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APPLICATION ON PAPERS

CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: **Mr David Jonathan Hanby FCCA**

Considered on: **25 June 2020**

Chair: **Mrs Helen Carter-Shaw**

Outcome: **Consent Order for Severe Reprimand and costs approved**

INTRODUCTION

1. The Chair considered a draft Consent Order in respect of Mr Hanby. The matter was listed to be considered on the basis of documents only. Neither Mr Hanby nor ACCA were present or represented.

2. The Chair had before them the draft Consent Order, signed by Mr Hanby and a signatory on behalf of ACCA, together with supporting documents in a bundle, numbered 1 to 446. In addition, there was a service bundle, numbered 1 to 10, a simple costs bundle of 2 pages and a detailed costs bundle of 2 pages.

SERVICE

3. The Chair was satisfied that Mr Hanby had been properly notified of the meeting by an email dated 19 June 2020.

BACKGROUND

4. It was alleged by ACCA, and Mr Hanby admitted, the following:

Allegation 1

Between February 2013 to 24 February 2015, David Jonathan Hanby FCCA continued to act for Client A and/or did not make the appropriate disclosures to HMRC in respect of Client A, who he suspected had committed a VAT offence, contrary to paragraph 103 of Section B1 (Professional duty of confidence) of ACCA's Code of Ethics and Conduct (as applicable from 2013 to 2015).

Allegation 2

Between 12 May 2012 and 3 April 2013, David Jonathan Hanby FCCA did not promptly report suspected money laundering (namely suspected tax evasion on the part of Client A) to the Serious Organised Crime Agency, contrary to Section B2 (Anti-Money Laundering) and/or Section 150 (Professional behaviour) of ACCA's Code of Ethics and Conduct (as applicable from 2012 to 2013).

Allegation 3

By reason of his conduct in respect of allegations 1 and/or 2, David Jonathan Hanby FCCA is:

(a) Guilty of misconduct pursuant to byelaw 8(a)(i); or

(b) Liable to disciplinary action pursuant to bye-law 8(a)(iii).

5. In relation to Allegation 3, it should be made clear that Mr Hanby accepted that his conduct either amounted to misconduct or, in the alternative, that he was liable to disciplinary action. However, ultimately this was a matter for the Chair to determine.

6. The details were set out in the attached draft Consent Order. ACCA's Investigating Officer and Mr Hanby had agreed the form of order which proposed a severe reprimand and made an order for costs.

DECISION AND REASONS

7. In accordance with Regulation 8 of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, as amended, the Chair has the power to approve or reject the draft Consent Order or to recommend amendments. The Chair can only reject a signed draft Consent Order if they are of the view that the admitted breaches would more likely than not result in exclusion from membership.

8. The Chair was satisfied that there was a case to answer and that it was appropriate to deal with the complaint by way of a Consent Order. The Chair considered that the Investigating Officer had followed the correct procedure.

9. The Chair considered the bundle of evidence and, together with Mr Hanby's admissions, found the facts proved. They were satisfied that the admitted facts and Mr Hanby's actions were serious and did amount to misconduct. It is important that professional accountants can identify suspected money laundering – and report this promptly - bearing in mind the significant role they play as key gatekeepers for the financial system. Mr Hanby was the Money Laundering Reporting Officer ("MLRO") of the Firm at the relevant time and it is, therefore, expected that he would have a greater understanding of what constitutes suspected money laundering and, consequently, that the same should have been reported to SOCA in a timely way. Furthermore, Mr Hanby, as a professional accountant, is expected to comply with the requirements to cease acting for a client in the event of non-disclosure by the client of matters that they are required to notify HMRC.

10. The duty to make the appropriate disclosures and to report suspected money laundering is a significant one and a failure to do so falls far below the standards expected of a professional accountant. It brings discredit on Mr Hanby, ACCA and the accountancy profession. The Chair noted Mr Hanby's representations

but was satisfied for the above reasons that his behaviour amounted to misconduct.

11. Mr Hanby is a member of ACCA, having joined in 1995. He became a Fellow in 2000.

12. On 14 March 2011, Mr Hanby's firm, Company B ("the Firm"), sent a letter of engagement to Client A in respect of their appointment as auditors.

13. On 9 March 2012, an Audit Planning Extract in respect of the year-ended 31 December 2011 was signed-off by the Firm. This document noted concerns about the integrity of Client A and their Corporation Tax position posing a threat to objectivity and independence, which it was considered could be addressed by appropriate safeguards.

14. On 5 April 2012, an Internal Suspicious Activity Report ("ISAR") was made and submitted to Mr Hanby (who was the firm's MLRO) in respect of Client A on the basis that the company had underpaid and under-declared VAT.

15. On 12 April 2012, the Firm wrote to Client A to bring a number of matters to the attention of the directors in respect of the year-ended 31 December 2011. This letter included reference to VAT errors totaling £257,380.69 that Client A needed to notify to HMRC.

16. In February 2013, Mr Hanby became aware that Client A had not made the relevant disclosures to HMRC of the issues that had been identified in the Firm's letter of 12 April 2012.

17. On 4 March 2013, the Firm sent a letter of engagement to Client A in respect of their appointment as auditors.

18. On 17 March 2013, an Audit Planning Extract in respect of the year-ended 31 December 2012 was signed-off by the Firm.

19. On 4 April 2013, a Suspicious Activity Report ("SAR") (ML043) was submitted by the Firm to what was then the Serious Organised Crime Agency ("SOCA") in respect of Client A.

20. On 17 July 2013, the Firm wrote to Client A bringing certain matters to the attention of the directors in respect of the year-ended 31 December 2012. This letter included reference to VAT errors totaling £435,882.36 that Client A needed to notify HMRC about. The figure of £435,882.36 included errors of £257,380.69, which the Firm had notified Client A of in their letter of 12 April 2012.

21. On 7 February 2014, an Audit Planning Extract in respect of the year-ended 31 December 2013 was signed-off by the Firm. This document noted concerns of the key management's honesty and integrity.

22. On 20 March 2014, a SAR (ML049) was submitted by the Firm to the National Crime Agency ('NCA') which had by then replaced SOCA, in respect of Client A.

23. On 2 April 2014, the Firm wrote to Client A to bring certain matters to the attention of the directors in respect of the year-ended 31 December 2013. This letter included reference to VAT errors totaling £714,704.69 that Client A needed to notify HMRC about, which included errors of:

    (i) £257,380.69, which the Firm notified Client A of in their letter of 12 April 2012; and

    (ii) £435,882.36, which the Firm notified Client A of in their letter of 17 July 2013.

24. On 30 April 2014, the Firm sent a letter of engagement to Client A in respect of their appointment as auditors.

25. On 24 February 2015, the Firm was asked by Client A to act in the matter of a COP9 Disclosure to HMRC.

26. On 26 March 2015, four SARs (references ML053, ML054, ML055 and ML056) were submitted by the Firm to the NCA in respect of Client A.

Allegation 1 – Offences Relating to VAT

27. Paragraphs 102 to 103 of Section B1 (Professional duty of confidence) of ACCA's Code of Ethics and Conduct ("the Code") apply in circumstances where a professional accountant suspects that a client has committed an offence relating to VAT.

28. On 12 April 2012, the Firm sent a letter to Client A which identified VAT errors totaling £257,380.69 and requested that Client A notify HMRC of these.

29. Mr Hanby asserts that it would have been around February 2013 that he became aware that Client A had not made full disclosure to HMRC of those issues identified in the Firm's letter of 12 April 2012. This was following Client A informing Mr Hanby that they had not disclosed such matters to HMRC.

30. In the circumstances, Client A's failure to disclose those matters identified in Mr Hanby's letter to them of 12 April 2012 to HMRC is akin to them refusing to make disclosure for the purposes of paragraph 103 of Section B1 of the Code. Consequently, Mr Hanby ought to have informed Client A that the Firm could no longer act for them and that it would be necessary for them to inform HMRC of the same, pursuant to paragraph 103 of Section B1 of the Code.

Allegation 2 – Anti-Money Laundering

31. In respect of the identification of suspected money laundering, Section B2 of the Code refers to suspicion as being

> "*more than speculation but falling short of proof based on firm evidence"*. It also states that "*Where a requirement to report applies, a professional accountant shall comply promptly with his/her*

obligation to do so. In this context, professional accountants are reminded that tax evasion will usually be deemed a crime and that they may be required to make an additional report to the tax authorities."

32. Section 150 (Fundamental Principle of Professional Behaviour) of the Code required Mr Hanby to comply with relevant laws and regulations and avoid any conduct that he knew, or should have known, may discredit the profession.

33. As of 12 May 2012, Mr Hanby was either aware, or ought to have been aware, that:

- Concerns about the integrity of Client A and their position relating to Corporation Tax, in connection with the audit of Client A for the year-ended 31 December 2011, had been identified by the Firm;

- An internal SAR had been made to him in respect of Client A. Mr Hanby's comments on the internal SAR state that:

"The management letter includes details of these errors on the June 12 VAT return…the client informed djh that the errors would be corrected on June 12 VAT return…djh… to assess whether the errors are corrected in June 12, if not ML Report required ASAP."

34. Client A had over-claimed VAT (by way of errors and incorrectly claimed amounts on bad debts) in the sum of £257,380.69 but had not notified HMRC of this.

35. Further, following the passing of Client A's VAT Return deadline (in respect of the quarter-ending June 2012) of 7 August 2012, Mr Hanby was in a position to ascertain that Client A had not corrected these errors, as evidenced by these errors still being referred to in Mr Hanby's letters to Client A of 17 July 2013 and 2 April 2014.

36. The above ought to have made Mr Hanby suspicious that Client A had engaged in tax evasion and therefore he ought to have submitted a SAR to SOCA. For the following reasons suspected tax evasion should give rise to a suspicion of money laundering:

- Section 327(1) of the Proceeds of Crime Act 2002 ("POCA") (contained in Part 7, Money Laundering) states that a person commits an offence if he conceals, disguises or converts criminal property;

- The Anti-Money Laundering Guidance for the Accountancy Sector (published on ACCA's website on 31 January 2008) states that:

  "*Money laundering activity may range from a single act, eg, being in possession of the proceeds of one's own crime…as well as concealing it" ;*

  "…criminal property (or 'proceeds') can take any form. For example…savings as a result of tax evasion" ;

  "Individuals in the regulated sector commit an offence if they fail to make a disclosure in cases where they have knowledge or suspicion, or reasonable grounds for suspicion, that money laundering is occurring. Disclosure must be made to their MLRO or direct to SOCA under s330, POCA…"

  "The MLRO is responsible for assessing internal reports, making further inquiries if need be…and, if appropriate, filing SARs with SOCA" ; and

  "Once an MLRO has concluded a report is required, it should be prepared and submitted promptly to SOCA" .

37. On the basis that Mr Hanby should have been suspicious that Client A's conduct amounted to money laundering Mr Hanby ought to have reported this

conduct to SOCA promptly by way of a SAR. He eventually did this on 4 April 2013. Mr Hanby acted contrary to Paragraph 20 of Section B2 and/or Section 150.1 of the Code for failing to promptly notify SOCA.

38. The Chair noted the agreed aggravating and mitigating factors as set out in the Consent Order. In particular, the Chair noted that Mr Hanby: had fully co-operated with the investigation and regulatory process; had shown insight, apologised and expressed genuine remorse; had no previous disciplinary history with ACCA; there was no continuing risk to the public as Mr Hanby had retired from his position as MLRO and undertaken a further money laundering training course; he had, therefore, taken remedial action to address his conduct.

39. The Chair noted that the misconduct had been neither deliberate nor dishonest. In addition, Mr Hanby had worked with HMRC and Client A to ensure that the unpaid monies due to HMRC were recovered, with interest.

40. In all the circumstances, and following ACCA's Guidance on sanctions, the Chair was satisfied that the sanction of severe reprimand was appropriate in this case and that exclusion would be disproportionate. There had been an (eventual) acceptance of the failures. Mr Hanby had shown insight into his failings and taken appropriate corrective steps to prevent a recurrence. He had also expressed genuine regret and remorse.

41. The order for costs for this Consent Order appeared appropriate.

42. Accordingly, the Chair approved the attached Consent Order. In summary:

    a. Mr Hanby shall be severely reprimanded; and

    b. Mr Hanby shall pay costs of £2000.00 to ACCA.

Mrs Helen Carter-Shaw
Chair
25 June 2020