

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Thubelihle Maphosa
Heard on:	Wednesday, 22 January 2020 and Tuesday, 31 March 2020 (in camera)
Location:	ACCA's Offices, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
Committee:	Mrs Helen Carter-Shaw (Chair) Mr Edward Weiss (Accountant) Mr Garrett O'Reilly (Lay)
Legal Adviser:	Mr Alastair McFarlane
Persons present and capacity:	Miss Harriet Gilchrist (Counsel on behalf of ACCA on 22 January 2020) Miss Rachael Davies (Hearings Officer on 22 January 2020) Ms Anna Packowska (Hearings Officer on 31 March 2020) Mr Thubelihle Maphosa (by telephone on 22 January 2020)
Summary:	Severe Reprimand. Cost to ACCA of £1,000

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

1. ACCA was represented by Miss Gilchrist. Mr Maphosa attended by telephone. The Committee had before it a bundle of papers, numbered pages 1-81, an additional bundle numbered pages 1-7, and a service bundle numbered pages 1-20.

ALLEGATIONS

Mr Thubelihle Maphosa, who is registered with ACCA (Association of Chartered Certified Accountants) as a student:

1. Mr Maphosa submitted an altered or otherwise defaced ACCA Advanced Diploma in Accounting and Business to the South African Qualification Authority (SAQA) on or around 09 January 2019.
2. Mr Maphosa's conduct as set out in paragraph (1) above was: (a) Dishonest in that he knew that ACCA Advanced Diploma in Accounting and Business he submitted to SAQA was altered or otherwise defaced; (b) Contrary to the Fundamental Principle of Integrity.
3. By reason of his conduct as set out in any or all of the matters at 1 and/or 2(a) and/or 2(b), Mr Maphosa is guilty of misconduct pursuant to Bye-law 8(a)(i).

APPLICATION TO AMEND

3. At the outset of the hearing, Miss Gilchrist made an application to amend Allegation 2(a) to add the words "in circumstances he knew he could not alter or deface the diploma". She submitted that this was to add clarity to the Allegation.
4. Mr Maphosa opposed the application and did not consider it to be fair.
5. The Committee accepted the advice of the Legal Adviser.

6. The Committee rejected ACCA's application. Its reasons are as follows. The Committee was mindful that an amendment can be made at any time under Regulation 10(5) provided it can be done without prejudice to Mr Maphosa's defence. The Committee also bore in mind its duty to ensure a fair hearing, and the public interest, in ensuring that all relevant allegations are properly considered. The Committee was not persuaded that the proposed amendment added clarity to ACCA's case. It extended it by adding another element of knowledge alleged to be dishonest. Also, if it is to be read together with the existing wording, it could mean ACCA have to prove two elements of knowledge. ACCA had limited their case on dishonesty, to the submission of an altered certificate in itself being dishonest. The Committee did not consider that it was fair to Mr Maphosa to amend the basis of this central charge at this late stage.

BACKGROUND

7. ACCA received a referral from ACCA South Africa (SA) regarding Mr Thubelihle Maphosa. On 25 January 2019, ACCA (SA) had received a request from the South African Qualification Authority (SAQA) to authenticate an ACCA Advanced Diploma in Accounting and Business submitted to SAQA by Mr Maphosa.
8. Mr Maphosa obtained his ACCA Advanced Diploma in Accounting and Business qualification on merit in July 2015. This is not disputed. The diploma he supplied to SAQA, however, had been altered or otherwise defaced with an Ofqual stamp in the bottom right hand corner.
9. Mr Thubelihle Maphosa is currently an ACCA student. He was admitted to ACCA's student register on 08 December 2011.
10. Mr Maphosa intended that his ACCA Advanced Diploma in Accounting and Business qualification to be recognised in South Africa. Accordingly, he submitted it to the SAQA for local recognition.
11. SAQA's function is to assess qualifications obtained from outside South Africa

and determine if the qualification meets the standards set by the National Qualifications Framework of South Africa.

12. SAQA contacted ACCA South Africa (SA) and requested that the documents Mr Maphosa submitted to SAQA be authenticated by ACCA (SA).
13. While some ACCA qualifications are accredited by Ofqual, the ACCA Advanced Diploma in Accounting and Business qualification is not accredited by Ofqual. Therefore, the Ofqual stamp / logo should not appear on the ACCA Advanced Diploma in Accounting and Business certificate.
14. ACCA relied upon the witness statements of Person A, the Student Nurturing Team Manager. Person A reviewed the ACCA Advanced Diploma in Accounting and Business certificate submitted to SAQA and stated: *“I can confirm Mr Maphosa obtained ACCA Advanced Diploma in Accounting and Business qualifications on merit but the certificate he submitted to SAQA he submitted has been altered with an Ofqual stamp at the bottom right corner.”*

ACCA’s SUBMISSIONS

Allegation 1

15. It is not disputed that Mr Maphosa obtained his ACCA Advanced Diploma in Accounting and Business on merit, however the certificate he supplied to SAQA had been altered / otherwise defaced with an Ofqual stamp in the bottom right hand corner.
16. ACCA’s Advanced Diploma in Accounting and Business qualification is not accredited by Ofqual, therefore, the Ofqual stamp / logo should not appear on Mr Maphosa’s, or any, ACCA Advanced Diploma in Accounting and Business certificate.
17. Mr Maphosa’s ACCA Advanced Diploma in Accounting and Business certificate clearly states the certificate “must not in any circumstances be copied, altered or otherwise defaced.” The certificate Mr Maphosa submitted

to SAQA for local recognition was altered or otherwise defaced by Mr Maphosa.

18. Mr Maphosa altered or otherwise defaced an ACCA Advanced Diploma in Accounting and Business certificate and submitted it to SAQA by for the purpose of gaining recognition for it in South Africa. ACCA submitted that this would be regarded as dishonest by the ordinary standards of reasonable and honest people.
19. ACCA submitted that Mr Maphosa admits that his actions lacked integrity. ACCA submitted that if the Committee did not make a finding of dishonesty against Mr Maphosa then it was open to it, in the alternative, to find that the Fundamental Principle of Integrity has been breached on the basis that Mr Maphosa's conduct, "whilst not dishonest, has nevertheless demonstrated a failure on his part to be straightforward and honest". The Committee considered this quoted part of ACCA's written submission to be erroneous and approached the lack of integrity charge as an alternative to dishonesty.

Misconduct

20. ACCA submitted that misconduct was a matter of judgment for the panel and that dishonestly altering a certificate clearly met the threshold for misconduct.

MR MAPHOSA'S SUBMISSIONS

21. In Mr Maphosa's initial response to ACCA, in his email dated 14 February 2019, he stated:

"I had contacted SAQA and they had requested a certificate with an offqual logo and I forwarded the emails to ACCA south africa and made calls however it was stated that they could not help with this matter. Through my research i found that ACCA is part of Offqual in the Uk and they are accredited and I could not understand why i could not be helped in this regard, hence i printed my ACCA certificate on an Offqual logo and submitted to SAQA since it is what they required. I realise this action lacked integrity and professional

behaviour however it was not a forged certificate as i acquired it with merit and hence i would request lineancy in dealing with the matter.” (sic)

22. In his email of 12 September 2019, Mr Maphosa stated *“I would like to express regret on what I did as an ACCA student guided by the Ethics Code of Conduct.”* He states that he has *“learnt my lesson from this mistake and will never happen again...”*.
23. In his oral evidence, Mr Maphosa stated that [PRIVATE] had been studying with ACCA since 2011, since when he had been slowly undertaking ACCA's qualifications as funding from his company (a non-profit organisation) allowed. He needed to submit his diploma to SAQA for assessment and when he initially submitted it to them, they stated it should have the Ofqual logo. Accordingly, he stated that he would talk to ACCA and contacted ACCA South Africa. He said they were slow to respond and eventually indicated they would send him a letter of equivalence. He understood that this would not suffice, and so went onto the web to find out if ACCA was registered under Ofqual. He found that they were. He stated that he therefore decided that it would not be a problem for him to print his certificate with the Ofqual logo on it. He had gained the diploma on merit having passed the exam and while he accepted, when looking back, that he should not have amended the diploma and therefore his actions lacked integrity, he was adamant that his actions were not dishonest.

DECISION ON ALLEGATIONS AND REASONS

24. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the allegations was on ACCA. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the 'balance of probabilities'. The Committee put Mr Maphosa's good character into the balance in his favour, both in terms of his credibility and the likelihood of him having acted as alleged.

DECISION ON FACTS

25. Mr Maphosa admitted Allegation 1, and 2(b), but denied Allegation 2(a).
26. The Committee carefully considered all the oral and documentary evidence it had received, as well as the submissions of Miss Gilchrist, on behalf of ACCA, and Mr Maphosa on his own behalf.

Allegation 1

27. The Committee was satisfied, on his own admission, that on or around 09 January 2019, Mr Maphosa submitted an altered or otherwise defaced ACCA Advanced Diploma in Accounting and Business to the South African Qualification Authority (SAQA). Further, The Committee accepted the evidence of Person A as credible and reliable. Accordingly, the Committee found Allegation 1 proved.

Allegation 2

28. The Committee next considered Allegation 2(a) and whether Mr Maphosa's conduct in respect of Allegation 1 was dishonest.

Dishonesty

29. The Committee applied the test as set out by the Supreme Court in *Ivey v Genting Casinos Limited*. It specifically considered what Mr Maphosa's belief was as to the facts. The Committee had the benefit of hearing Mr Maphosa giving evidence and found him to be a credible witness who attempted to do his best to assist the Committee. It noted that he frankly accepted that his conduct fell short of professional standards, but was adamant that he had not acted dishonestly. The Committee accepted that Mr Maphosa genuinely believed, having conducted research on the internet, that his ACCA diploma was something that Ofqual do accredit.

30. While ACCA have particularised dishonesty simply on the basis of the submission of an altered diploma, it is necessary for the Committee to ascertain the actual state of Mr Maphosa's knowledge. It would be wrong to ignore all the background and circumstances in making that determination. It accepted that he genuinely thought his diploma was Ofqual accredited and did not know (or at least did not think about whether) he could not make an amendment to it. It accepted that Mr Maphosa genuinely believed that he was entitled to have the Ofqual accreditation. He was aware that the diploma would be sent to ACCA for verification, gave written permission to SAQA to do this, and indeed, when asked, sent it to ACCA himself. The Committee found that Mr Maphosa's decision that "it would not be a problem" for him to print his certificate with the Ofqual logo on it was a reckless one, rather than a dishonest one. The Committee rejected the submission of ACCA that "any modification of a document is inherently dishonest". The Committee was satisfied that Mr Maphosa's ACCA Advanced Diploma in Accounting and Business certificate sent to SAQA was false in respect of the Ofqual stamp, as ACCA Advanced Diploma in Accounting and Business qualification is not accredited by Ofqual, therefore the Ofqual stamp / logo should not appear on it. Nonetheless, having ascertained his genuine belief at the time, it was not satisfied that such conduct was dishonest by the objective standards of ordinary decent people. Accordingly, Allegation 2(a) was found not proved.

Fundamental Principle of Integrity

31. Having found Allegation 1 proved and 2(a) not proved, the Committee next considered Allegation 2(b), and whether Mr Maphosa's conduct in respect of 1(a) was contrary to the Fundamental Principle of Integrity. This imposed "an obligation on all professional accountants to be straightforward and honest in all professional and business relationships." It also implied "fair dealing and truthfulness".
32. The Committee noted that ACCA's Allegation was an alternative to dishonesty, and noted the Court of Appeal decision in *Wingate and Evans v The Solicitors Regulation Authority [2018] EWCA Civ 366* and that the

Court held that “ ‘integrity’ is a useful shorthand to express the higher standards which society expects from professional persons, and which the professions expect from their own members the underlying rationale is that the professions have a privileged and trusted role in society. In return, they are required to live up to their own professional standards.

33. The Committee noted that Mr Maphosa accepted, with hindsight, that he should not have amended his diploma, and that such action was not “in line with my professional conduct”. The Committee considered that his actions were reckless and sufficiently serious to amount to a lack of integrity. Accordingly, Allegation 2(b) is proved.

Allegation 3

34. The Committee next asked itself whether Mr Maphosa was guilty of misconduct.
35. The Committee had regard to the definition of misconduct in Bye-law 8(c), and the assistance provided by the case law on misconduct. It was satisfied that Mr Maphosa’s actions, as proved in 1 and 2(b), brought discredit on him, the Association and the accountancy profession. It was satisfied that putting the logo on the diploma when he should not have done was sufficiently serious, as Mr Maphosa accepted, to amount to misconduct. Mr Maphosa was reckless in appending this logo and, although the Committee found that his actions were not dishonest and although it was a one-off incident, it considered this was (a non-dishonest) want of integrity, sufficient to reach the threshold for misconduct.

SANCTIONS AND REASONS

36. The Committee noted its powers on sanction were those set out in Regulation 13(4). It had regard to ACCA’s Guidance for Disciplinary Sanctions and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.

37. The Committee considered that the reckless submission of the diploma with the Ofqual accreditation, which should not have been on there, was for personal benefit, and was serious. The Committee had specific regard to the public interest, and the necessity to declare and uphold proper standards of conduct and behaviour. Acting with integrity is a fundamental requirement of any professional. Acting without integrity by a member of the accountancy profession undermined its reputation and public confidence in it.

38. The mitigating factors before the Committee identified are as follows:

- Immediate admission of responsibility to ACCA acknowledging his wrongdoing;
- Mr Maphosa apologised and expressed genuine remorse;
- A previous good character with no disciplinary record;
- Mr Maphosa has shown insight into the seriousness of his conduct and the importance of acting with integrity, in order to maintain the reputation of the profession and uphold the public's trust in it;
- The conduct was an isolated incident;
- Mr Maphosa has fully co-operated with the investigation and disciplinary process.

39. The aggravating factors the Committee identified were:

- Mr Maphosa's actions were reckless, unprofessional and for his own benefit;
- The serious potential impact on the reputation of the profession.

40. The Committee considered the sanctions available to it in ascending order. It was satisfied, in view of the seriousness of Mr Maphosa's conduct, that the sanctions of No Further Action, Admonishment and Reprimand were insufficient to maintain public confidence in the profession and uphold proper standards of conduct. The conduct could not be described to be of "a minor nature", as referred to in the Reprimand section of the Guidance.
41. The Committee carefully considered the factors listed at C4 for Severe Reprimand in the Guidance. While it did not have any references before it, the Committee considered that the majority of the other factors listed were present. In the particular circumstances of this case, it was satisfied that Mr Maphosa's behaviour was not fundamentally incompatible with him remaining a student member and that the sanction of removal of the student register would be disproportionate.
42. For the reasons set out above, the Committee was satisfied that the sanction of a Severe Reprimand was a sufficient and proportionate sanction having balanced the aggravating and mitigating factors, the public interest, the need to uphold standards with Mr Maphosa's desire to continue within the profession and his acceptance of the need to uphold standards.

COSTS AND REASONS

43. The Committee received a costs schedule in which ACCA claimed costs of £7,220. Mr Maphosa provided details of his financial means and the financial circumstances of his immediate family. It was plain that he had no means to pay the level of costs sought by ACCA.
44. The Committee considered that it was appropriate to make an award of costs in this case in favour of ACCA. It considered that the sum claimed of £7,220 was reasonable for the work it had undertaken and the costs incurred. However, it also considered it appropriate to make a significant reduction to reflect Mr Maphosa's very limited means. Taking account of all the circumstances, the Committee was satisfied that the sum of £1,000 was

reasonable, appropriate and proportionate in this case. Accordingly, it ordered that Mr Maphosa pay ACCA's costs in the amount of £1,000.

EFFECTIVE DATE OF ORDER

45. This order shall take effect from the date of the expiry of the appeal period unless notice of appeal is given prior to the expiry of that period, in which case it shall become effective (if at all) as described in the Appeal Regulations.

Mrs Helen Carter-Shaw
Chair
31 March 2020