

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Myron Lipson
Heard on:	Friday, 27 January 2023
Location:	Remotely via Microsoft Teams
Chair:	HH Graham White
Legal Adviser:	Mr Robin Havard
Summary	Severe Reprimand Costs payable to ACCA £1,714

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, signed by Mr Lipson on 10 January 2023 and a signatory on behalf of ACCA on 18 January 2023, together with supporting documents in a bundle numbering pages 1 to 111.
3. When reaching his decision, the Chair had been referred by the Legal Adviser to the requirements of Regulation 8 of the Complaints and Disciplinary

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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".

4. The Chair understood that Mr Lipson was aware of the terms of the draft Consent Order and that it was being considered today.
5. The Chair also understood that Mr Lipson 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

Allegation 1

- (a) Between 1 April 2016 and 31 March 2018 being the sole director and shareholder of Company A drew dividends as set out in Schedule A below which as he should have known amounted to a breach of Section 830 of the Companies Act 2006.
- (b) By reason of the conduct at 1(a) above, Mr Lipson is guilty of misconduct pursuant to bye-law 8(a)(i).

Allegation 2

- (a) Between 25 April 2019 and 23 October 2020 as the holder of a Practising Certificate, failed to notify ACCA that Company A had been put into liquidation on 25 April 2019, pursuant to Global Practising Regulations 2003 ('GPR') 12(2)(b) being in force at the material time.
- (b) By reason of the conduct at 2(a) above, Mr Lipson is guilty of misconduct pursuant to bye-law 8(a)(i).

Allegation 3

- (a) Between 26 August 2020 and 8 June 2021 Mr Lipson, as the holder of a Practising Certificate, failed to notify ACCA that he ceased to be a director of Company B on 26 August 2020, pursuant to Global Practising Regulations 2003 ('GPR')12(2)(a) being in force at the material time.
- (b) By reason of the conduct at 3(a) above, Mr Lipson is guilty of misconduct pursuant to bye-law 8(a)(i).

Year-end	Amount of dividend
31 March 2017	£75 000
31 March 2018	£98 000

DECISION ON FACTS

- 6. The Chair noted that the following summary of the facts were agreed and therefore adopted them as his findings of fact.

Allegation 1

- 7. Mr Lipson was the sole director and shareholder of Company A ("the company") which was incorporated on 9 July 2015. The company was engaged in the processing of wages and payroll services on behalf of clients. On 25 April 2019 a liquidator was appointed to Company A. HMRC was the sole creditor at this date and was owed a net amount of £1,217,266.
- 8. The financial year for Company A ends on 31 March.
- 9. Company A's retained profits and dividends for the years/periods ended 31 March 2016, 2017, 2018 and 2019 amounted to £227,000.
- 10. On 1 March 2019 Mr Lipson stopped withdrawing funds from the company.
- 11. Mr Lipson withdrew £227,000 in dividends in the years 2016-2018.

12. According to Companies Act 2006 Section 830, dividends can only be paid out if there are available profits.
13. Furthermore, according to HMRC guidance, "a dividend is a payment a company can make to shareholders if it has made a profit".
14. In 2017 and 2018, the records showed that Company A had made profits of £75,000 and £98,000 respectively. Therefore, Company A had not made sufficient profits for the years 2017 and 2018 to enable them to pay the dividends withdrawn by Mr Lipson.
15. As a result, dividends had been withdrawn by Mr Lipson when the company had insufficient funds to pay them, which is in breach of Companies Act legislation and HMRC guidance.
16. Mr Lipson , however, paid no dividends for the 2019 financial year as he was aware that the company was at this point insolvent.
17. ACCA has not pursued an allegation based on drawing funds and dividends from the company whilst insolvent or trading whilst insolvent because the point at which a company becomes insolvent is not always clear. The date at which Mr Lipson contends he knew the company was insolvent was in the 2019 financial year and there is no evidence drawings from the company were made after this date.
18. Furthermore, no proceedings have been brought against Mr Lipson by the Insolvency Service or liquidator based on insolvent trading and/or that his conduct may render him unfit to be a director.

Allegation 2

19. On 25 April 2019 a liquidator was appointed to Company A.

20. As a holder of a practising certificate, Mr Lipson is obligated to report certain matters to ACCA that may be relevant to continued possession of such a certificate. Global Practising Regulations 12(2)(b) states:

"A holder of a practising certificate shall give written notice forthwith to the Association of the occurrence of any of the following, setting out in the notice details of the event in question and any other relevant information:

(a)...

(b) the appointment of a receiver, administrator, trustee, judicial factor or sequestrator of the assets of the holder (or the happening of any similar or analogous event) ... (emphasis added)

21. Mr Lipson first informed ACCA of the appointment when he notified them of his own bankruptcy on 23 October 2020.
22. On 9 August 2021 Mr Lipson informed ACCA that he had failed to inform ACCA that Company A had been put into liquidation on 25 April 2019 until 23 October 2020.

Allegation 3

23. On 26 August 2020 Mr Lipson resigned as director of Company B.
24. As a holder of a practising certificate, Mr Lipson is obligated to report certain matters to ACCA that may be relevant to continued possession of such a certificate. Global Practising Regulations 12(2)(a) states:

"A holder of a practising certificate shall give written notice forthwith to the Association of the occurrence of any of the following, setting out in the notice details of the event in question and any other relevant information:

(a) in the case of a... director of a firm, a person has become or ceased to be a... director of it...

25. Mr Lipson did not give written notice to ACCA that he had ceased to be a director of Company B. This was discovered by ACCA during the course of the investigation.
26. On 9 August 2021 Mr Lipson informed ACCA that he had failed to inform ACCA that he had ceased to be a director of Company B.

DECISION ON ALLEGATIONS AND REASONS

27. 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.
28. 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.
29. The Chair considered the bundle of evidence and, on the basis of the admissions of the allegations by Mr Lipson, found the facts of the allegations proved. He considered that the admitted facts and Mr Lipson'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

30. In deciding whether to approve the proposed sanction of a severe reprimand, and for Mr Lipson to pay ACCA's costs in the sum of £1,714, 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.

31. In reaching his decision, the Chair had noted, and found, the following aggravating features, as identified by ACCA:

- Serious failure to follow correct legal procedures;
- Withdrawal of substantial dividends led to a deterioration in the Company's already precarious financial position and ultimately the company being placed in liquidation;
- Length of time involved

32. In deciding that a severe reprimand was the most suitable sanction, paragraphs C4.1 to C4.5 of ACCA's Guidance have been considered and the following mitigating factors had been identified by ACCA:

- Mr Lipson has been a member of ACCA since 2002 and has a previous good record with no relevant complaint or disciplinary history;
- Mr Lipson has fully co-operated with the investigation and regulatory process;
- Mr Lipson has ultimately admitted his conduct;
- Mr Lipson has expressed regret over his actions.

33. [PRIVATE]

34. The Chair considered that both the aggravating and mitigating features identified by ACCA were supported by documentary evidence and were relevant.

35. 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 adequately reflect the seriousness of Mr Lipson's conduct. When considering the criteria set out in the Guidance, the Chair took into consideration the fact

that the errors identified could not be described as short-term and involved significant funds. However, the failures were rectified immediately, and Mr Lipson had shown appropriate insight and remorse for his conduct.

36. Therefore, the Chair concluded that it would be proportionate and sufficient to impose a severe reprimand to reflect the seriousness of the findings against Mr Lipson.
37. In all the circumstances, the Chair was satisfied that the sanction of a severe reprimand was appropriate, proportionate, and sufficient, and that exclusion would be a disproportionate outcome.

COSTS AND REASONS

38. ACCA was entitled to its costs in bringing these proceedings. The claim for costs in the sum of £1,714, which had been agreed by Mr Lipson, appeared appropriate.

ORDER

39. Accordingly, the Chair approved the terms of the attached Consent Order. In summary:
 - a. Mr Lipson shall be severely reprimanded; and
 - b. Mr Lipson shall pay costs of £1,714 to ACCA.

HH Graham White
Chair
27 January 2023