

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Mohammed Abul Khayer
Heard on:	Thursday, 06 October 2022
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Chair:	HH Suzan Matthews KC
Legal Adviser:	Mr Robin Havard
Summary	Severe Reprimand and fine of £4,000 Costs payable to ACCA - £555

CONSTITUTION OF THE COMMITTEE

1. A Consent Order is made on the order of the Chair under the relevant regulations.

INTRODUCTION

2. The Chair had considered a draft Consent Order dated 25 August 2022, signed by Mr Khayer and a signatory on behalf of ACCA, together with supporting documents in a bundle numbering pages 1 to 138.
3. When reaching her decision, the Chair had been referred by the Legal Adviser to the requirements of Regulation 8 of the Complaints and Disciplinary Regulations 2014 (as amended) ("CDR8") and had accepted his advice. The Chair had also taken account of the content of ACCA's documents entitled "Consent Orders Guidance" and "Consent Orders Guidance FAQs".

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4. The Chair was satisfied that Mr Khayer was aware of the terms of the draft Consent Order and that it was being considered today.
5. The Chair was also satisfied that Mr Khayer was aware that he could withdraw his agreement to the signed draft consent order by confirming the withdrawal in writing. No such withdrawal had been received.

ALLEGATIONS

Mr Mohammed Khayer, a member of the Association of Chartered Certified Accountants ('ACCA') and the Money Laundering Reporting Officer and principal of KAS Accountancy Ltd ("the Firm"), admits the following:

Allegation 1

On dates between 26 June 2017 and 18 October 2021, failed on behalf of the Firm, to comply with or demonstrate full compliance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the MLRs") namely:

- a. Regulation 18 (Risk assessment by relevant persons)
- b. Regulation 19 (Policies, controls and procedures)
- c. Regulation 21 (Internal controls)
- d. Regulation 24 (Training)
- e. Regulation 26 (Ownership and Management: Prohibitions and approvals)

Allegation 2

By reason of the conduct set out in Allegation 1, Mr Mohammed Khayer failed to comply with Section B2 (Anti-Money Laundering) of ACCA's Code of Ethics and Conduct and the Fundamental Principles of Professional Behaviour and Competence and due care (as applicable from 2017 to 2021).

Allegation 3

By reason of the conduct set out at Allegations 1 and 2 above, Mr Mohammed Khayer is guilty of misconduct pursuant to bye-law 8(a)(i).

DECISION ON FACTS

6. The Chair noted that the following facts were agreed upon and therefore adopted them as her findings of fact.
7. On 29 February 2008, Mr Khayer became a Member of ACCA.

8. On 28 February 2013, Mr Khayer became a Fellow of ACCA.
9. On 31 August 2011, Mr Khayer was issued with a practising certificate which he continues to hold.
10. On 02 March 2017, the Firm was incorporated and Mr Khayer was appointed as a director.
11. On 26 June 2017, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the Money Laundering Regulations" or "MLR") came into force.
12. Mr Khayer was the Money Laundering Reporting Officer ("the MLRO") of the Firm.
13. On 9 July 2021, ACCA's Anti-Money Laundering team ("the AML Team") undertook desk-based monitoring of the Firm. The monitoring visit revealed evidence of non-compliance with AML controls including:
 - Firm-wide risk assessment — The Firm had not conducted and documented a firm-wide risk assessment;
 - Escalation/Internal SAR — The Firm did not have a clear and consistent procedure for reporting suspicious activity
 - Training — The Firm/MLRO had not provided formal AML training to all relevant employees and retained the training records.
 - Prohibitions and approvals: Beneficial Owners Officers and Managers ("BOOMs") — The Firm did not obtain approval from ACCA for the appointment of a second director of the Firm who was also a person of significant control.
14. The review revealed the firm was not compliant with relevant sections of the Money Laundering Regulations. As such Mr Khayer acted contrary to the Fundamental Principle of Professional Behaviour, which required members to comply with relevant laws and regulations and avoid any conduct that a professional accountant knows or should know may discredit the profession. In addition, the conduct amounted to misconduct and was contrary to the requirements in Section B2 of ACCA's Code of Ethics and Conduct (Anti-Money Laundering) which include the following provisions:
 - a. Relationship with the local law; sections 5-6
 - b. Internal controls and policies; sections 7-8
 - c. Reporting suspicious transactions; sections 20-22.
15. On or around 8 October 2022, the ACCA's AML Senior Supervision Officer considered the documents and information that Mr Khayer submitted after the

monitoring review and confirmed that Mr Khayer had completed the actions outlined in the AML report and that the AML review was complete.

16. On 26 July 2021, following the completion of the monitoring review of the Firm, a complaint was referred to Professional Conduct in light of the failures to comply with the MLRs.
17. On 7 February 2022, the Professional Conduct department wrote to Mr Khayer setting out the details of the complaint and invited him to respond.
18. On 7 March 2022, Mr Khayer responded and provided an explanation of the circumstances and the steps he and the firm had taken to address the AML concerns that had been identified.
19. On 09 May 2022, ACCA contacted Mr Khayer and proposed that the matter be disposed of via consent. On 23 May 2022, Mr Khayer provided a response confirming that he agreed for the matter to be disposed of via consent.

DECISION ON ALLEGATIONS AND REASONS

20. In accordance with CDR8, the Chair has the power to approve or reject the draft Consent Order or to recommend amendments. The Chair can only reject a signed draft Consent Order if she is of the view that the admitted breaches would more likely than not result in exclusion from membership.
21. The Chair was satisfied that there was a case to answer and that it was appropriate to deal with the complaint by way of a Consent Order. The Chair considered that the Investigating Officer had followed the correct procedure.
22. The Chair considered the bundle of evidence and, on the basis of the admissions of the allegations by Mr Khayer, found the facts of the allegations proved. She considered that the admitted facts and Mr Khayer's actions amounted to misconduct in that they brought discredit to him, the Association and the accountancy profession. They, therefore, justified disciplinary action under bye-law 8(a)(i).

SANCTION AND REASONS

23. In deciding whether to approve the proposed sanction of a severe reprimand together with a fine of £4,000, and for Mr Khayer to pay ACCA's costs in the sum of £555, the Chair had considered the Guidance to Disciplinary Sanctions ("the Guidance"), including the key principles relating to the public interest, namely: the protection of members of the public; the maintenance of public confidence in the profession and in ACCA, and the need to uphold proper standards of conduct and performance. The Chair also considered whether the proposed sanction was appropriate, proportionate and sufficient.
24. In reaching her decision, the Chair had noted, and found, the following aggravating features, as identified by ACCA:

- Mr Khayer was the MLRO of the Firm and compliance with the MLRs is a legal requirement and mandatory;
 - The potential risks arising from a failure to implement adequate AML policies and procedures in the Firm;
 - The extent of the Firm's non-compliance was significant;
 - The length of time since the Money Laundering Regulations came into effect; and
 - Mr Khayer's conduct fell below the standards expected of a qualified ACCA member and brought discredit upon herself, ACCA and the accountancy profession.
25. In deciding that a severe reprimand and a financial penalty were, together, the most suitable sanction, the Chair had considered paragraphs C4.1 to C4.5 of ACCA's Guidance and the following mitigating factors that had been identified:
- Mr Khayer had been an ACCA member in continuous good standing since 2008 and had no previous complaint or disciplinary history;
 - Mr Khayer was no longer in breach of the MLRs and there was no continuing risk to the public;
 - Mr Khayer had demonstrated insight by regularising his position;
 - Mr Khayer had co-operated with the investigation;
 - There was no evidence of harm;
 - There was no evidence to suggest that Mr Khayer's conduct was deliberate or dishonest; and
 - There was no evidence of the actual enabling of any money laundering.
26. The Chair considered that both the aggravating and mitigating features identified by ACCA were supported by documentary evidence and were relevant.
27. In the Chair's judgement, the conduct was such that the public interest would not be served by making no order, nor would an admonishment or a reprimand alone adequately reflect the seriousness of Mr Khayer's conduct. When considering the criteria set out in the Guidance, the Chair took into consideration the fact that the non-compliance with the MLRs 2017 could not be described as short-term. However, once detected, the failure was rectified immediately and the necessary improvements were implemented promptly.
28. Therefore, the Chair concluded that it would be proportionate and sufficient to impose a severe reprimand together with a financial penalty of £4,000 to reflect the seriousness of the findings against Mr Khayer.
29. In all the circumstances, the Chair was satisfied that the sanction of a severe reprimand and a fine of £4,000 was appropriate, proportionate, and sufficient,

and that removal of Mr Khayer from the register would be a disproportionate outcome.

COSTS AND REASONS

30. ACCA was entitled to its costs in bringing these proceedings. The claim for costs in the sum of £555, which had been agreed by Mr Khayer, appeared appropriate.

ORDER

31. Accordingly, the Chair approved the terms of the attached Consent Order. In summary:
 - a. Mr Khayer shall be severely reprimanded and ordered to pay a fine of £4,000; and
 - b. Mr Khayer shall pay costs of £555 to ACCA.

HH Suzan Matthews KC
Chair
6 October 2022