

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Zanele N Dlamini

Heard on: Friday, 05 August 2022

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

Committee: Mrs Kathryn Douglas (Chair)
Ms Andrea White (Accountant)
Ms Diane Meikle (Lay)

Legal Adviser: Mrs Sobia Hussain

Persons present

and capacity: Ms Michelle Terry (ACCA Case Presenter)
Ms Nikita Apostol (Hearings Officer)

Summary: Removal from the student register

Costs: £5700 costs awarded against Miss Dlamini

ACCA



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SERVICE OF PAPERS

1. Having considered the Service bundle, the Committee was satisfied that notice of the hearing was served on Miss Dlamini in accordance with the Complaints and Disciplinary Regulations 2014 ("CDR").

PROCEEDING IN ABSENCE

2. Ms Terry, for ACCA, made an application for the hearing to continue in the absence of Miss Dlamini.
3. The Committee accepted the advice of the Legal Adviser.
4. The Committee noted that Miss Dlamini has not communicated with ACCA at all. The Committee is satisfied that the correspondence email address was that registered with ACCA and that email delivery receipts had been received in response to ACCA's email correspondence. The Committee also noted that there is evidence to suggest that ACCA's messages were deleted without being read.
5. The Committee has noted that there has not been any contact from Miss Dlamini and there has not been any application to adjourn the hearing.
6. The Committee was satisfied that Miss Dlamini's non-engagement amounts to a voluntary waiving by Miss Dlamini of her right to attend this hearing and that an adjournment would be very unlikely to secure her attendance. In all the circumstances, including the public interest in the expeditious discharge of the Committee's regulatory function, it was satisfied that it was just to proceed with the hearing in her absence.

ALLEGATIONS

1. Miss Zanele N Dlamini, a registered student of the Association of Chartered Certified Accountants ('ACCA'):

- (a) On a date before the 11 March 2021, submitted a document (Statement of Achievement) purportedly issued by ACCA to Company A which contained false/inaccurate information regarding the ACCA exam units she had passed.
- (b) Miss Dlamini's conduct described in respect of 1(a) was:
 - (i) Dishonest, in that she knew the document was false and/or that she intended to mislead Company A as to the ACCA exams she had passed; or in the alternative;
 - ii) Conduct, that demonstrates a lack of integrity.

2. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Miss Dlamini has failed to co-operate fully with the investigation of a complaint in that she failed to respond to ACCA's correspondence dated:

- (a) 25 August 2021;
- (b) 08 September 2021; and
- (c) 17 September 2021.

3. By reason of the above, Miss Dlamini is

- a) Guilty of misconduct pursuant to Bye-law 8(a)(i) in relation to any or all of the conduct alleged at Allegations 1 and 2; or in the alternative;
- (b) Liable to disciplinary action, pursuant to Bye-law 8(a)(iii) in relation to any or all of the conduct alleged at allegation 2.

BACKGROUND

- 7. Miss Dlamini was admitted into ACCA's register as a student on 20 November 2019 and she has remained an ACCA student since.

8. Miss Dlamini submitted a document, namely a Statement of Achievement, purportedly issued by ACCA to Company A. Company A contacted ACCA's South Africa office and asked for the document Miss Dlamini submitted to them to be authenticated. The matter was referred to the United Kingdom office. The document was subsequently reviewed by ACCA's Customers Operation Manager, who confirmed it was not a genuine ACCA document and a referral was made to ACCA's Investigations Department.

ACCA SUBMISSIONS

9. ACCA's submissions to the Committee included an email chain demonstrating that a document provided to Company A, being a Statement of Achievement, which was purportedly issued by ACCA was false. It was further submitted by ACCA that the document contained false / inaccurate information in relation to Miss Dlamini's exam results which did not match the exam results recorded on her ACCA record. ACCA submitted that it is reasonable to infer that Miss Dlamini provided the document to Company A and in doing so, knew it was false. ACCA submitted Miss Dlamini was the only person to benefit from this.
10. ACCA submits that the actions of Miss Dlamini in relation to the above fall under the definition of dishonesty as defined by the case of Ivey v Genting.
11. ACCA further submits that Ms Dlamini has failed to respond to ACCA on three separate occasions and in doing so is in breach of her duty to fully co-operate with the Regulator.

MS DLAMINI'S SUBMISSIONS

12. There was no response from Miss Dlamini to ACCA's case and she has not made any submissions.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

13. The Committee reminded itself that the burden of proof was on ACCA alone and that Miss Dlamini's absence added nothing to ACCA's case and was not indicative of guilt.

ALLEGATION 1

Miss Zanele N Dlamini, a registered student of the Association of Chartered Certified Accountants ('ACCA'):

- (a) On a date before the 11 March 2021, submitted a document (Statement of Achievement) purportedly issued by ACCA to Company A which contained false/inaccurate information regarding the ACCA exam units she had passed.**
14. The Committee was satisfied on the balance of probabilities that the Statement of Achievement document was submitted by Miss Dlamini and contained false information regarding the ACCA exam units she had passed. The Committee relied on the document itself as evidence of this as well as the witness evidence which confirms that the document was not authentic. Whilst there was no evidence as to how and why the false document was submitted to Company A, the Committee found on the balance of probabilities that Miss Dlamini had submitted the document herself. The document contained personal information relating to Miss Dlamini. Miss Dlamini was the only person likely to receive advantage by the submission of such a document. Further, Miss Dlamini had been written to on several occasions on this matter but had not taken the opportunity to deny that she had submitted the document.
15.
 - (b) Miss Dlamini's conduct described in respect of 1(a) was:**
 - (i) Dishonest, in that she knew the document was false and/or that she intended to mislead Company A as to the ACCA exams she had passed.**

16. The Committee noted the advice provided by the Legal Adviser and considered what Miss Dlamini's belief was, as to the facts. Whilst mindful the burden of proof was on ACCA, it noted that Miss Dlamini's conduct in falsifying an achievement record was an intentional and deliberate act to attempt to claim exam passes in the full knowledge that she did not sit these exams. The Committee in applying the dishonesty test as stipulated by *Ivey v Genting* was satisfied that ordinary people would consider her conduct in this regard as dishonest, according to the standards of ordinary decent people. Accordingly, it was satisfied that Allegation 1 b) i) was proved.
17. As Allegation 1 b) i) was proved, the Committee did not need to consider Allegation 1 b) ii) as it was listed in the alternative.

ALLEGATION 2

2. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Miss Dlamini has failed to co-operate fully with the investigation of a complaint in that she failed to respond to ACCA's correspondence dated:

- (a) 25 August 2021;**
- (b) 08 September 2021; and**
- (c) 17 September 2021.**

18. The Committee was satisfied on a balance of probabilities that Allegation 2 was proved. In reaching its decision, the Committee relied on the evidence presented by ACCA which included letters and correspondence sent and delivered to Miss Dlamini's registered address as evidence of notification of the investigation and subsequent disciplinary action. The Committee noted that the emails had been deleted prior to reading the content. The Committee was satisfied that as a student member, she ought to have been aware of her duty and undertakings to co-operate with the Regulator and the action of deleting the emails prior to opening and reading the correspondence was indicative of a lack of engagement and co-operation on her part.

ALLEGATION 3

3. By reason of the above, Miss Dlamini is

- a) Guilty of misconduct pursuant to Bye-law 8(a)(i) in relation to any or all of the conduct alleged at Allegations 1 and 2; or in the alternative.**

19. The Committee had regard to the definition of misconduct in bye-law 8(c) and the assistance provided by the case law on misconduct as provided by the Legal Adviser. To dishonestly purport to have completed examinations when she had not and continuously failing to co-operate with the investigation was, in the Committee's judgment, deplorable conduct. It was satisfied that Miss Dlamini's actions brought discredit upon herself, the Association and the accountancy profession. It was satisfied that her conduct undermined one of the fundamental tenets of the profession – to be honest and not to associate oneself with false and misleading statements – and therefore her conduct had reached the threshold for misconduct. The Committee was of the view that the failure to co-operate with the Regulator on a number of occasions is also a serious breach of her duty to the Regulator and effectively could deem her to be unregulatable.
20. As Allegation 3 a) was proved, the Committee did not need to consider Allegation 3 b) as it was listed in the alternative.

SANCTION AND REASONS

21. The Committee noted its powers on sanction were those set out in Regulation 13(1). 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.
22. The Committee accepted the advice of the Legal Adviser.

23. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. The Committee found that Miss Dlamini's dishonest behaviour was serious. Trust and honesty are fundamental requirements of any professional. Dishonesty by a member of the accountancy profession undermines its reputation and public confidence in the profession.
24. The aggravating factors the Committee identified were:
- The conduct involved dishonesty;
 - The serious impact on the reputation of the profession and potential harm to Company A and the public at large;
 - There was no evidence of insight into the seriousness of the conduct and into the future risk of repetition;
 - There was no engagement with ACCA and a pattern of continued lack of co-operation.
25. The Committee noted that Miss Dlamini was of previous good character with no disciplinary record albeit over a relatively short professional career. No other mitigating factors were identified.
26. Given the Committee's view of the seriousness of the misconduct, it was satisfied that the sanctions of 'No Further Action', 'Admonishment', 'Reprimand' and 'Severe Reprimand', were insufficient, given the gravity of the proven misconduct.
27. The Committee reminded itself that it was dealing with a case of dishonesty and had specific regard to Section E2 of the Guidance in relation to dishonesty and was mindful of the case law to the effect that dishonesty lies at the top of the spectrum of misconduct. The Committee determined that her dishonest behaviour was fundamentally incompatible with Miss Dlamini remaining on the student register of ACCA. The lack of co-operation and engagement was also of serious concern to the Committee. The Committee considered that the only appropriate and proportionate sanction was that she be removed from the student register. This sanction was also in the wider public interest to protect

the public and maintain confidence in the profession and the regulatory process.

COSTS AND REASON

28. ACCA claimed costs of £6389.50 and provided a detailed schedule of costs. The Committee noted Miss Dlamini had not provided any evidence as to her means. The Committee decided that it was appropriate to award costs to ACCA in this case and considered that the sum claimed by them was a reasonable one in relation to the work undertaken. It made some reduction for the Case Presenter and Hearing Officer's fees as the case has not taken a full day as estimated. There is no information as to the ability of Miss Dlamini to pay and therefore the Committee made no assumption of means and therefore, no reduction. Accordingly, the Committee concluded that the sum of £5700.00 was appropriate and proportionate. It ordered that Miss Dlamini pay ACCA's costs in the amount of £5700.00.

EFFECTIVE DATE OF ORDER

29. The Committee was satisfied that an immediate order was not necessary in the circumstances of this case and therefore, the effective commencement date of the order was on the expiry of the appeal period.

Mrs Kathryn Douglas
Chair
05 August 2022