

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Lubomir Biczel
Heard on:	Wednesday, 18 January 2023
Location:	Held remotely via Microsoft Teams
Committee:	Ms Ilana Tessler (Chair) Mr Trevor Faulkner (Accountant) Mr Andrew Skelton (Lay)
Legal Adviser:	Ms Tope Adeyemi (Legal Adviser)
Persons present and capacity:	Mr Benjamin Jowett (ACCA Case Presenter) Ms Nyero Abboh (Hearings Officer)
Summary:	Exclusion from membership
Costs:	£12,750

INTRODUCTION

1. The Disciplinary Committee (“the Committee”) met to hear allegations against Mr Biczel. Mr Biczel was not present and was unrepresented.

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



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

2. The papers before the Committee consisted of a main bundle numbered 1 to 457, an additional bundle numbered 1 to 17 and a service bundle numbered 1 to 15. The Committee also had before it a partly completed case management form and a schedule of pseudonymisation.

PRELIMINARY MATTERS

Service of papers

3. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by Mr Jowett on behalf of ACCA and it also took into account the advice of the Legal Adviser.
4. Included within the Service Bundle was the Notice of Hearing dated 21 December 2022 (thereby satisfying the 28-day notice requirement) which had been sent to Mr Biczel’s address as it appears on the ACCA register. The Notice of Hearing included correct details of the date, time and remote venue for the hearing and also Mr Biczel’s right to attend the hearing by telephone or video link and to be represented, if he wished. Additionally, the Notice of Hearing provided details about applying for an adjournment and the Committee’s power to proceed in his absence if considered appropriate. The service bundle also included two emails addressed to Mr Biczel. Both emails were dated 21 December 2022 and provided the secure link to the documentation regarding the hearing and the password.
5. The Committee also had sight of a telephone attendance note which recorded attempts made by ACCA’s hearings officer on the 11th and 16th of January 2023 to speak to Mr Biczel. The note recorded that on both occasions an automated message was heard advising that the number could not be reached and that there was no opportunity to leave a voice message.
6. Having considered the relevant documents, the Committee was satisfied that Notice had been served in accordance with the Regulations.

Proceeding in absence

7. In considering whether to proceed in the absence of Mr Biczel, the Committee noted that no communication has been received from him in respect of the hearing. The Committee was satisfied that all reasonable efforts had been made to try and engage with Mr Biczel and that an adjournment would serve no useful purpose as there was nothing to indicate that Mr Biczel would attend on a different date. Furthermore, no application for an adjournment had been made by him. The Committee considered that there was a strong public interest in the matter being dealt with expeditiously. In all the circumstances, it was decided that it was in the public interest and in the interests of justice that the matter should proceed notwithstanding the absence of Mr Biczel.

Application to amend

8. By email dated 13 January 2023, ACCA informed Mr Biczel that it intended to apply for an amendment to the allegations. It was proposed that allegation 5 be amended to include the following additional wording: "*or otherwise confirmed his understanding that if he engaged in public practice activities, he would need to hold an ACCA practising certificate*". A date in the schedule of the allegation was also proposed to be amended from 23 May 2019 to 28 May 2019.
9. In oral submissions, Mr Jowett submitted that the amendments were intended to add clarity to what was alleged and did not amount to a substantive change to ACCA's case. He submitted that the proposed amendments could not cause prejudice to Mr Biczel's defence as he had not submitted a defence and that in any event, Mr Biczel had been given the opportunity to object to the amendment and had not done so.
10. Regulation 10(5) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR') allows the Committee at any stage, upon the application of either party or on its own motion, to amend the allegations provided the relevant person is not prejudiced in the conduct of their defence.

11. The Committee was satisfied that the proposed amendments did not cause prejudice to Mr Biczel and served to clarify the nature of what was alleged. It allowed the application.

ALLEGATIONS

12. The allegations faced by Mr Biczel, as amended, were as follows:
 1. *On or about 13 February 2019 Lubomir Biczel FCCA (Mr Biczel) caused or permitted to be filed at Companies Registration Office on behalf of A Ltd accounts for the year ended 31 March 2018 containing an undated audit report issued in Mr Biczel's name when*
 - 1.1 *Mr Biczel did not hold an ACCA practising certificate with audit qualification; and*
 - 1.2 *for the purposes of filing the accounts with an audit report referred to in allegation 1 used the 'ARN' of an auditor (Mr B) who was not then appointed by the directors of A Ltd, in order to facilitate the filing of those accounts containing an audit report.*
 2. *Between January 2013 and 19 January 2022 Mr Biczel carried on public practice without a practising certificate, contrary to Regulation 3(1)(a) of the Global Practising Regulations then in force with regards to any or all of the following:*
 - 2.1 *he prepared and or caused or permitted to be filed on behalf of Firm C 131 sets of accounts, full particulars of which are set out in a letter dated 8 September 2021 and/or*
 - 2.2 *he held himself out, or allowed himself to be held out as being able to undertake public practice activities and/or*
 - 2.3 *allowed himself to be known as a "qualified Accountant (ACCA)"*

2.4 *the matters referred to in allegation 1 above.*

3. *Between 29 December 2016 and 21 June 2021 Mr Biczel was a director of Firm D where public practice was carried on without holding a practising certificate contrary to regulation 3(2)(a) of the Global Practising Regulations then in force.*
4. *Between 29 December 2016 and 21 June 2021 Mr Biczel held rights in Firm D which in effect put him in the position of a principal in the firm in that he held 100% of the shares in the company when he did not hold a practising certificate contrary to regulation 3(2)(b) of the Global Practising Regulations then in force.*
5. *Mr Biczel submitted any or all the CPD declarations listed in Schedule A in which he declared that he had not engaged in public practice activities without holding an ACCA practising certificate in respect of the prior 12-month period or otherwise confirmed his understanding that if he engaged in public practice activities, he would need to hold an ACCA practising certificate.*
6. *Mr Biczel's conduct was dishonest in that in respect of allegation 1.1, he knew he required an ACCA practising certificate with audit qualification to carry out audit work and or sign an audit report and in respect of allegation 1.2 represented to Companies Registration Office that the accounts were being submitted in the name and or on behalf of a duly authorized audit firm, when they were not.*
7. *Mr Biczel's conduct in respect of allegation 5 was dishonest in that at all material times he knew:*
 - 7.1 *he was engaged in public practice; and*
 - 7.2 *that he did not possess an ACCA practising certificate; but confirmed otherwise when completing the annual returns referred to in Schedule A.*

8. *In the alternative Mr Biczel has failed to demonstrate integrity.*
9. *Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations (as applicable in 2019), Mr Biczel failed to co-operate with the investigation of a complaint in that between 25 April 2019 and 8 September 2021, he failed to respond to ACCA's correspondence as set out in Schedule B.*
10. *By reason of his conduct referred to in allegations 1 - 9 above Mr Biczel is liable to disciplinary action pursuant to bye-law 8(a)(i).*
11. *In the alternative in respect of allegations 2 - 4 and 9 above Mr Biczel is liable to disciplinary action pursuant to bye-law 8(a)(iii).*

BACKGROUND

13. Mr Biczel became a member of ACCA on 31 March 2013 and a fellow of ACCA on 31 March 2018. A complaint was referred to ACCA's investigations department in February 2019. The concerns relate to work undertaken by him in circumstances where it is alleged that he did not have an ACCA practising certificate.
14. In 2013, ACCA issued Mr Biczel with a warning regarding practising without a practising certificate in relation to a Firm C. No further action was taken at that stage and the case was closed. Following the complaint received in 2019, a Financial Analysis Made Easy (FAME) database search was carried out and Mr Biczel was found to be company secretary of the firm since 14 December 2012 but not a director. The company's Standard Industrial Classification code is "non-life insurance". There are two company directors, both of the same address as Mr Biczel and Firm C, neither of whom appear to be qualified accountants. Investigations into the company revealed that it had a website and an associated Facebook page with content about the firm and testimonials. The search also revealed that 49 companies had submitted reports prepared by Mr Biczel at Firm C of which two were audited accounts.

15. Copies of the audited accounts were obtained and examined by ACCA. The process for filing annual returns is set out in the Companies Registration Office Information Leaflet No. 23 as well as on the CRO website. Since 2017, companies in the Republic of Ireland are required to submit their annual return (Form B1) and deliver it electronically once a year via CORE, the CRO's e-filing system. If obligations for preparing and filing the return are not met, a company is liable to render itself ineligible for the audit exemption for two years.
16. The notes on the completion of Form B1 set out that all statutory auditors were to be registered on the Public Register of Auditors and must have an Auditor's Registration Number (ARN) in order to be entitled to carry out audits in Ireland. The ARN is to be entered in the applicable section of the B1 form whenever an auditor's report is attached to the annual return.
17. The CRO is the Competent Authority for making the Auditor Register available to the public. A search of the CRO website's auditor register showed that neither Mr Biczel or Firm C appear, however the FAME searches conducted showed that audited accounts were submitted by Firm C for company A Ltd for the years ending 31 March 2017 and 2018.
18. The coversheet for the Annual Return signed by the directors of A Ltd shows that it was presented by Firm C and the uploads included Financial Statements for the year from 1 April 2017 to 31 March 2018 with the Auditor Registration Number CP008353 and the Auditor name, Mr B. A search of the CRO's auditor register showed that Mr B does appear on the register as a Statutory Auditor. The CRO's website showed the individual details for Mr B including his registration number CP008353. However, the Independent Auditor's Special Report to the directors of A Ltd is signed off by *"Lubo Biczel FCCA, QFA for and on behalf of Firm C"*.
19. The annual returns and company accounts submitted to the CRO for A Ltd for the period 2016 – 2018 show that in 2016, the company's accounts were audited by BCC Accountants and Registered Auditors Ltd and in 2017 they were audited by Mr B of Firm B. However, in 2018, the annual return shows that the company's auditor was Mr B, whereas the company's accounts were

audited by Mr Biczel on behalf of Firm C. The CRO records Mr B's resignation as auditor as of 23 December 2018. The FAME search also revealed that Mr Biczel was a director of Firm D.

20. ACCA also considered declarations made by Mr Biczel. Mr Biczel's CPD requirements commenced in 2014. ACCA's database shows that CPD declarations were submitted to ACCA for each year from 2013 to 2019. The declarations included sections relating to the requirement of having an ACCA practicing certificate to engage in public practice.
21. Between April 2019 and September 2021, ACCA's investigation department sent letters and emails to Mr Biczel to advise him of the allegations under investigation and to request his comments, receiving no response.

DECISION ON FACTS/ALLEGATIONS AND REASONS

22. The Committee considered with care all the evidence presented and the submissions made by Mr Jowett. It accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove its case and to do so on the balance of probabilities.

Allegation 1.1 - proved

23. The Committee considered there was sufficient evidence that Mr Biczel caused or permitted to be filled an undated audit report issued in his name when he did not hold an ACCA practising certificate with audit qualification. The Committee took into account that they had been provided with evidence of a pack submitted by A Ltd which included audited accounts. These accounts had been signed by Mr Biczel after the previous auditors had resigned. At the point the accounts were signed and submitted, neither Mr Biczel or his firm were registered on FAME. The Committee found allegation 1.1 proved in its entirety.

Allegation 1.2 – proved

24. ACCA had adduced as evidence, documentation presented at the time of filing which included the details of another individual rather than Mr Biczel. The Committee found that Mr Biczel had used the previous firm's ARN number as a means of lodging the accounts. It follows that the Committee found this allegation proved.

Allegation 2.1 – proved

25. The Committee was provided with numerous sets of accounts that had been submitted on behalf of Firm C between January 2013 and January 2022. Consideration was given to evidence from the FAME database that showed that Mr Biczel was company secretary of Firm C during that period and that there was no evidence that he had a practicing certificate or that other individuals associated with Firm C were qualified accountants. In light of the information available, the Committee concluded that Mr Biczel had carried on public practice activities via Firm C without a practising certificate.

Allegation 2.2 – proved

26. Screenshots taken from Mr Biczel's website and business Facebook page were provided to the Committee. These screenshots included descriptions of the services provided by Mr Biczel which would amount to public practice activities. There were also a number of testimonials on the website that attested to the work that Mr Biczel had provided. The Committee considered that it was clear from this information that Mr Biczel had held himself out as being able to undertake public practice activities. This allegation was therefore found proved.

Allegation 2.3 – proved

27. The Committee was also satisfied that the screenshots taken from Mr Biczel's website included content that evidenced Mr Biczel had held himself out as a "Qualified Accountant (ACCA)". This allegation was therefore found proved.

Allegation 3 – proved

28. The Committee found that Mr Biczel had filed a BI annual return and accompanying accounts in circumstances where he was not qualified to carry out an audit and did not have a practising certificate. It also found, for the reasons outlined that he had also described his business as offering accounting services. The Committee therefore considered that it followed that Mr Biczel was carrying on public practice without a practising certificate contrary to Regulation 3 (1) of the Global Practising Regulations.

Allegation 4 – proved

29. The Committee took note of the information obtained from FAME which showed that during the relevant period Mr Biczel was a director of Firm D and a 100% shareholder. There is no evidence that he held a practising certificate during this period therefore the Committee was satisfied that this allegation was provided the requisite standard.

Allegation 5 – proved

30. Examples of the content of the CPD declarations have been provided to the Committee. The wording in the CPD declarations changed over the years however all the forms required the completion of a declaration by the member that they had not engaged in public practice without a practising certificate or understood that they were required to have a practising certificate before engaging in public practice. The actual forms Mr Biczel completed have not been provided, instead sample forms have been adduced. The Committee are satisfied that the samples represent the information that was on the forms at the time and have taken into account the evidence that Mr Biczel was in other way fully engaged with ACCA, most notably the screenshots from ACCA's database which showed that he was a "member" whose status was classified as "active" at the relevant time. The Committee found allegation 5 proved.

Allegation 6 1.1 – proved

31. The Committee took into account the evidence that Mr Biczel had been provided with Guidance materials relating to the requirement to have a

practising certificate to undertake specific work. Furthermore, he was provided with information on what was expected in this regard following conversations with members of ACCA staff in 2013. Overall, the Committee concluded that he was aware of his responsibilities and therefore found this allegation proved.

Allegation 6 1.2 – proved

32. Evidence had been provided to the Committee that Mr Biczel had submitted a return to Companies Registration Officer (CRO) that included the name of an auditor of a duly authorised auditor firm at a point when that auditor firm had already resigned. The Committee considered that Mr Biczel would have known the auditors had resigned and in turn that the accounts he was submitting had not been duly authorized at the point of submission.

Allegation 7.1 and 7.2 - proved

33. The Committee was mindful of the information that Mr Biczel would have had in respect of his responsibilities when submitting the CPD declarations in the form of the Guidance accompanying the declarations. Additionally, Mr Biczel had received advice from ACCA staff in 2013 in respect of the need to hold an ACCA Practising Certificate. It was satisfied on account of the information Mr Biczel had been provided with that he was aware of what public practice was and that he was also aware he was engaged in it without possessing an ACCA practising certificate.
34. The Committee found that despite the information Mr Biczel had received regarding his responsibilities, that he had gone on to confirm when completing CPD declarations, that he was not engaged in public practice without a practicing certificate. The Committee was satisfied bearing in mind Mr Biczel's knowledge that his conduct in this regard would be considered dishonest by the standards of ordinary people. Allegations 7.1 and 7.2 were therefore found proved.

Allegation 8 – N/A

35. As allegation 7 was found proved, the Committee did not go on to consider allegation 8 which was drafted in the alternative.

Allegation 9 – proved

36. Correspondence has been provided to the Committee in the form of letters and emails that were sent to Mr Biczel between 25 April 2019 and 8 September 2021 in respect of ACCA's investigations. The Committee considered that the letters made it clear that there was an expectation that Mr Biczel was to respond. There is no evidence that Mr Biczel has responded to any of the letters or emails sent to him. The Committee find that his lack of response to the letters amounts to a failure to co-operate and therefore finds this allegation proved.

Allegation 10 – proved

37. The facts found proved relate to an extensive range of unacceptable activities over an extended period of time. The conduct was also serious in that it had the potential to cause financial harm to members of the public and reputational damage to the profession. In all circumstances, it was considered that the behaviour amounted to misconduct as described under bye – law 8(a)(i).

Allegation 11 – N/A

38. As allegation 10 was found proved the Committee did not go on to consider allegation 11 which was drafted in the alternative.

SANCTION AND REASONS

39. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Jowett. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA and had in mind the fact that the purpose of sanctions was not to punish Mr Biczel, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct. Furthermore, any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser.

40. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
41. The Committee considered the misconduct involved the following aggravating features: absence of evidence of insight; no evidence of any remorse and no evidence of any remediation. The behaviour also amounted to a pattern of misconduct over a period of years; there was repeated failure to co-operate with the investigations officer and Mr Biczel had been advised of his responsibilities in respect of needing a practising certificate by ACCA staff in 2013.
42. The Committee considered there to be one mitigating factor which was the absence of any previous disciplinary history with ACCA.
43. The Committee did not think it was appropriate, or in the public interest, to take no further action or order an admonishment in a case where a member had disregarded the membership requirements and acted dishonestly and also failed to co-operate adequately with the Regulator.
44. The Committee then considered whether to reprimand Mr Biczel. The Guidance indicates that a reprimand would be appropriate in cases where the misconduct is of a minor nature, there appears to be no continuing risk to the public and there has been sufficient evidence of an individual's understanding, together with genuine insight into the conduct found proved. The Committee did not find those factors to be present in the current instance.
45. The Committee moved on to consider whether a severe reprimand would adequately reflect the seriousness of the case. The Guidance indicates that such a sanction would usually be applied in situations where the conduct is of a serious nature but where there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public and there is evidence of the individual's understanding and appreciation of the conduct found proved. The Committee considered none of these criteria to be met. In particular, it noted that the behaviour was long standing and intentional and there was a risk of financial harm and reputational harm arising from it. The behaviour was also repetitious with dishonesty being

found in a number of areas. Mr Biczel had also not co-operated with the investigation and has demonstrated no insight into his dishonest behaviour and has offered no apology. Overall, the conduct did not meet the Guidance for a severe reprimand.

46. The Committee went on to consider the Guidance relating to exclusion from membership. Mr Biczel's misconduct, which was sustained over a period of years, included as outlined a risk of financial harm to members of the public and reputational harm to the profession. These features, coupled with his failure to engage with ACCA, to demonstrate an understanding of the seriousness of his behaviour and to evidence any remedial actions was fundamentally incompatible with his continued membership. In all the circumstances the Committee considered exclusion to be the most appropriate and proportionate sanction.

COSTS AND REASON

47. ACCA applied for costs in the sum of £12,831.50. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing.
48. The Committee formed the view that much work had gone into investigating and preparing the case and that it was appropriate for a costs order to be made in favour of ACCA. The Committee however considered that a reduction to the amount sought was required in order to reflect the shorter amount of time ACCA's hearings officer was involved.
49. The Committee determined the appropriate order was that Mr Biczel pay £12,750.

EFFECTIVE DATE OF ORDER

50. The Committee decided that the order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Ms Ilana Tessler
Chair
18 January 2023