

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Alinafe Nkhoma
Heard on:	Wednesday, 21 December 2022
Location:	Remote video hearing via MS Teams
Committee:	Mr Mike Cann (Chair) Ms Wanda Rossiter (Accountant) Mr Nigel Pilkington (Lay)
Legal Adviser:	Miss Judith Chrystie (Legal Adviser)
Persons present and capacity:	Ms Ariane Tadayyon (ACCA Case Presenter) Ms Nyero Abboh (Hearings Officer)
Summary	Facts proved; misconduct found; removal from student register with immediate effect
Costs:	£6000

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SERVICE OF PAPERS

1. The Committee was satisfied there had been effective service of the notice of the hearing. The Notice of Hearing dated 23 November 2022 had been sent to Miss Nkhoma's registered email address in accordance with the requirements of Complaints and Disciplinary Regulations 2014 (as amended) ('the Regulations').
2. Whilst recognising that it was not a requirement for service for the material to be received, the Committee took confidence that service had been properly effected because Miss Nkhoma had responded to ACCA through the email address she had registered with ACCA, which was the same address used by ACCA for service.

PROCEEDING IN ABSENCE

3. The Committee carefully considered whether to proceed in Miss Nkhoma's absence. It reviewed its service bundle with page numbers 1-26.
4. The Committee noted that there had been numerous efforts on the part of ACCA to email and telephone Miss Nkhoma using the contact details she had registered with ACCA. The Service Bundle contained material which the Committee was satisfied demonstrated that the emails had been successfully delivered and that, with one exception, ACCA's calls would not connect or went unanswered. The exception was on 15 December 2022. On this date an ACCA Hearings Officer phoned the mobile number registered by Ms Nkhoma and the phone was answered by a person giving the name of Ms Nkhoma's sister, Alice. Alice provided an alternative contact number for her sister. The Hearings Officer called the number provided but this went straight to answer machine without any option to leave a voice message.
5. The Committee was satisfied that Miss Nkhoma was aware she was being investigated by ACCA and facing a hearing today; the information about the allegations and the disciplinary proceedings, including today's hearing had been sent to the email address registered with ACCA. This address was being used by Miss Nkhoma – indeed, she had used it to say that she was able to attend the hearing today on 30 November 2022.

6. Notwithstanding Miss Nkhoma's response on 30 November 2022, there was no other email or call to ACCA to follow up on her attendance (whether this would be by phone or remote video, for example), or to seek advice or ask to adjourn the hearing. The Committee considered that ACCA had made considerable efforts to contact her and to provide opportunities for her to participate in the hearing.
7. The Committee considered that, from all the circumstances, it was evident that Miss Nkhoma had deliberately decided not to communicate with ACCA. The Committee was satisfied that there was no purpose in delaying consideration of the case as there was nothing to indicate that an adjournment would mean Miss Nkhoma would attend at a future date. The Committee was, therefore, satisfied that Miss Nkhoma had voluntarily waived her right to participate in the regulatory process and had absented herself from the hearing.
8. The Committee determined that it was fair and in the public interest to proceed in Miss Nkhoma's absence and that it was reasonable and appropriate to exercise its discretionary power in Regulation 10(7) of the Regulations to proceed with the hearing.

ALLEGATION

9. The Committee considered the following allegation:
 - 1) Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended) failed to co-operate with the investigation of a complaint, in that she did not respond fully to any or all of ACCA's correspondence dated:
 - a. 2 July 2021;
 - b. 27 July 2021;
 - c. 11 August 2021.
 - 2) By reason of her conduct Miss Nkhoma is:

- a. Guilty of misconduct pursuant to bye-law 8(a)(i); in respect of any or all of the matters set out at Allegation 1 above; or in the alternative,
 - b. Liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of any of all of the matters set out at allegation 1 above.
10. The Committee considered the following papers:
 - a. Disciplinary Committee report and bundle with page numbers 1-82 (which was followed by a clearer copy of the database printout);
 - b. Additional bundle with pages numbers 1-2;
 - c. File note of single page.
11. Miss Nkhoma became an ACCA student on 22 June 2020.
12. Miss Nkhoma was the subject of an ACCA investigation in connection with an on-demand MA1 Management Information examination she sat on 13 December 2020.
13. Miss Nkhoma provided a short summary after being informed of the complaint. This was sent using the email address registered with ACCA.
14. ACCA alleged that Miss Nkhoma had not responded to any of the three letters emailed to her during the course of the investigation. The letters sought responses from Miss Nkhoma. The letters were sent to the email address Miss Nkhoma had registered with ACCA on 2 July 2021, 27 July 2021 and 11 August 2021.
15. ACCA stated that:
 - a. The email address had not changed during the course of the investigation;
 - b. None of the emails had been returned or bounced back into the case management system:

- c. ACCA had phoned Miss Nkhoma on 5 October 2022 and spoke with her about the hearing for non-cooperation. During the call, ACCA advised that when the case management form was due and asked her to return the form, which she said she would do then or the following day.
16. ACCA submitted that:
- a. Miss Nkhoma had an obligation to co-operate fully with ACCA as her professional body and a failure to do so was discreditable and amounted to misconduct;
 - b. Engaging with ACCA when a complaint was raised was fundamental to ACCA being able to discharge its regulatory obligations of ensuring protection of the public and upholding the reputation of the profession;
 - c. Not cooperating was serious, prevented ACCA from regulating the profession and would, if unchecked, undermine confidence in the profession.

DECISION ON FACTS AND REASONS

17. The Committee found allegation 1 proved. ACCA had sent letters to Miss Nkhoma on 2 July 2021, 27 July 2021 and 11 August 2021; the letters necessitated a response; the student had not responded to these letters; the student had therefore failed to co-operate with ACCA's investigation which breached Regulation 3(1) of the Complaints and Disciplinary Regulations 2014.
18. The Committee was satisfied allegation 2a) was proved. It considered that a failure to co-operate with ACCA over three pieces of correspondence relating to a regulatory investigation into a serious allegation amounted to misconduct.
19. Miss Nkhoma was asked to respond to questions that were reasonable and relevant to ACCA's investigation. She repeatedly failed to respond to these questions and ignored ACCA's correspondence notwithstanding her obligation to co-operate.

20. It considered that having voluntarily applied to join the student register, Miss Nkhoma was under an obligation to co-operate with ACCA, as her regulator, and its investigation. Failure to do so hampered ACCA's ability to investigate a serious matter, which impacted on its ability properly to regulate the profession and to do effectively and efficiently. This was a significant failing and one that fell far below the standards expected of Miss Nkhoma – it amounted to misconduct.

SANCTION AND REASONS

21. The Committee had regard to the Guidance for Disciplinary Sanctions ('the Guidance').
22. The Committee considered the mitigation and aggravated features in the case. It was advised that there was no disciplinary history. It considered that the misconduct was persistent because there were three incidents of a failure to respond and co-operate.
23. Given the significance of the misconduct and the fact that by not engaging with the disciplinary process or these proceedings, Miss Nkhoma had shown no remorse, insight or acceptance of the failure to co-operate, the Committee considered that it would be inappropriate and insufficient to conclude this matter with an admonishment or any form of reprimand. Having carefully considered the specific terms of the Guidance, the Committee was satisfied that these sanctions would not adequately reflect the gravity of the misconduct nor address the significant damage caused to ACCA's ability properly to regulate the profession in the public confidence by being unable fully to investigate significant allegations.
24. The Committee regarded Miss Nkhoma's misconduct and her continued failure to engage with ACCA and demonstrate an understanding of the seriousness of her failure to co-operate as incompatible with her remaining on the student register. The Committee considered that Miss Nkhoma's behaviour, which was deliberate (in that she chose not to respond) and persistent (in addition, Miss Nkhoma continued to disengage) could significantly undermine confidence in ACCA's regulation of the profession and therefore in the integrity of its membership and student registration system.

25. In all these circumstances, the Committee considered the misconduct and determined that the only appropriate and proportionate sanction was removal from the student register; such an order was necessary in the public interest.

COSTS AND REASONS

26. ACCA claimed costs in the sum of £7,151.50. Having considered the schedule submitted by ACCA, the Committee was satisfied that, subject to the reduction identified below, the costs were reasonable and had been reasonably incurred.
27. The Committee considered that a deduction should be made to the sums claimed for the Case Presenter and the Hearing Officer attending the hearing given that the hearing had been shorter than anticipated. The Committee also made a reduction to the amount claimed for the post preparation of report work as it considered this seemed excessive.
28. The Committee reduced the amount claimed to £6,000.
29. It considered that it was appropriate for a cost order to be made. The Committee was mindful that the wider ACCA member and student community should not be penalised by having to fund the costs of a hearing necessitated by Miss Nkhoma's failure to co-operate.
30. The Committee had no evidence regarded Miss Nkhoma's ability to pay. She had been provided with an opportunity to submit evidence about her financial means and to seek a reduction based on her ability to pay the costs claimed by ACCA.
31. However, Miss Nkhoma had not provided anything on which the Committee could base any further alteration to a cost order.
32. The Committee ordered that Miss Nkhoma pay costs to ACCA in the sum of £6,000.

EFFECTIVE DATE OF ORDER

33. The Committee considered whether the order should be made with immediate effect. It determined that it was in the interest of the public for Miss Nkhoma's name to be removed as swiftly as possible. Without an immediate order, Miss Nkhoma would be able to continue to represent herself as registered as an ACCA student. The Committee considered that it would be against the public interest for Miss Nkhoma to continue to represent herself in this way.

Mr Michael Cann
Chair
21 December 2022