

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

| | |
|--|--|
| In the matter of: | Mr Sojay Krishna Saha |
| Heard on: | Thursday, 24 March 2022 |
| Location: | Remotely via Microsoft Teams |
| Committee: | Mr Maurice Cohen (Chair) Ms Joanne Royden-Turner (Accountant) Ms Rachel O'Connell (Lay) |
| Legal Adviser: | Mr Robin Havard (Legal Adviser) |
| Persons present and capacity: | Ms Michelle Terry (ACCA Case Presenter) Mr Jon Lionel (Hearings Officer) |
| Summary: | Severely Reprimand |
| Costs: | £3,400 |

PRELIMINARY APPLICATIONS

APPLICATION TO AMEND THE ALLEGATIONS

1. Ms Terry applied to amend allegations 1(a)(i) and 1(b).
2. The proposed amendment to allegation 1(a)(i) was to the first line as follows:

"i. Held himself out to be in public practice....."

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



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

3. The proposed amendment to allegation 1(b) was to change the word, "declarations" to "declaration".
4. In effect, the applications were to rectify some typographical errors as opposed to substantive amendments.
5. Mr Saha did not object to the proposed amendments.
6. The Committee found that the proposed amendments had not arisen as a result of the introduction by ACCA of any new evidence in its case against Mr Saha and were to rectify certain typographical errors. Therefore, the Committee concluded that the amendments would cause no prejudice to Mr Saha. In the circumstances, the Committee was prepared to grant the applications.

ALLEGATIONS (as amended)

Schedule of Allegations

1. Mr Sojay Krishna Saha, a Fellow of the Association of Chartered Certified Accountants ('ACCA'):
 - a) Between 30 October 2015 and 15 June 2021:
 - i) Held himself out to be in public practice contrary to:
 - (a) Regulation 8(2)(a)(ii) of the Membership Regulations (2015 -2016) while he was a student and affiliate; and
 - (b) Regulation 3(1)(a) of the Global Practising Regulations (2016 - 2021) once he became a member.

- ii) Was director of two companies registered as 'Henderson Royce Accountants Ltd', which held themselves out to be in public practice, contrary to:
 - (a) Regulation 8(2)(a)(iii) of the Membership Regulations (2015 -2016) while he was a student and affiliate; and
 - (b) Regulation 3(2)(a) of the Global Practising Regulations (2016 2021) after he became a member.
- iii) Held rights in two companies registered as 'Henderson Royce Accountants Ltd' where public practice was being carried on, which in effect put him in the position of principal of two firms, contrary to
 - (a) Regulation 8(2)(a)(iv) of the Membership Regulations (2015 -2016) while he was a student and affiliate; and
 - (b) Regulation 3(2)(b) of the Global Practising Regulations (2019 2021)
- b) Inaccurately declared in one or more annual declaration to ACCA that he had not engaged in public practice activities without holding an ACCA Practising Certificate on:
 - i) 31 January 2018; and/or
 - ii) 30 November 2018; and/or
 - iii) 02 January 2020; and/or
 - iv) 29 December 2020.

- c) His conduct at Allegation 1b):
- i) Was dishonest, in that he knew he had engaged in public practice activities and/or that the declaration was inaccurate, or in the alternative;
 - ii) Demonstrates a failure to act with integrity or in the further alternative
 - iii) Was reckless in that he failed to have any or any proper regard as to whether the declarations he made, that he had not engaged in public practice, were true, on:
 - 31 January 2018;
 - 30 November 2018;
 - 02 January 2020;
 - 29 December 2020.
- d) By reason of his conduct, Mr Sojay Krishna Saha is:
- i) Guilty of misconduct pursuant to Bye-law 8(a)(i) in respect of any or all of the matters set out at Allegations 1 a) to 1 c); or in the alternative
 - ii) Liable to disciplinary action pursuant to Bye-law 8(a)(iii) in respect of Allegations 1 a).

DECISION ON FACTS/ALLEGATIONS AND REASONS

7. In reaching its findings of fact in respect of allegations 1(a) and (b), the Committee relied upon the following documents: a hearing bundle (pages 1 to 222) and a service bundle (pages 1 to 15). The Committee had also listened to the submissions made by Ms Terry on behalf of ACCA and the evidence of Mr

Saha. Finally, the Committee had considered legal advice, which it had accepted.

Allegation 1(a)

8. Mr Saha admitted the facts of allegation 1(a) and the Committee found them proved.
9. The Committee made the following additional findings of fact.
10. During the period in which Mr Saha was a student member of ACCA, Regulation 8(2)(a)(ii) of the Membership Regulations ("MR") prohibited him from being in public practice or holding himself out to be in public practice.
11. Once Mr Saha became a member of ACCA, Regulation 3(1)(a) of the Global Practising Regulations ("GPR") prohibited Mr Saha from being in public practice or holding himself out to be in public practice without a practising certificate ("PC") issued by ACCA, unless he holds a PC which authorises the carrying on of the activity in question.
12. GPR4 sets out the meaning of "public practice".

"(1) Activities

Subject to regulations 4(2), 4(3) and 4(5), public practice, which may be carried on by an individual or a firm (the "practitioner"), means:

(a) accepting an appointment as an auditor; and/or

(b) signing or producing any accounts or report or certificate or tax return concerning any person's financial affairs, whether an individual sole-trader, an unincorporated body or a firm, in circumstances where reliance is likely to be placed on such accounts or report or certificate or tax return by any other person (the "third party"), or doing any other thing which may lead the third party

to believe that the accounts or report or certificate or tax return concerning the financial affairs of such a person have been prepared, approved or reviewed by the practitioner; and/or

(c) holding oneself or itself out, or allowing oneself or itself to be held out, as being available to undertake the activities referred to in (a) and (b) above (and allowing oneself to be known as a, or a firm of "Chartered Certified Accountant(s)", "Certified Accountant(s)", "Chartered Accountant(s)", "Accountant(s)" or "Auditor(s)" or any similar description or designation standing for any such description in the context of the practitioner's business shall be regarded as an example of such a holding out); and/or

(d) holding oneself out, or allowing oneself to be held out, as a sole proprietor, partner or director of a firm, or designated member or member of a limited liability partnership, where public practice is carried on."

13. On 29 July 2007, Mr Saha registered as a student member of ACCA.
14. On 14 January 2016, Mr Saha became an affiliate member of ACCA. An affiliate member means a registered student who has passed or obtained exemptions from the ACCA Qualification examinations but has not progressed to membership.
15. On 29 February 2016, he became a member of ACCA and, on 28 February 2021, he became a Fellow.
16. On 05 June 2015, Mr Saha became a member of the Institute of Financial Accountants ("IFA"). This is a different organisation, separate and distinct from ACCA.
17. On 01 October 2015, Mr Saha was issued a PC by IFA but, between 30 October 2015 and 15 June 2021, he had never been issued with a PC by ACCA.

18. The Committee found, on the basis of his admission, that Mr Saha had been holding himself out as being in public practice. In further support of this finding, the Committee found that the following information was included on Companies House records.
19. Companies House records showed Mr Saha had been appointed a Director/principal at two companies, (hereafter referred to as 'HRA1' with company number 10732837 and 'HRA2' with company number 07252527).
20. Both businesses had been registered with the word 'Accountant' in their name.
21. Mr Saha had held himself out as an 'Accountant' in Companies House records for both businesses.

HRA1 (10732837)

22. Mr Saha was appointed a Director of HRA1 on 17 June 2020 and became a shareholder on 24 May 2019.
23. HRA1 was registered as 'Henderson Royce Accountants' until 18 June 2020, at which time it became registered under the name 'Henderson Royce Consultants Limited'.

HRA2 (07252527)

24. Mr Saha was appointed a Director at HRA2 on 30 October 2015 i.e. at a time when he was a student member, and a shareholder on 10 April 2018.
25. The nature of HRA2's business was registered as "accounting and auditing activities", which are public practice activities.

26. HRA2 was registered as 'Savant & Saver Solutions Ltd' at the time Mr Saha became its Director; it became registered under the name 'Henderson Royce Accountants Ltd' at Companies House on 05 March 2019.
27. Google searches for Mr Saha and the firm returned results that illustrated that public practice was being carried on.
28. Searches found that Mr Saha was operating two websites for his firms at

<https://henderson-royceaccountants>.

business.site/?utm_source=gmb&utm_medium=referral#summary and at

<https://www.hraccountants.tax/>

which were both active at the time of ACCA's investigation (pages 135 - 142).

29. The websites both held the firm out as available to undertake public practice. By way of example, one company had described itself as a firm of *'experienced ...proactive accounting & tax services provider of accounting services and business advisers based in London, UK'*.
30. Mr Saha's LinkedIn profile described him as a 'Chartered Certified Accountant' in a search on 20 January 2021 and an 'Accountant' in a search on 11 June 2021.
31. In his written representations to ACCA on 10 February 2021, Mr Saha had also admitted that he had signed off accounts for his clients on behalf of his firm which he was not permitted to do without a PC.
32. The Committee was satisfied that Mr Saha had been, and had held himself out to be, in public practice by:

- (i) Referring to himself as an 'Accountant' on Companies House records;
- (ii) Signing off accounts on behalf of clients;
- (iii) Referring to himself as a Chartered Certified Accountant on his LinkedIn profile;
- (iv) Holding directorships and shareholdings in companies which provided accountancy and tax services.

Allegation 1(b)

- 33. Mr Saha admitted the facts of allegation 1(b) and the Committee found them proved.
- 34. The Committee made the following additional findings of fact.
- 35. Mr Saha submitted annual declarations to ACCA for the years 2017 to 2020, which stated:

"I have not engaged in public practice activities (as defined by the Chartered Certified Accountants' Global Practising Regulations 3 and 4), without holding an ACCA practising certificate.

I have read and understood the instructions and guidance".

- 36. The associated guidance notes which were available to Mr Saha to read before submitting his declaration gave the following information:

"Engaging in public practice activities.

If you engage in public practice activities, as defined by the Chartered Certified Accountants' Global Practising Regulations 3 and 4, you are required to hold an ACCA practising certificate. Please refer to the factsheet Do I need a practising certificate available online ..."

37. From 2018 onwards, the Instructions and Guidance included the following paragraphs:

"ACCA's definition of public practice extends beyond audit to incorporate all types of work generally associated with an accountancy practice, such as producing accounts, tax returns, but excluding book-keeping services.

If you engage in public practice activities or hold yourself out, as defined by Global Practising Regulations 3 and 4, you are required to hold an ACCA practising certificate or arrange to be placed on ACCA's register of practitioners."

38. The Committee had considered a screenshot from ACCA's database of the dates that ACCA received Mr Saha's annual declarations. It was satisfied that, on the dates stipulated within the allegation, Mr Saha had submitted annual declarations which were inaccurate. Even though he had been involved in, and held himself out to be, in public practice during those years, he had declared that he had not done so without holding an ACCA PC. However, at no stage had he held an ACCA PC.

Allegation 1(c)(i)

39. The Committee relied upon its findings of fact under allegations 1(a) and 1(b) above.
40. The Committee had considered carefully the explanations, both written and oral, put forward by Mr Saha in respect of his conduct. He had accepted in his written accounts that he had fallen into error but that he had not behaved in a deliberate manner to avoid his obligations. He accepted, and apologised for the fact, that he had been negligent in failing to ensure that he fully understood the regulatory requirements to which he was obligated to adhere. In his email of 10 February 2021, he stated that he, *"used to consider CPD as my*

professional development and didn't realised that it was linked to Practising certificate requirement". (sic)

41. Mr Saha also accepted that the website was misleading and that the LinkedIn profile was inappropriate based on his professional description.
42. On balance, however, the Committee was not satisfied that ACCA had proved, on the balance of probabilities, that, at the time he was holding himself out as being in public practice, he knew that he was not entitled to conduct himself in the manner outlined above. Further, on the dates he submitted his annual CPD declarations, the Committee was not satisfied that it had been established that Mr Saha knew that the declarations were inaccurate and, thereby, deliberately misleading.
43. On this basis, the Committee did not find allegation 1(c)(i) proved

Allegation 1(c)(ii)

44. Whilst the Committee had not found Mr Saha to have behaved dishonestly, it was satisfied that he had failed to act with integrity. The Committee considered that anyone in Mr Saha's position would have considered whether there were any restrictions on what he was entitled to do and taken the necessary steps to ensure that he was fulfilling his regulatory obligations. Furthermore, a person of his experience should undoubtedly have made sure that, when submitting declarations to ACCA in relation to a subject as important as CPD, he had taken the time to check that his submissions were accurate.
45. In failing to do so, the Committee found that he had acted in disregard to his professional obligations and had fallen short of the high standards of ethical behaviour expected of a member of ACCA.
46. On this basis, the Committee found allegation 1(c)(ii) proved.

Allegation 1(c)(iii)

47. On the basis that allegation 1(c)(iii) was pleaded in the alternative to allegation 1(c)(ii), the Committee made no finding in respect of it.

Allegation 1(d)

48. Taking account of its findings that Mr Saha's conduct had demonstrated a lack of integrity, together with the fact that such conduct had extended over a protracted period, the Committee was satisfied that he was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Mr Saha, the Association and the accountancy profession.
49. The Committee found allegation 1(d) proved.

SANCTION AND REASONS

50. The Committee considered what sanction, if any, to impose taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had heard brief submissions from Mr Saha; it had also listened to legal advice from the Legal Adviser, which it accepted.
51. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
52. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.

53. The Committee considered whether any mitigating or aggravating factors featured in this case.
54. In terms of mitigating factors, the Committee accepted that there were no previous findings against Mr Saha. Ms Terry also accepted, on behalf of ACCA, that Mr Saha had cooperated throughout the investigation. Mr Saha had also admitted the central facts of the allegations and he had apologised for his conduct. Finally, the Committee considered that Mr Saha had shown a level of insight into his failings.
55. As for aggravating features, on the basis of the Committee's findings, it had been established that Mr Saha's behaviour had illustrated a lack of integrity and it represented a course of conduct that extended over a period of time. The Committee was entirely satisfied that his behaviour would undermine confidence in the profession and put at risk the reputation of ACCA.
56. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.
57. The Committee then considered whether a severe reprimand would be an appropriate sanction. Whilst the Committee concluded that Mr Saha's misconduct was serious, it was satisfied that such misconduct was no longer continuing. He had also liaised with ACCA to ensure that the circumstances which had led to the investigation and his subsequent appearance before the Committee had been rectified. There was also no evidence to suggest that his conduct had caused any direct or indirect harm. As stated, he had shown a level of insight into his failings and had expressed remorse. There was no evidence of repetition and he had cooperated throughout the course of the investigation.
58. On this basis, the Committee concluded that the sanction to be imposed on Mr Saha would be a severe reprimand. The Committee was satisfied that such a

sanction was appropriate, proportionate and sufficient to protect the public interest.

COSTS AND REASONS

59. The Committee had been provided with a simple costs breakdown (page 1) and a detailed costs breakdown (pages 1 and 2) related to ACCA's overall claim for costs. It had also been provided with a statement of Mr Saha's finances (page 1).
60. The Committee concluded that ACCA was entitled to be awarded costs against Mr Saha, the allegations, including a failure to act with integrity, having been found proved. The amount of costs for which ACCA applied was £6,734.00.
61. In the Notice of Proceedings, Mr Saha had been informed by ACCA that, if the allegations were found proved, an application for costs would be made. A form was also sent to Mr Saha to complete with regard to details of his income, assets and liabilities. Mr Saha had provided ACCA with a schedule in which he set out his income and outgoings on a monthly basis. The Committee accepted that the sums shown illustrated that Mr Saha's financial circumstances were limited.
62. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £3,400.00.

EFFECTIVE DATE OF ORDER

63. This order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mr Maurice Cohen
Chair
24 March 2022