

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

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| In the matter of: | Mr Leung Ka Fai |
| Heard on: | Thursday, 19 November 2020 |
| Location: | Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU |
| Committee: | Ms Ilana Tessler (Chair) Mr David Horne (Accountant) Mrs Jackie Alexander (Lay) |
| Legal Adviser: | Mr Sanjay Lal (Legal Adviser) |
| Persons present and capacity: | Mr Benjamin Jowett (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer) |
| Observers: | None |
| Summary | Severe Reprimand Fine £5000.00 |
| Costs: | The Committee ordered that Mr Leung Ka Fai pay costs to ACCA in the sum of £5,500.00. |

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PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

1. The Committee had before it a Main Bundle pages 1-78, a Service Bundle pages 1-14, Tabled Additional Bundles 1, 2 and 3, each of 3 pages and a Schedule of Anonymisation.
2. The Committee noted that Mr Leung had not attended remotely, and no communication had been received from him in respect of the hearing.
3. The Committee was satisfied that Notice of this hearing has been given in accordance with Rules 10 and 22 of the Complaints and Disciplinary Regulations (the "Regulations") on 22 October 2020. This was in the form of an email that had been sent to his registered email address.
4. Mr Jowett applied to the Committee to proceed in the absence of Mr Leung. He submitted there had been no indication from Mr Leung that he was seeking an adjournment or that he would engage on a future date. He submitted that the material before the Committee demonstrated that Mr Leung had opened at least two emails sent to him to his registered email address in the recent past, so that would show the email address was in use and active.
5. The Committee went on to consider whether it would be in the interests of justice to proceed in the absence of Mr Leung.
6. The Committee determined Mr Leung had not engaged with ACCA in respect of this hearing. He had not applied for the matter to be adjourned and the Committee was satisfied he had waived his right to attend. There had been no communication from Mr Leung since 11 March 2020. There is a public interest in the expeditious disposal of the matter in light of the nature of the allegations, and in the circumstances, the Committee determined that it is in the interests of justice to hear the matter in the absence of Mr Leung in accordance with Regulation 10(7).
7. The Committee having made the decision to proceed, Mr Jowett applied to amend Allegation 4 with the inclusion of the words "3(i)(d)" and removal of "3(i)(a)" and in respect of Allegation 7(2) by deleting the following words "...s 1 and...". He submitted that the amendments could be made without prejudice, as it properly reflected the correct provision of the Global Practising

Regulations. Mr Leung had been informed of the proposed amendments via two emails sent on 11 and 12 November 2020 but no response had been received.

8. The Committee was satisfied that the amendments could be made without prejudice to Mr Leung as the substance of the allegations remained the same and the amendments were by way of minor correction.

ALLEGATION(S)/BRIEF BACKGROUND

9. Mr Leung Ka Fai, an ACCA member,
 1. Pursuant to byelaw 8(a)(vi) is liable to disciplinary action by virtue of a disciplinary finding against him on 12 August 2019 by another professional or regulatory body, namely the Hong Kong Institute of Certified Public Accountants.
 2. Failed to inform ACCA he had been disciplined by the Hong Kong Institute of Certified Public Accountants in accordance with Allegation 1 above, in breach of byelaw 10(b).
 3. Between 2014 and December 2016, carried on public practice without holding an ACCA practising certificate in breach of the Global Practising Regulation 3(i)(a) then in force.
 4. Between January 2017 and 20 May 2020, failed to notify the Association that he had complied with any local legislative and/or regulatory requirements that he was eligible to carry on public practice in accordance with Global Practising Regulation 3(i)(d) then in force.
 5. Between 2014 and 20 May 2020, has been a partner in Yip Leung & Co, a firm where public practice is carried on in the name of the firm, contrary to Global Practising Regulation 3(2)(a).
 6. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014, failed to co-operate with the investigation of a complaint in that he failed to respond fully to questions raised in a letter from ACCA's Investigating Officer dated 16 December 2019.

7. In light of any or all of the facts set out above is accordingly,

7.1. Guilty of misconduct pursuant to byelaw 8(a)(i) in respect of allegations 3 to 6.

7.2. Liable to disciplinary action pursuant to byelaw 8(a)(iii) in respect of Allegation 2 and in the alternative in respect of Allegations 3 to 6.

10. The Head of Membership from ACCA's Hong Kong office emailed ACCA's Complaints and Assessment Department on 28 October 2019, with a list of members of the Hong Kong Institute of Certified Public Accountants ('the Institute') who had recently been disciplined by the Institute and who also appeared to be ACCA members.
11. A copy of the Institute's Disciplinary Committee '*Order and Reasons for Decision*' dated 12 August 2019 regarding Mr Leung were obtained from the Institute's website. Besides Mr Leung, the proceedings were brought against two other respondents, being Mr Leung's co-partner, Accountant A and their institute licensed firm, 'Yip, Leung & Co'.
12. In summary, the Institute's Disciplinary Committee found Yip Leung & Co was engaged as auditor for a client company ('the Company') from 2009 to 2016. Accountant A had been the engagement partner from 2009 to 2013 and Mr Leung engagement partner from 2014 to 2016. The Committee found the Company had been owned by Accountant A's family since incorporation in 1982 with his father and brothers as both shareholders and directors. In December 2014, Accountant A inherited a 5.88% shareholding from his father, hence he stood down as the engagement partner for the 2014 audit when Mr Leung took his place. Nevertheless, Accountant A remained connected with the audit by becoming the engagement quality control reviewer (EQCR).
13. The Institute's Disciplinary Committee found that Mr Leung (and Accountant A) had failed or neglected to observe, maintain or otherwise apply professional standards to ensure the audit team was independent of the Company. Although both Mr Leung and Accountant A claimed the latter had disassociated himself by standing down as the audit engagement partner, the Committee found that

by assuming the role of EQCR he was still part of the audit team and there was no evidence of any appropriate safeguards which could effectively eliminate or reduce the independence threat.

14. The Institute's Disciplinary Committee ordered Mr Leung (and Accountant A) be reprimanded and that both pay a penalty of HK\$120,000 each (about £12,000 based on £1 to HK\$10) (pages 29 - 30). They were also ordered jointly and severally to pay the Institute's costs of HK\$44,866. The firm was also ordered to pay a penalty of HK\$100,000. Mr Leung did not appeal the Committee's decision and he is now out of time to do so. Mr Leung has paid in full the penalty and costs as they relate to him personally. The firm has paid the penalty and costs.
15. In a letter dated 16 December 2019, ACCA's investigating officer asked Mr Leung to respond to a number of questions regarding this allegation. After a number of subsequent letters and emails, Mr Leung responded in an email dated 11 March 2020 stating,

'In fact, HKICPA already stated the majority of the matter in their papers. I can only commit of HKICPA stated, even I have explained (sic) as below: I would represent that my involvement was passive as I was only a salaried partner of the Firm. All engagement decisions were made by Accountant A. The firm was of the opinion that independent risk arising from blood relation could be negated if the Firm acted diligently without bias when performing professional(sic) services, and the Firm had done so. Also, I believed that the Firm had taken all possible measures to mitigate the independence risk resulted from Accountant A inheriting, under a will, 5.88% share capital in the client wick(sic) was the subject of the disciplinary action. Furthermore (sic), the Firm had already resigned as auditors of the client, and Accountant A is resigning from the Firm. The Firm has severed all ties with the client.'

16. In respect of the duty to notify ACCA, Mr Leung in the same email stated

'Hope you can understand that it was only a single matter in our Firm and I was passive in this matter And, I am sorry that I haven't notified

the matter to ACCA as I don't aware of such procedure. In fact, the HKICPA procedures happened(sic) in Hong Kong social activities that lead serious local travel problem and insufficient (sic) time for me to handle daily job duties, and thus I have not enough to ask advice from ACCA. I am sorry about that.'

17. In respect of Allegation 3, 4 & 5 above, it is alleged that Mr Leung has been in practice. In particular, the Reasons of the Institute's Disciplinary Committee refer to his being a 'Practising' member of the Institute and a partner in a practice which includes his name, being Yip, Leung & Co, and which is also registered with the Institute.
18. Furthermore, the Reasons refer to 'Yip, Leung & Co' having been appointed as auditor for the Company from 2009 to 2016 with Accountant A being the engagement partner for the years 2009 to 2013 and Mr Leung being the engagement partner for the three years from 2014 to 2016. Audit work constitutes public practice, in accordance with Global Practising Regulation 4(1)(a).
19. In terms of the firm 'Yip, Leung & Co' being appointed auditor from 2009 as referred to in the Reasons, this was the same year Mr Leung was issued with a practising certificate by the Institute. In that regard, the Institute has advised ACCA that it issued a practising certificate to Mr Leung on 17 February 2009 which he has held continuously since that date. According to two online directories) 'Yip, Leung & Co' remains active and is described as carrying on public practice given reference to 'Audit and assurance', 'Tax' and 'Tax Advisory'.
20. ACCA submit that they have no record of Mr Leung ever being in practice. This is confirmed by an extract from ACCA's records and also from an enquiry made to ACCA's Authorisations Department which advised that Mr Leung has never been issued with a practising certificate, nor has he submitted his details to the Register of Practitioners.
21. Mr Leung has responded to this head of complaint in his email dated 11 March 2020 as follows,

"I only a salaried partner in a firm in our Firm arrangement,(sic) Mr. Peter Yip and the Firm itself were the real public practice(sic) in Hong Kong and signed the reports, but we all have Hong Kong Practicing Membership. Since, I haven't worked for case that not issued by HKFRS AND the Firm haven't signed report for overseas companies, thus I haven't reported carrying on public practice to ACCA as I haven't used the title of Practicing ACCA member in the public."

22. In respect of Allegation 6 above, it is alleged the Investigating Officer's email to Mr Leung of 17 March 2020, (for which there is evidence this email was opened on that day) he had not responded fully to the questions contained in the letter of 16 December, in that he had not responded to questions 7 to 11 as follows,

- 7) *The Reasons for Decision record that you were a 'partner' in the firm 'Yip, Leung & Co'. Given this, please advise when you first became partner in the firm.*
- 8) *Please confirm whether or not you have remained a partner in the firm since the Institute's decision. If not, please clarify.*
- 9) *If you have been a partner/ director and / or principal in any other accountancy firm, please provide me with details.*
- 10) *Given you have been in practice,*
 - i. *Please provide a description of the size and structure of Yip Leung & Co and any other firm where you have been in practice.*
 - ii. *Please advise how much public practice work has been carried on by you personally. In particular please advise of your estimated fee income for each type of public practice you have carried on over the last three years (in particular audit work, preparation of company accounts, preparation of tax returns (both personal and corporate)).*
 - iii. *Please provide me with a copy of the letterhead for your firm and any business cards.*

iv. *Please confirm your firm held up to date professional indemnity insurance and had always done so. Please provide a copy of the most recent policy schedule.*

11) *Please advise whether you have ever held a practising certificate with any other accountancy body, save for the Institute. If so, please provide me with a copy.*

23. However, despite a further chaser email of 07 April 2020, it is submitted to date no response has been received from Mr Leung to these outstanding questions. Accordingly, it is submitted Mr Leung has failed to co-operate fully with the investigation of the complaint relating to his being in practice, which includes his failing to regularise his position.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

Mr Leung Ka Fai, an ACCA member,

1. Pursuant to byelaw 8(a)(vi) is liable to disciplinary action by virtue of a disciplinary finding against him on 12 August 2019 by another professional or regulatory body, namely the Hong Kong Institute of Certified Public Accountants. **(Found Proved)**
2. Failed to inform ACCA he had been disciplined by the Hong Kong Institute of Certified Public Accountants in accordance with Allegation 1 above, in breach of bye law 10(b). **(Found Proved)**
3. Between 2014 and December 2016, carried on public practice without holding an ACCA practising certificate in breach of the Global Practising Regulation 3(i)(a) then in force. **(Found Proved)**
4. Between January 2017 and 20 May 2020, failed to notify the Association that he had complied with any local legislative and/or regulatory requirements that he was eligible to carry on public practice in accordance with Global Practising Regulation 3(i)(d) then in force. **(Found Proved)**

5. Between 2014 and 20 May 2020, has been a partner in Yip Leung & Co a firm where public practice is carried on in the name of the firm, contrary to Global Practising Regulation 3(2)(a). **(Found Proved)**
6. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014, failed to co-operate with the investigation of a complaint in that he failed to respond fully to questions raised in a letter from ACCA's Investigating Officer dated 16 December 2019. **(Found Proved)**
7. In light of any or all of the facts set out above is accordingly,
 - 7.1. Guilty of misconduct pursuant to byelaw 8(a)(i) in respect of allegations 3 to 6. (Found Proved)
 - 7.2. Liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of allegation 2 and in the alternative in respect of allegations 3 to 6. (Found Proved in so far as Allegation 2 is concerned)
24. The Committee was satisfied from the Institute's Disciplinary Committee "*Order and Reasons for Decision*" dated 12 August 2019, that Mr Leung had a disciplinary finding made against him on that date and he did not inform ACCA of the same. ACCA only found out in October 2019, when they were emailed from the Head of Membership of ACCA's Hong Kong office with a list of members of the Hong Kong Institute of Certified Public Accountants who had been recently disciplined and who were also members of ACCA. Mr Leung seemed to accept in his email response of 11 March 2020, that he had not notified ACCA as he was unaware of the procedure. The Committee is satisfied that the wording of the relevant byelaw creates both a duty to inform and a liability to disciplinary action as a result of having been disciplined by another regulatory body and it finds Allegation 1, 2 and, therefore, liable to disciplinary action under 7(2) proved under bye-law 8(a)(iii).
25. In relation to Allegations 3, 4 and 5 above, the Committee was satisfied that it is apparent from the Institute's '*Order and Reasons for Decision*' that Mr Leung has been in public practice. In particular, the Reasons refer to his being a 'Practising' member of the Institute and a partner in a practice which includes

his name, being Yip, Leung & Co, and which is also registered with the Institute. The Reasons refer to 'Yip, Leung & Co' having been appointed as auditor for the Company from 2009 to 2016 with Accountant A being the engagement partner for the years 2009 to 2013 and Mr Leung being the engagement partner for the three years from 2014 to 2016.

26. The Committee was satisfied that audit work constitutes public practice, in accordance with Global Practising Regulation 4(1)(a). In terms of the firm 'Yip, Leung & Co' being appointed auditor from 2009 as referred to in the Reasons, this was the same year Mr Leung was issued with a practising certificate by the Institute. In that regard, the Institute has advised ACCA that it issued a practising certificate to Mr Leung on 17 February 2009, which he has held continuously since that date. According to two online directories 'Yip, Leung & Co' remains active and is described as carrying on public practice given reference to 'Audit and assurance', 'Tax' and 'Tax Advisory'. In accordance with Global 10 Practising Regulation 4(1)(c), carrying on public practice includes holding out as offering such services and the Committee was satisfied that ACCA has no record of Mr Leung ever being in practice. This is confirmed by an extract from ACCA's records provided to the Committee, and also from an enquiry made to ACCA's Authorisations Department, which advised that Mr Leung has never been issued with a practising certificate, nor has he submitted his details to the Register of Practitioners. Accordingly, the Committee found Allegations 3, 4 and 5 proved.
27. In respect of Allegation 6, the Committee finds as a fact that no adequate response has ever been received from Mr Leung in respect of the specific questions asked of him in the letter of 16 December 2019. The Committee noted that the email address used by Mr Leung remains active.
28. In respect of Allegation 7.1, the Committee reminded itself that misconduct is a matter for its professional judgment. The Committee is satisfied, having found the facts found proved in relation to Allegations 3, 4, 5 and 6, that Mr Leung has brought discredit to himself, ACCA and the accountancy profession and is, therefore, guilty of misconduct as per Allegation 7.1. Cooperation with the Regulator and compliance with fundamental requirements in respect of public practice lie at the heart of professional regulation. The Committee has already

determined in respect of Allegation 7.2 that the failure to inform renders Mr Leung liable to disciplinary action pursuant to byelaw 8(a)(iii). In light of its finding as to misconduct in respect of Allegations 3, 4, 5 and 6, the Committee did not go on to consider whether these matters amounted to a liability to disciplinary action as this was pleaded in the alternative.

SANCTION

29. The Committee had regard to the Guidance for Disciplinary Sanctions. The Committee accepted the advice of the Legal Adviser. The Committee accepted the advice that any sanction must be proportionate, and it should consider the least restrictive sanction first and move upwards only if it would be proportionate to do so.
30. The Committee balanced Mr Leung's interests with that of the public interest, which includes the protection of members of the public, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and performance. The issue of sanction was for the Committee exercising its own professional judgement.
31. The Committee carefully considered the aggravating and mitigating factors in this case. The Committee was unable to identify any specific aggravating factors beyond its findings of fact and its determination on misconduct.
32. In terms of mitigating factors, the Committee considered the following factors:
 - No previous disciplinary findings
33. The Committee first considered taking no action in this case. It was in no doubt that to do so would fail to mark the gravity of Mr Leung's misconduct and would undermine confidence in the profession and in ACCA as regulator.
34. Having decided that it was necessary to impose a sanction in this case, it considered the question of sanction in ascending order, starting with the least restrictive.
35. The Committee considered whether the appropriate and proportionate sanction would be an Admonishment or Reprimand, but the Committee decided that the

misconduct found was too serious and that public confidence in the profession and in the regulator would be undermined if any such orders were made.

36. The Committee then went on to consider whether a Severe Reprimand would be appropriate and proportionate in the circumstances of this case. The Committee determined that the imposition of a Severe Reprimand would be the proportionate sanction; this would mark the gravity of the misconduct and declare and uphold proper professional standards particularly with regard to the duty to cooperate which lies at the heart of professional regulation.
37. In addition, the Committee determined to make a fine in the sum of £5000 to reflect the failure to engage with the regulatory body, the lack of insight, as well as the amount that would have been paid in respect of a practising certificate. The Committee had no information as to Mr Leung's financial position, as he had failed to participate in these proceedings. Furthermore, the Committee concluded the amount of the fine would mark the seriousness of the matters found proved. The Committee was in no doubt that any lesser sanction would undermine public confidence in the profession and in ACCA as its regulator.

COSTS AND REASONS

38. ACCA claimed costs £6586, which comprised the costs of the investigation and the matters as highlighted by Mr Jowett in respect of the history of the matter. These cover the costs of investigation, preparation and the presentation of the case, as well as the costs of the Committee Officer and of today's hearing. The Committee noted the Costs Schedule was sent to Mr Leung in advance of the hearing, but he has not responded. The Committee had regard to the Guidance of Costs document.
39. The Committee decided that it was appropriate to reduce costs to the sum of £5500 to reflect the fact that hearing concluded in less time than anticipated.

EFFECTIVE DATE OF ORDER

40. The Committee decided that the order would come into effect at the expiry of the appeal period.

**Ms Ilana Tesler
Chair
19 November 2020**