

HEARING

APPEAL COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Tendayi Goneso

Heard on: Friday, 23 June 2023

Location: Held remotely by video conference

Committee: Mr Andrew Papat, CBE (Chair)
Ms Victoria Smith (Lay)
Mr David Horne (Accountant)

Legal Adviser: Mr Andrew Granville Stafford

Persons present

and capacity: Mr Tendayi Goneso (Student Member)
Ms Michelle Terry (ACCA Case Presenter)
Ms Geraldine Murray (Hearings Officer)

Outcome: Appeal allowed. Findings on Allegations 1(b) and 1(c) rescinded. Case remitted to the Disciplinary Committee to be heard afresh.

INTRODUCTION AND PRELIMINARY MATTERS

1. The Appeal Committee of ACCA ('the Committee') convened to consider the ACCA's appeal against findings made by the Disciplinary Committee in the case of Mr Tendayi Goneso at a hearing on 24 February 2023. The Committee

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had before it a bundle of documents (112 pages) and a service bundle (15 pages).

ALLEGATIONS

2. The allegations considered by the Disciplinary Committee were as follows.

Mr Tendayi Goneso breached the Global Practising Regulations and Membership Regulations (2017 – 2022) by virtue of not holding a valid practising certificate with regards to any or all of the following:

1.
 - a. *From February 2017, held himself out as being in public practice as defined by Global Practising Regulation 4, by describing himself as an Accountant in his LinkedIn profile, contrary to Paragraph 8(2)(a)(ii) of the Membership Regulations (as applicable from 2017 to 2022)*
 - b. *From 06 September 2021, held himself out as a member of TD Accounting Services LLP where public practice was carried on in the name of the firm, contrary to Paragraph 8(2)(a)(iii) of the Membership Regulations (as applicable in 2021 to 2022)*
 - c. *From 06 September 2021, held rights in TD Accounting Services LLP where public practice was carried on in the name of the firm, which in effect put him in the position of principal of the firm, contrary to Paragraph 8(2)(a)(iv) of the Membership Regulations (as applicable in 2021 to 2022)*
2. *By reason of his conduct in respect of any or all of the matters set out at allegation 1 above, Mr Goneso is:*
 - a. *Guilty of misconduct pursuant to byelaw 8(a)(i); or in the alternative.*
 - b. *Liable to disciplinary action pursuant to byelaw 8(a)(iii).*

HEARING BEFORE THE DISCIPLINARY COMMITTEE

3. Mr Goneso was admitted as a student member of ACCA on 08 August 2019. The ACCA's case was, in summary, that he engaged in public practice when he did not hold a practising certificate. The background to the allegations is set out in the Disciplinary Committee's written reasons in the following terms.

3. *Following the receipt of a complaint in late February 2022, ACCA undertook an investigation into Mr Goneso's practice. The investigations revealed that he was appointed a designated member of TD Accounting Services LLP (TD Accounting) on the date of the organisation's incorporation on 06 September 2021, holding more than 50% of the voting rights. Mr Goneso's LinkedIn page stated that he was a "Senior Accountant" and had been an "Accountant" from "February 2017 – Present".*
4. *Mr Goneso is a registered ACCA student and does not hold, nor has he ever held, an ACCA Practising Certificate. On this basis, ACCA allege that his activities with TD Accounting and the information he displayed on LinkedIn amounted to a breach of the Global Practising Regulations and Membership Regulations (2017 – 2022). The Regulations restrict ACCA students from being or holding themselves out to be in public practice or a limited liability partnership where public practice is carried on.*
5. *In written submissions Mr Goneso admitted to being a designated member of TD Accounting and that the organisation is a public practice entity. He went on to add however that in all his engagements in public practice he had not affiliated himself with ACCA and had only described himself as a member of the Association of Accounting Technicians (AAT); a body from whom he had obtained a license to practise.'*
4. At the hearing, ACCA's case presenter made an application to amend the allegations. She applied to amend the phrase 'valid practising certificate' to 'valid ACCA practising certificate'. After hearing submissions from both parties, the Disciplinary Committee refused the application. It considered that the effect of the proposed change would be significant and that it was unfair to allow it at that stage of the proceedings. There is no appeal against that decision.
5. The Disciplinary Committee went on to consider the evidence and submissions of the parties and to make its findings on the allegations. It found allegations 1(a), 1(b) and 1(c) not proved. In those circumstances, allegation 2 was not engaged. It gave the following reasons for its decision.

'10. *Before determining the facts of the individual allegations, the Committee first considered how the term "practising certificate" should be defined. It*

formed the view that it was a general term that could include reference to a licence to practice from another regulated body such as the AAT. The Committee also took note of the wording of paragraph 3.1(a) of ACCA's *Global Practising Regulations 2003* which states the following: "No member shall carry on public practice in a designated territory or in a country or jurisdiction that, according to local legislative and/or regulatory requirements, requires a practicing [sic] certificate issued by the Association, unless the member holds a practising certificate which authorises the carrying on of the activity in question." In the Committee's view the final sentence of paragraph 3.1 added weight to an interpretation that reference to practising certificate was not restricted to an ACCA practising certificate.

Allegation 1 (a) – Not proved

11. *The Committee went on to consider the facts of allegation 1(a). It was noted that in the screenshot of Mr Goneso's LinkedIn profile, that he was described as being in employment and holding the role of senior accountant. The Committee did not find such a description to amount to Mr Goneso holding himself out as being in public practice. The word "Accountant" is not a protected term and does not in itself imply that public practice is being undertaken. In the absence of other evidence to suggest that public practice was being undertaken, the Committee found the allegation not proved.*

Allegation 1 (b) – Not proved

12. *In his oral evidence Mr Goneso stated that he had resigned from his paid employment in July 2021. On 06 September 2021 he set up TD accounting but did not carry out any public practice until he obtained a licence to practice from AAT in December 2021. No evidence was adduced by ACCA to undermine Mr Goneso's assertions in this regard. Furthermore, the Committee had been provided with a copy of a certificate issued to Mr Goneso from AAT which showed that he was licensed to engage in public practice by them from 09 December 2021. Overall, the Committee found there was no evidence to substantiate the allegation and therefore found it not proved.*

Allegation 1 (c) – Not proved

13. *For the reasons outlined in respect of allegation 1(b), the Committee was satisfied that Mr Goneso had not carried out any public practice between 06 September 2021 and 09 December 2021 (the point at which he obtained a licence from AAT). It follows therefore that this allegation was found not proved.'*

PERMISSION TO APPEAL

6. By written notice dated 16 March 2023, ACCA applied for permission to appeal the findings made by the Disciplinary Committee in respect of Allegation 1(b), 1(c) and 2. The application was made under Appeal Regulation ('AR') 5(5) which states:

'An appeal by the Association against a finding or order made by the Disciplinary Committee . . . may be upheld only upon the ground that the decision was one that no Committee acting reasonably would have made.'

7. The application for permission to appeal was granted by the Chair, HH Suzan Matthews KC, on 24 April 2023. The Chair was satisfied, in accordance with AR 6(2), that there was a clear public interest in the findings of the Disciplinary Committee being reviewed and that the appeal had a real prospect of success.

DECISION AND REASONS

8. The Committee considered all the documents before it, the submissions of both parties and the advice of the Legal Adviser, which it accepted. The Committee bore in mind that, pursuant to AR 10(2), the burden was on ACCA as the appellant to satisfy it that the grounds of appeal were made out.
9. There is only one ground on which ACCA can bring an appeal, namely that the finding in question was a decision that no Disciplinary Committee acting reasonably could have made. The Committee therefore considered, in respect of the findings made by the Disciplinary Committee, whether a reasonable Committee could have come to the same conclusion.
10. There was no appeal against the finding on Allegation 1(a).
11. The Committee considered the finding made by the Disciplinary Committee on Allegation 1(b). It was not in dispute that Mr Goneso was at all relevant times a student member of ACCA and therefore, by virtue of Regulation 8(2)(a)(iii) of

the Membership Regulations ('MR'), he could not be a member of a LLP where public practice was carried out. Further, it was not in dispute that, from 06 September 2021, he was a member of a LLP, having incorporated TD Accounting Services LLP.

12. The Disciplinary Committee found as a fact, in respect of Allegation 1(b), that Mr Goneso did not carry out any public practice until he obtained a licence to practice from AAT in December 2021. On that basis, it found Allegation 1(b) not proved. That finding, in the Committee's view, overlooked the definition of public practice in GPR 4(1)(c). That states that a member or a firm holds itself out to be in public practice by:

'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.'

13. It is clearly arguable that use of the title 'TD Accounting Services LLP' was a designation similar to those cited in GPR 4(1)(c). The Disciplinary Committee therefore should have considered whether Mr Goneso's membership of an LLP using that name amounted to engaging in public practice for the purposes of GPR 4. It did not do so, and the Committee accordingly agreed with ACCA that it had adopted too narrow a definition of public practice. In the circumstances, the Committee was satisfied that the Disciplinary Committee had reached a decision on Allegation 1(b) that no reasonable Committee would have made.
14. In relation to Allegation 1(c), it was not in dispute that Mr Goneso held rights in TD Accounting Services LLP during the relevant period. The Disciplinary Committee found this allegation not proved on the same basis it found Allegation 1(b) not proved. However, in the Committee's view, the Disciplinary Committee again fell into error by not considering the full definition of public practice, and in particular whether the designation of the firm engaged the definition. Therefore, for the same reasons as set out above, the Committee was satisfied that the Disciplinary Committee reached a decision on Allegation 1(c) that no reasonable Committee could have reached.
15. Therefore, pursuant to AR 11(2), the Committee rescinds the findings made by the Disciplinary Committee on allegations 1(b) and 1(c). The appeal is accordingly allowed.

16. Ms Terry on behalf of ACCA submitted that the appropriate course, pursuant to AR 11(2)(d), was to remit this matter to be considered afresh by a differently constituted Disciplinary Committee. The Committee agreed.
17. As the Disciplinary Committee did not consider Allegation 2 at all, there is no finding in respect of this allegation which requires rescinding. This will simply be considered by the new Disciplinary Committee when it reconsiders Allegations 1(b) and 1(c).

Mr Andrew Popat CBE
Chair
23 June 2023