

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Kenny Anthony Rampersad FCCA
Heard on:	Wednesday, 03 June 2020
Location:	Remote Skype link via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	Ms Ilana Tessler (Chair) Ms Fiona MacNamara (Accountant) Mr Nigel Pilkington (Lay)
Legal Adviser:	Mr Robin Havard (Legal Adviser)
Persons present and capacity:	Mr Phillip Law (ACCA Case Presenter) Ms Geraldine Murray (Hearings Officer) Mr Jonathan Lionel (Hearings Officer)
Observers:	Ms Wendy Harris (Appointment Board observer)
Summary	Member to receive a Reprimand
Costs:	£3,000.00

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PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

1. The Committee had considered the following documents: a Hearing bundle, (pages 1 to 53), a Service bundle, (pages 1 to 25), a Tabled Additional 1 bundle, (pages 1 to 3) and a Tabled Additional 2 bundle, (pages 1 to 7).
2. The Committee had considered the letter dated 04 May 2020 sent by ACCA by email to Mr Rampersad. It had also considered the second email on the same day providing Mr Rampersad with a link to the documents on which ACCA relied. ACCA had then sent an email with a password enabling Mr Rampersad to gain access to the documents.
3. The Committee was satisfied that the three emails had been sent to his registered email address in accordance with Regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had also noted that the emails had been delivered successfully. The emails contained the necessary information, to include the date and time of hearing, and details of how to participate in the hearing, in accordance with CDR10.
4. Consequently, the Committee decided that Mr Rampersad had been properly served with proceedings.

PROCEEDING IN ABSENCE

5. On 22 May 2020, in the absence of any response from Mr Rampersad to the email of 04 May 2020, ACCA sent another email to him at the same email address asking him to respond, reminding him of the date of hearing, and asking him whether he intended to attend by telephone or video link.
6. On 28 May 2020, Mr Rampersad sent an email to ACCA. He stated, "*I wish to confirm that I will not be attending on June 03 but equally I am not happy for the committee to proceed in my absence.*"

7. However, in summary, Mr Rampersad also stated that he accepted that he had not informed ACCA of the finding made against him by the Institute of Chartered Accountants of Trinidad and Tobago ("ICATT") as he was unaware of his responsibility to do so. He accepted that he was wrong not to inform ACCA. Nevertheless, having accepted that he was wrong, Mr Rampersad went on to say that he did not see the purpose of the proceedings carrying on against him. He also maintained that he was of the belief that he had not been a member of ACCA for some two years.
8. The remainder of the email from Mr Rampersad dated 28 May 2020 outlined certain aspects of his personal, professional, and financial circumstances.
9. On 29 May 2020, ACCA sent a reply to Mr Rampersad, stating that his email had been forwarded to the relevant individuals within ACCA for them to comment and it was confirmed in that email that he remained a member of ACCA, albeit his membership was suspended. ACCA repeated the arrangements available to Mr Rampersad for him to join the hearing on 03 June 2020 and also reminded Mr Rampersad that if he wished any documentation to be considered by the Committee, he should send it by email as soon as possible.
10. On 01 June 2020, ACCA sent a further email to Mr Rampersad, informing him again of the need to send as soon as possible any documentation or information which he would wish the Committee to take into account. ACCA also included once again the link to the documents on which ACCA relied.
11. On 02 June 2020, Mr Rampersad sent an email to ACCA in which he stated:

"It is not my intention to waste the committee's time notwithstanding my absolute displeasure and disagreement with the entire process. Unless you advise me otherwise, I do not believe there is any benefit to be derived from an adjournment."

12. The Committee was satisfied that ACCA had done everything possible to engage Mr Rampersad in the proceedings, but he clearly had no intention of doing so.
13. The Committee found, on the balance of probabilities, that Mr Rampersad had received the emails from ACCA informing him of the hearing and giving him access to the documents containing the evidence on which ACCA relied in support of the allegations. The Committee concluded that Mr Rampersad had voluntarily absented himself from the hearing, which he could have joined by skype telephone or video link.
14. Indeed, the Committee noted that Mr Rampersad's reasons for saying that he did not wish the hearing to proceed in his absence was more to do with his suggestion that there was no need for such proceedings. His non-appearance was not based on his lack of awareness of the hearing date, or his inability to attend, or the fact that he had not been provided with either sufficient notice of the hearing or of details of the allegations being made against him and the evidence in support of those allegations. At no stage had Mr Rampersad indicated that the Committee would not be able to reach findings in respect of the allegations on the evidence before it. As stated, Mr Rampersad had accepted from the outset that he had been the subject of disciplinary proceedings by ICATT and that he had not reported to ACCA the existence, and outcome, of those proceedings. The Committee found that he had, therefore, waived his right to attend.
15. The Committee was also satisfied that, taking account of the nature of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made. Finally, the Committee considered that it was in a position to reach proper findings of fact on the written evidence presented to it by both ACCA and Mr Rampersad.
16. The Committee ordered that the hearing should proceed in the absence of Mr Rampersad.

JURISDICTION

17. Mr Rampersad had claimed that the Committee did not have jurisdiction to consider the allegations against him. This was on the basis that he was no longer a member.
18. Mr Rampersad argued that he had not paid his membership fees for some two years and the register did not show him to be a member. He had sent a screen shot which suggested that his name had been removed from the register, although it was not dated, nor did it include his name.
19. Regulation 11(1) of the Chartered Certified Accountants' Membership Regulations 2014 confirms that, subject to the remainder of Regulation 11, a member shall be removed from the register of members if any sum due to the Association shall remain unpaid after three months from the day on which it was due.
20. However, Regulation 11(2) states that the Council of ACCA may, in its absolute discretion, suspend the operation of Regulation 11(1) where it is of the opinion it is reasonable to do so.
21. Therefore, with regard to the suggestion that, due to non-payment of fees, Mr Rampersad's name was removed from the register, the Committee accepted the explanation put forward that at no time had Mr Rampersad's name been removed and that he had been, and continues to be, a member. Indeed, at page 13 of the Service bundle, a copy of which had been served on Mr Rampersad, a screen shot of his details held by ACCA clearly showed that he remained a member, although his membership was currently suspended.
22. In an email to Mr Rampersad dated 02 December 2019, ACCA stated:

"Dear Mr Rampersad

Case UF5298828

Re: ACCA Disciplinary Committee proceedings

Your case has now been transferred to the Case Progression Team in the Adjudication Department. I am the Case Progression Officer with conduct of your case. Please therefore address all future correspondence directly to me. I would be grateful if you could please complete the Case Management form sent to you in previous correspondence and return it to ACCA as soon as possible. I also acknowledge your response of 27 November 2019 and the contents within. However, I am unable to accept your resignation of membership by virtue of regulation 10(3) of the Chartered Certified Accountants' Membership Regulations 2014."

23. Regulation 10(3) of the Membership Regulations states as follows:

"An individual's notice of resignation or notice seeking removal from the member, affiliate or student register shall not be accepted, and the individual shall accordingly not cease to be a member or, as the case may be, an affiliate or a registered student, where a complaint in respect of him or of a relevant firm in relation to which he is a specified person has been received by the Association, or where disciplinary proceedings of the Association are otherwise pending against him or such relevant firm until such time as the matter has been finally disposed of and the amount of any fine or costs specified in a disciplinary order made in respect of him or such relevant firm has been paid in full."

24. The Committee noted that this is a mandatory requirement. ACCA had no discretion whether or not to accept Mr Rampersad's resignation. Therefore, taking account of the pending disciplinary proceedings, ACCA was in no position to accept Mr Rampersad's resignation.
25. The Committee was satisfied that it had jurisdiction to consider the allegations made against Mr Rampersad and the hearing would proceed.

BRIEF BACKGROUND

26. On 15 May 1980, Mr Rampersad became a Member of ACCA and on 15 May 1985, he became a Fellow.

27. On 18 July 2018, Mr Rampersad was made the subject of a disciplinary order by ICATT. These proceedings had arisen as a result of that disciplinary order being made.

ALLEGATIONS

Allegation 1

Pursuant to byelaw 8(a)(vi), Kenny Anthony Rampersad FCCA is liable to disciplinary action by virtue of the disciplinary finding against him on 18 July 2018 by the Institute of Chartered Accountants of Trinidad and Tobago;

Allegation 2

Kenny Anthony Rampersad FCCA failed to bring promptly to the attention of ACCA that he may have become liable to disciplinary action by reason of having been disciplined by the Institute of Chartered Accountants of Trinidad and Tobago on 18 July 2018, pursuant to byelaw 10(b);

Allegation 3

Kenny Anthony Rampersad FCCA is:

- (a) Guilty of misconduct pursuant to byelaw 8(a)(i) by reason of his conduct in respect of any or all matters set out at Allegations 1 and/or 2; or
- (b) Liable to disciplinary action pursuant to byelaw 8(a)(iii) in respect of any or all of the matters set out at Allegations 1 and/or 2 above.

DECISION ON FACTS/ALLEGATIONS AND REASONS

Allegation 1

28. The Committee found that ICATT was both a Professional and a Regulatory body.
29. The Committee had considered the order of the Disciplinary Committee of ICATT dated 18 July 2018 in respect of Mr Rampersad. It was satisfied that, taking account of the sanction imposed on him, Mr Rampersad had been disciplined by ICATT for breaches of Rules 202 and 203 of the Member Rules of Conduct of ICATT. It also found that the sanctions imposed in respect of the breaches which had been found proved included an order that Mr Rampersad should be severely reprimanded and ordered to pay the sum of TT\$10,000 to ICATT.
30. Consequently, the Committee was satisfied that byelaw 8(a)(vi) applied, and that Mr Rampersad was liable to disciplinary action.
31. The Committee, therefore, found the facts of Allegation 1 proved.

Allegation 2

32. Byelaw 10(b) required Mr Rampersad to bring promptly to the attention of ACCA any facts or matters indicating that he, "*may become liable to disciplinary action....*".
33. Having been disciplined by ICATT on 18 July 2018, Mr Rampersad failed to notify ACCA that disciplinary action had been taken against him by ICATT, whether promptly or at all, let alone that he had become liable to disciplinary action, of which he would have been aware considerably before 18 July 2018. ACCA only became aware of the order made against Mr Rampersad when it was informed by ICATT on 19 September 2018.
34. Mr Rampersad had accepted that he had failed to notify ACCA and the reason he gave for his failure was that he did not know that he had an obligation to do so. He had also worked on the assumption that ICATT would inform ACCA of the proceedings and the order made against him.

35. The Committee, therefore, found the facts of Allegation 2 proved.

Allegation 3(a)

36. In respect of Allegation 1, from the information provided by ICATT, the complaint which gave rise to the proceedings against Mr Rampersad was based on the outcome of a Practice Monitoring Review ("PMR") held on 29 March 2017 which, in turn, referred to previous reviews which had taken place on 06 January 2011, 21 January 2013 and 03 February 2015.

37. On 06 June 2019, Mr Rampersad had written to ACCA in the course of its investigation and confirmed that he had accepted the order imposed by ICATT and stated that the matter arose out of the PMR in 2017 when the following weaknesses had been found:

- (i) Non preparation of audit working papers primarily for the firm's audit clients who are insurance agents;
- (ii) The firm provides both accounts and audit services to insurance agents audit clients.

38. It had been submitted on behalf of ACCA that Mr Rampersad was guilty of misconduct on the basis that the conduct alleged at Allegation 1 amounted to serious professional misconduct on its own, which brings discredit to Mr Rampersad, ACCA and the accountancy profession. The conduct brought discredit as it was important that accountants who were regulated by ACCA ensured that they also complied with the requirements of any other regulatory or professional body of which they were also a member.

39. The Committee had taken into account that the findings made by the Disciplinary Committee of ICATT were sufficiently serious to merit the imposition of a Severe Reprimand and a financial penalty of TT\$10,000.

40. In the judgment of the Committee, the fact that Mr Rampersad had been disciplined by another accountancy regulator, together with the imposition of

such serious sanctions, brought discredit to Mr Rampersad, the Association and to the accountancy profession in that it risked undermining public confidence and trust.

41. The Committee, therefore, found Allegation 3(a) proved in respect of Allegation 1.
42. In respect of Allegation 2, ACCA submitted that Mr Rampersad was guilty of misconduct on the basis that the conduct alleged amounted to serious professional misconduct on its own, which brings discredit to Mr Rampersad, ACCA and the accountancy profession. ACCA stressed the importance of ACCA members informing ACCA of any circumstances when they become subject to disciplinary proceedings in order to maintain public trust and confidence in the Association.
43. Mr Rampersad had stated that he simply was unaware of his responsibility to report the matter to ACCA and he had assumed that ICATT would report the matter. In other words, his failure was not deliberate.
44. The Committee had taken into account that Mr Rampersad had been a member of ACCA for approximately 40 years and a Fellow for 35 years. He was, therefore, a person of very considerable experience. Whilst the Committee was prepared to accept that this was not a deliberate omission on the part of Mr Rampersad, it was simply not acceptable for him to say that he was unaware of the obligation to report the ICATT proceedings to ACCA. Indeed, the byelaw stipulated that he should have reported promptly to ACCA the possibility, let alone the outcome, of disciplinary proceedings against him. In failing to do so, this put at risk the public's trust in ACCA and its reputation. It also meant that, had ICATT not reported the matter to ACCA, there was a risk that members of the public outside Trinidad and Tobago would have been wholly unaware of the shortcomings in the practices of Mr Rampersad which had led to the proceedings brought by ICATT.

45. In its judgment, the Committee was satisfied that this conduct brought discredit to Mr Rampersad, ACCA and the accountancy profession to the extent that it amounted to misconduct.
46. On this basis, the Committee found Allegation 3(a) proved in respect of Allegation 2.

Allegation 3(b)

47. Taking account of its findings in respect of Allegation 3(a), the Committee made no findings in respect of Allegation 3(b)

SANCTIONS AND REASONS

48. The Committee considered what sanction, if any, to impose, taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions (January 2020) ("the Guidance") and the principle of proportionality. It had also listened to legal advice from the Legal Adviser, which it accepted.
49. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
50. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA and to declare and uphold proper standards of conduct and performance.
51. The Committee considered whether any aggravating or mitigating factors featured in this case.
52. In terms of aggravating factors, the Committee considered that, in respect of these proceedings, Mr Rampersad had shown insufficient insight into the seriousness, and relevance, of the allegations which had been brought against him by ACCA. This contrasted with the insight he had shown in respect of the

disciplinary proceedings brought by ICATT, to which reference was made below. The Committee did not consider that Mr Rampersad understood sufficiently the importance of the need to comply with the byelaws and regulations to which he was subject as a member and Fellow of ACCA.

53. As for mitigating factors, the Committee noted that Mr Rampersad had no previous ACCA sanctions recorded against him.
54. The Committee acknowledged that, whilst Mr Rampersad had not formally responded to the allegations, he had been transparent in the exchanges with ACCA leading up to the hearing. He accepted the order which had been made against him by ICATT and also that he should have reported the matter to ACCA.
55. The Committee had also found that his failure to do so had not been deliberate although, whilst not as serious as a deliberate decision not to notify, this still represented a serious omission. It had also noted that ACCA would have had some knowledge of the matter as it was an ACCA officer who carried out the investigation leading to the ICATT proceedings. However, this did not in any way relieve Mr Rampersad of his obligation to notify ACCA, particularly of the outcome of the proceedings.
56. The Committee also noted that Mr Rampersad had acknowledged the weaknesses identified in the PMR. He had confirmed that he had accepted the recommendations made by ICATT to properly document audit work done and also to have different members of staff to undertake the audit and accounting tasks.
57. Mr Rampersad stated that ICATT had since returned to carry out a further PMR and had confirmed that the practices at the firm had improved, although he had not provided to ACCA evidence to support such a statement despite being requested to do so. On the other hand, ACCA had not provided any evidence to suggest that this was not correct and, therefore, the Committee considered that, on the balance of probabilities, this went in his favour.

58. The Committee concluded that an admonishment would not adequately reflect the seriousness of the Committee's findings.
59. However, having considered the criteria in the Guidance, the Committee accepted that there was no ongoing risk to the public and Mr Rampersad had engaged with ACCA at an early stage. Whilst the Committee had concerns with regard to Mr Rampersad's appreciation of the seriousness of his conduct, he had never attempted to suggest that the allegations were not well-founded. Fortunately, there had been no or very little adverse consequences to the extent that the facts giving rise to the allegations had not led to material distress, inconvenience and loss.
60. On this basis, the Committee had decided that the sanction of a reprimand was appropriate, proportionate, and sufficient.

COSTS AND REASONS

61. The Committee considered the documents containing details of ACCA's detailed claim for costs (pages 1 to 2) and costs schedule (page 1). It had also taken account of ACCA's Guidance on costs.
62. The Committee concluded that, in principle, ACCA was entitled to be awarded costs against Mr Rampersad. The amount of costs for which ACCA applied was £5,640.
63. The Committee noted that it was appropriate to discount the claim in respect of the Case Presenter and Hearings Officer to reflect the fact that the hearing had been shorter than the estimated time in respect of today's hearing.
64. Whilst Mr Rampersad had not provided any documents as to his means, even though he had been invited to do so on a number of occasions, the Committee had taken into account the comments that he had made in relation to his current status, both professionally and personally, and had also borne mind the difference, in terms of financial commitment, of having to pay costs when residing in Trinidad.

65. In exercising its discretion, the Committee considered that ACCA was entitled to an award of costs in the sum of £3,000.00.

EFFECTIVE DATE OF ORDER

66. The Committee decided that this order shall take effect from the date of expiry of the appeal period referred to in the Appeal Regulations.

Ms Ilana Tessler
Chair
03 June 2020