invited the Committee to reconstitute itself as an Interim Orders Committee, and to revoke the current Interim Order suspending Mr A's practising certificate with audit qualification and the Firm's audit licence.
37. The Committee revoked the interim order in accordance with AR 9(5)(h).

EFFECTIVE DATE OF ORDER

38. This order will take effect immediately pursuant to Regulation 16(3) AR.

Mr John Wilson
Chair
21 July 2020