

HEARING

CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Mark Howard Rogers

Heard on: Friday, 09 September 2022

Location: Remotely via Microsoft Teams

Committee: Mr Andrew Gell (Chair)
Mr Trevor Faulkner (Accountant)
Ms Sue Heads (Lay)

Legal Adviser: Ms Jane Kilgannon (Legal Adviser)

Persons present

and capacity: Ms Georgia Luscombe (External Counsel for ACCA)
Mr Mark Howard Rogers (The Member)
Ms Claire Notley (Solicitor for Mr Rogers)
Mr Daren Samat (Counsel for Mr Rogers)
Ms Nikita Apostol (Hearings Officer)

Summary: Allegations 1(a), 2(a), 2(b)(i) and 2(c)(ii) found proved
No further action

Costs: Mr Rogers ordered to pay £2,500 towards ACCA's costs

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PRELIMINARY MATTERS

1. The Committee convened to consider two allegations against Mr Mark Howard Rogers ("Mr Rogers"). Mr Rogers was present and represented by Mr Daren Samat ("Mr Samat"). ACCA was represented by Ms Georgia Luscombe ("Ms Luscombe").
2. The Committee confirmed that it was not aware of any conflicts of interest in relation to the case.
3. Mr Samat made an Application for the admission of a witness statement from Mr Rogers dated 08 September 2022, exhibiting two documents taken from Companies House records referring to a relevant company. The Committee heard representations from Mr Samat. Ms Luscombe did not object to the admission of the evidence. The Committee accepted the advice of the Legal Adviser. Having regard to the relevant circumstances and in the interests of justice, the Committee decided that it would be appropriate to grant the Application and admit the late evidence.
4. The Committee had considered the following documents: a Memorandum and Agenda (pages 1 to 2); a Hearing Bundle (pages 1 to 89); a Supplementary Bundle (pages 1 to 74); a first Tabled Additional Bundle (pages 1 to 8); a second Tabled Additional Bundle (pages 1 to 14); and a Service Bundle (pages 1 to 31).

BRIEF BACKGROUND

5. Mr Rogers has been a Member of ACCA since 1996 and a Fellow since 2001. At all relevant times, he practised through a firm called HJS Accountants Limited ("HJS Accountants"). He remains a director of that firm, which is now called HJS (Reading) Limited.
6. Client A engaged Mr Rogers as their accountant from October 2015 to April 2018.

7. Following a discussion with a new firm of accountants, Client A formed the view that Mr Rogers had set up their business interests incorrectly for tax purposes.
8. On 12 June 2018, a teleconference was held between Mr Rogers, a tax director from HJS Accountants, Client A and Client A's new accountant. In order to rectify the issue raised by Client A, the transfer of shares to Client A from one of their companies was discussed.
9. In January 2019, Client A informed Mr Rogers that the paperwork for the discussed transfer of shares had not been completed.
10. On 27 March 2019, Mr Rogers sent an email to Client A, attaching a copy of minutes of a General Meeting dated 30 June 2018 and a stock transfer form dated 30 June 2018.

ALLEGATIONS

11. It is alleged that:

Allegation 1

- (a) On 27 March 2019, Mr Rogers sent Client A a copy of minutes of a General Meeting dated 30 June 2018 and a stock transfer form dated 30 June 2018 for him to sign.
- (b) Mr Rogers' conduct was:
 - i. Dishonest, in that he knew the stock transfer form had been back-dated;
 - ii. Dishonest, in that he knew no General Meeting on 30 June 2018 had taken place; or, in the alternative;
 - iii. Demonstrated a lack of integrity; and/or, in the further alternative;

- iv. Contrary to the Fundamental Principle of Professional Competence and Due Care (as applicable in 2019).
- (c) By reason of his conduct Mr Rogers is:
- i. Guilty of misconduct pursuant to bye-law 8(a)(i) in respect of any or all of the matters set out at allegation 1(a) and/or 1(b) above; or, in the alternative;
 - ii. Liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of 1(b)(iv).

Allegation 2

- (a) Between 14 October 2015 and 24 April 2018, Mr Rogers failed to issue and/or retain an engagement letter to Client A.
- (b) Mr Rogers's conduct was:
- i. Contrary to Section B9(5) of ACCA's Code of Ethics and Conduct (as applicable in 2015 to 2018).
- (c) By reason of his conduct Mr Rogers is:
- i. Guilty of misconduct pursuant to bye-law 8(a)(i) in respect of 2(a) and 2(b) above; or, in the alternative;
 - ii. Liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of 2(b) above.

DECISION ON ALLEGATIONS AND REASONS

12. At the start of the hearing, Mr Samat indicated that Mr Rogers admitted the following allegations: Allegations 1(a), 2(a) and 2(b)(i). In addition, Mr Samat

indicated that Mr Rogers accepted that Allegation 2(b)(i) amounted to conduct liable to disciplinary action pursuant to bye-law 8(a)(iii).

13. The Chair therefore announced, in accordance with Regulation 12(3)(c) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ("the Regulations"), that Allegations 1(a), 2(a) and 2(b)(i) were found proved.
14. The Committee considered with care all of the evidence presented and submissions made by Ms Luscombe and Mr Samat. The Committee accepted the advice of the Legal Adviser, who referred it to the relevant parts of the Regulations, the Bye-laws, the ACCA Code of Ethics and Conduct, relevant case law and the ACCA document, 'Guidance for Disciplinary Committee Hearings' (1 January 2021). The Committee bore in mind that it was for ACCA to prove its case and to do so on the balance of probabilities.

Allegations 1(b)(i) and 1(b)(ii) – not proved

15. The Committee considered whether Mr Rogers' conduct, in sending the minutes and the stock transfer form – each dated 30 June 2018 – to Client A, was dishonest. The Committee considered what it was that Mr Rogers had done, what his knowledge and intentions were at that point, and whether an ordinary decent person would find that conduct to be dishonest.
16. Mr Rogers had sent a backdated stock transfer form to be signed by Client A, along with minutes of a General Meeting of the same date. In his evidence to the Committee, Mr Rogers admitted that he knew that the stock transfer form was backdated, and that is clear from his covering email dated 27 March 2019 in which he states: "*As discussed, please find attached the share transfer form from [...] to yourself. You, will see this is dated 30th June 2018, subsequent to the telephone call with [...]. Please could you sign the share transfer form where indicated on behalf of [...]. The shares will then officially transfer to your personal ownership*". Mr Rogers also admitted that, as far as he was aware, no such General Meeting had taken place on 30 June 2018.

17. Mr Rogers did not accept that his conduct was dishonest. He explained that at no point did he have any intention to be deceptive or to mislead anyone. Mr Rogers explained that, by the end of the teleconference meeting on 12 June 2018, there was a consensus that, subject to the agreement of the other shareholders (who were likely to agree), the shares should and would be transferred to Client A. Mr Rogers also reported a subsequent telephone call with Client A in which Client A confirmed that the other shareholders had agreed to the transfer. Therefore, Mr Rogers stated that when he met with Client A on 01 March 2019, he was content with Client A's request to date the stock transfer form a couple of weeks after the 12 June 2018 meeting as that would put into place the agreement that he believed had been reached at the 12 June 2018 meeting and subsequently acceded to by the other shareholders. Indeed, he stressed that he considered this position to be not only acceptable, but more accurate, than dating the form with a 2019 date. In his written statement dated 30 April 2021, Mr Rogers indicated that he now accepts, with the benefit of hindsight, that he made a "technical error" in putting the 30 June 2018 date on the stock transfer form. However, he has explained that he genuinely believed at that time that what he was doing was proper and appropriate. To support that contention, he has pointed to the fact that he did not seek to hide his actions, in that he was open in his email communications with Client A about the date being used and was aware that his email communications could be seen by his colleagues and his firm's professional indemnity insurers.
18. In relation to the production of the false General Meeting minutes, Mr Rogers explained that those were generated automatically by his firm's software when he created the stock transfer form. None of the information in the minutes was manually inserted by Mr Rogers. Therefore, he explained that made the same argument in relation to the minutes as to the stock transfer form – namely, that his actions were not dishonest because he was acting on a genuine belief that he was doing the right thing. Furthermore, he was open about what he was doing and did not seek to hide it.
19. Mr Samat raised the absence of a dishonest incentive or motive for Mr Rogers to have acted as he did. Mr Rogers explained that he did not believe that Client A would obtain any tax advantage from the stock transfer taking place on 30

June 2018 rather than in 2019. Rather the contrary, it may well have had a more negative impact on their personal taxation position. Furthermore, Mr Rogers explained that, at the relevant time, Client A was no longer his client. He was simply assisting them out of goodwill, without payment for his services and because Client A's relative was a valued client of his firm.

20. The Committee noted the evidence that had been presented to demonstrate Mr Rogers' good character including the fact that Mr Rogers has never had a regulatory complaint made against him in relation to his honesty or integrity and the positive testimonials provided by two professional acquaintances of Mr Rogers.
21. On the balance of probabilities, the Committee accepted Mr Rogers' assertion that he had a genuine belief at the relevant time that he was not doing anything inappropriate. In coming to that conclusion, the Committee had particular regard to the fact that Mr Rogers had provided a plausible explanation as to why he mistakenly believed the use of the date of 30 June 2018 was appropriate in the circumstances, and that Mr Rogers appeared to have communicated in a direct and open way with Client A and with his own colleagues about the date to be used on the stock transfer form and accompanying General Meeting minutes. Given Mr Rogers' lengthy professional experience, the Committee found it unlikely that he would have communicated his intentions in writing in such a direct and open manner if he knew his actions were improper or if he were trying to mislead as to the date of the decision to transfer the stock and the date of the relevant General Meeting. On that basis, the Committee found that, by the objective standards of a decent ordinary person, Mr Rogers' conduct was not dishonest.
22. Accordingly, the Committee found Allegations 1(b)(i) and 1(b)(ii) not proved.

Allegation 1(b)(iii) - not proved

23. For the reasons set out above, the Committee found that, on the balance of probabilities, Mr Rogers' conduct likewise did not demonstrate a lack of integrity. The Committee considered that Mr Rogers' wrongdoing had been

unwitting, and it therefore accepted that he had acted in a straightforward and honest manner.

24. Accordingly, the Committee found Allegation 1(b)(iii) not proved.

Allegation 1(b)(iv) - not proved

25. The Committee had not been persuaded that Mr Rogers' conduct was contrary to the Fundamental Principle of Professional Competence and Due Care which requires members to "act diligently and in accordance with applicable technical and professional standards". Although the Committee accepted that Mr Rogers had made a professional error in back-dating the stock transfer form and General Meeting minutes, it appeared to the Committee that he had nevertheless acted carefully, thoroughly and on a timely basis when carrying out what he believed to be the appropriate actions to address Client A's instructions.

26. Accordingly, the Committee found Allegation 1(b)(iv) not proved.

Allegation 1(c)(i) – not proved

27. Having found the facts proved in relation to Allegation 1(a), the Committee then considered whether they amounted to misconduct.
28. Taking into account its findings that Mr Rogers' conduct at Allegation 1(a) was not dishonest, did not demonstrate a lack of integrity and was not contrary to the Fundamental Principle of Professional Competence and Due Care, the Committee considered that the conduct admitted and found proved did not reach the threshold of seriousness necessary to amount to misconduct. The Committee accepted that Mr Rogers' erroneous actions were unwitting and that he had not acted in order to seek an improper advantage for either himself or Client A.
29. Accordingly, the Committee found Allegation 1(c)(i) not proved.

30. Taking into account its finding in relation to Allegation 1(b)(iv) that Mr Rogers' conduct was not contrary to the Fundamental Principle of Professional Competence and Due Care, Allegation 1(c)(ii) fell away.

Allegation 2(c)(i) – not proved

31. Mr Rogers accepted that his failure to send and/or retain an engagement letter to Client A was a “regrettable oversight” but denied that this amounted to misconduct.
32. The evidence before the Committee indicated that the firm had systems in place in relation to the sending out of required documentation when a new client is taken on. However, in this instance it appears that something went amiss and the engagement letter was either not sent to Client A and/or it was not retained. The Committee accepted Mr Rogers' account that, within the structure at the firm, he was not personally responsible for sending out or filing engagement letters. Nevertheless, he was responsible for providing oversight of the process. The Committee was satisfied that the failure on Mr Rogers' part to ensure that the engagement letter - if one was sent - was retained, was not deliberate or reckless. Rather, it appears to have been an unfortunate systems error at the firm. Furthermore, the Committee had regard to the fact that this was a single isolated incident and it had not been presented with any evidence to indicate that Mr Rogers had been found wanting in regard to record-keeping on any other occasions. On that basis, the Committee considered that Mr Rogers' conduct would not be considered deplorable by fellow professional accountants and was not serious enough to amount to misconduct.
33. Accordingly, the Committee found Allegation 2(c)(i) not proved.

Allegation 2(c)(ii) – proved

34. Mr Rogers admitted the matter. Taking into account its finding in relation to Allegation 2(b)(i), that Mr Rogers' conduct was contrary to Section B9 of ACCA's Code of Ethics and Conduct, the Committee considered that it followed that he was liable to disciplinary action pursuant to bye-law 8(a)(iii).

DECISION ON SANCTION AND REASONS

35. In reaching its decision on sanction, the Committee took into account the evidence that it had already heard, a document provided as to Mr Rogers' financial means and the submissions made by Ms Luscombe and Mr Samat. The Committee accepted the advice of the Legal Adviser, who referred it to Regulation 13(1) of the Regulations, relevant case law and the ACCA document 'Guidance for Disciplinary Sanctions' (1 January 2021). The Committee bore in mind that the purpose of any sanction was not to punish Mr Rogers, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate.
36. When deciding on the appropriate sanction, the Committee carefully considered whether there were any aggravating and mitigating features in this case.
37. The Committee identified no aggravating features.
38. The Committee considered there to be the following mitigating features: the fact that Mr Roger had made early admissions; the absence of any previous disciplinary history with ACCA across a long (26 year) history of membership; the positive testimonials provided; and Mr Rogers' full and prompt co-operation with the regulatory process.
39. The Committee noted that Mr Rogers had indicated remorse for his actions, explaining that he regretted his decision to put the date of 30 June 2018 on the stock transfer form and apologising for his oversight in relation to Client A's letter of engagement. He had also demonstrated insight into how he ought to have behaved in relation to the stock transfer form, explaining that he now understands that he should not have put the date of 30 June 2018 on the form.
40. The testimonials were strong. One was from a professional accountant - a registered member of the Institute of Chartered Accountants in England and Wales. The other was from a qualified solicitor. Both described Mr Rogers as professional and honest.

41. The Committee considered the available sanctions in increasing order of severity.
42. The Committee first considered whether to take no further action. Whilst acknowledging that Mr Rogers had breached a professional requirement and the Committee in no way condoned that conduct, it considered the failure to be a technical one, at the lower end of the scale in terms of seriousness. The Committee also noted that the conduct was an isolated incident, and that there was no evidence to suggest that it was part of a pattern of behaviour. For these reasons, the Committee considered this to be an exceptional case in which the decision to take no further action was appropriate. The Committee considered that public interest factors generally and in particular the need to maintain public confidence in the profession did not demand a more severe sanction. The Committee further considered that no further action would be a proportionate disposal in the circumstances of the case.
43. The Committee considered whether admonishment, the next sanction available in terms of severity, would be appropriate. The Committee considered that some of the factors set out at paragraph C2.1 of the ACCA Guidance for Disciplinary Sanctions were present in this case, namely: evidence of no loss or adverse effect on client / members of the public; early admission of the facts alleged; isolated incident; not deliberate; genuine expression of remorse/apology; no evidence that subsequent work was not of satisfactory quality; and relevant and appropriate testimonials and references. However, the Committee noted that the nature of the conduct in question did not fall within nor appear to be of a similar severity to that listed in the 'Very Serious' and 'Serious' entries of the table titled 'Factors relevant to seriousness in specific case types' in relation to 'Other liabilities and breaches of bye-laws or regulations' at Section F of the guidance document. The Committee concluded that because the conduct in question was not deliberate and at the lower end of the scale in terms of seriousness, it would not be proportionate to impose the sanction of admonishment.
44. The Committee therefore decided to take no further action.

DECISION ON COSTS AND REASONS

45. There were two applications in relation to costs.
46. First, Mr Samat made an application for ACCA to make a contribution to the costs of Mr Rogers. He drew the Committee's attention to the fact that paragraph 10 of the ACCA Guidance for Costs Orders provides for the possibility of an order for costs payable by ACCA to Mr Rogers and that, although it appears that the provision may only apply where none of the allegations made against the member have been proven, ACCA and the Committee should not employ such a blanket policy. Mr Samat submitted that in this case, where a significant number of the allegations made were found not proved, it should be open to the Committee to order ACCA to make a contribution to Mr Rogers' costs. Mr Samat did not have a costs schedule available but offered to provide one at a later date should the Committee find in Mr Rogers' favour in principle.
47. Ms Luscombe argued that the Committee did not have the power to make an order for costs payable by ACCA to Mr Rogers because it was not the case that none of the allegations made against him had been found proved.
48. The Committee accepted the advice of the Legal Adviser who referred the Committee to Regulation 15(2) of the Regulations ("Where none of the allegations against a relevant person has been found proved, the Disciplinary Committee may direct that the Association pay a sum to the relevant person by way of contribution to the relevant person's costs incurred in connection with the case, in such amount as the Disciplinary Committee shall in its discretion think fit") and the ACCA document 'Guidance for Costs Orders' (1 January 2021).
49. The Committee decided that it did not have any discretion to impose an order for ACCA to pay a contribution towards Mr Rogers' costs because that power would only arise where none of the allegations made against him had been found proved. That was not the case here, where four matters had been found proved.

50. Second, Ms Luscombe made an application for Mr Rogers to make a contribution to the costs of ACCA. Ms Luscombe applied for costs totalling £8,876. The Committee was provided with a Schedule of Costs providing a breakdown of the activity undertaken by ACCA and the associated costs. Ms Luscombe submitted that the costs claimed were appropriate and reasonable.
51. Mr Samat challenged the application. Mr Samat drew the Committee's attention to the fact that not all of the allegations had been proved and that the matters that were proved were either admitted at the outset by Mr Rogers or were of a technical nature and less serious than the allegations found not proved. He also queried whether it was reasonable for ACCA to have pursued some of the matters alleged.
52. Mr Samat argued that the costs claimed were not reasonable and ought to be reduced to reflect the fact that most of the allegations were not found proved. Mr Samat drew the Committee's attention to Mr Rogers' statement of financial means.
53. The Committee accepted the advice of the Legal Adviser who referred the Committee to Regulation 15(1) of the Regulations and the ACCA document 'Guidance for Costs Orders' (1 January 2021).
54. The Committee was satisfied that ACCA was entitled to costs in principle and had been justified in investigating these matters. However, it considered that there should be a reduction to reflect the fact that the outcome of the hearing fell significantly short of what ACCA had alleged. If the case had been restricted to the issues which succeeded, there would have been a significant saving in costs. There would also be an element of unfairness to Mr Rogers if he were ordered to pay for the full investigation of allegations which were not proved.
55. In deciding the appropriate and proportionate order for costs the Committee took into account the above matters and decided to make an order for costs in the sum of £2,500.

56. Having considered the financial information, the Committee was satisfied that Mr Rogers could pay this amount without undue hardship.

EFFECTIVE DATE OF ORDER

57. The Order will take effect at the expiry of the appeal period.

ORDER

58. The Committee made the following order:
- a. Mr Rogers shall make a contribution to ACCA's costs in the sum of £2,500.

Mr Andrew Gell
Chair
09 September 2022