

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Samuel Ike Nwalema

Considered on: Wednesday, 15 March 2023

Location: Remotely conducted via Microsoft teams

Chair: Mrs Wendy Yeadon

Legal Adviser: Mrs Fiona Barnett

**People present
and capacity:** Miss Geraldine Murray, ACCA Hearings Officer

OUTCOME: CONSENT ORDER APPROVED

BACKGROUND

1. Mr Nwalema's case comes before the Chair by virtue of a draft Consent Order that has been reached in this case between ACCA and Mr Nwalema. The Agreement sets out Mr Nwalema's full admissions to the facts of the charges and his acceptance that he is thereby guilty of misconduct.
2. It is further stated in the draft Consent Order that an appropriate sanction in this case would be a Severe Reprimand.
3. The draft Consent Order was signed by Mr Nwalema on 26 February 2023 and signed on 03 March 2023 on behalf of ACCA. Neither ACCA nor Mr Nwalema have subsequently withdrawn their agreement to the draft Consent Order.
4. The Agreement between ACCA and Mr Nwalema, including ACCA's position on sanction, costs, and publicity, is set out in full below in the draft Consent Order, ending at paragraph 11.

Mr Samuel Ike Nwalema

-and-

THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

Referral to Consent Orders Chair

Consent Order: Draft Agreement

The Association of Chartered Certified Accountants ("ACCA") and
Mr Samuel Ike Nwalema ("the Parties"), agree as follows:

1. Mr Samuel Ike Nwalema admits the following:

Allegation 1

Mr Samuel Ike Nwalema, an ACCA member:

- a) Between February 1996 and June 1998, whilst an ACCA affiliate, was carrying on in public practice activities, contrary to Membership Regulations 8(2)(a) (as applicable in 1996-1998);
- b) Between June 1998 and December 2022, while a member, was a sole proprietor carrying on public practice contrary to Regulations 3(1)(a) and 3(2)(a) of the Global Practising Regulations (as applicable in 1996 - 2022) without holding an ACCA practising certificate.

Allegation 2

On the following dates, Mr Nwalema completed his annual Continuous Professional Development ("CPD") returns, declaring that he had not engaged in public practice activities without holding an ACCA practising certificate ("the Declaration"):

- i. 18 March 2021 (2020 CPD return);
- ii. 08 August 2019 (2018 CPD return);

His conduct at Allegations 2(a)(i)-(ii) above, was reckless in that he failed to have any or sufficient regard to, the terms of the Declaration he gave, when he wrongly confirmed he had not carried on public practice activities without holding a practising certificate (as per Global Practising Regulations 23 and 4), or otherwise acknowledged he required a practising certificate if he engaged in public practice.

Allegation 3

Between June 2017 and December 2022, Mr Nwalema engaged in providing accountancy services but failed to register with a supervisory authority for anti-money laundering purposes.

Allegation 4

By reason of his conduct above set out at allegations 1 to 3 above, Mr Nwalema is guilty of misconduct pursuant to byelaw 8(a)(i).

2. That Mr Nwalema shall be severely reprimanded pay a fine of £1708 and pay costs to ACCA in the sum of £1,710.

Signed
Mr Samuel Ike Nwalema

Dated 26 February 2023

Signed
(For and on behalf of ACCA)

Dated 03 March 2023

If the Consent Orders Chair is satisfied it is appropriate to deal with the complaint by way of Consent Order and the signed draft Consent Order is approved, it constitutes a formal finding and order. The Consent Orders Chair has the power to recommend amendments to the signed draft Consent Order and to subsequently approve any amended order agreed by the Parties.

Publicity

All findings and orders of the Consent Orders Chair shall be published naming the relevant person, as soon as practicable, and in such manner as ACCA thinks fit.

Relevant Facts, Failings and/or Breaches

1. The Investigating Officer has conducted their investigation into the allegations against Mr Nwalema in accordance with Regulation 8(1)(a) of the Complaints and Disciplinary Regulations (CDR) and is satisfied that:
 - they have conducted the appropriate level of investigation as evidenced by the enclosed evidence bundle and determined that there is a case to answer against Mr Nwalema and there is a real prospect of a reasonable tribunal finding the allegations proved;
 - the proposed allegations would be unlikely to result in exclusion from membership.
2. The relevant facts, failings and/or breaches have been agreed between the parties and are set out in the detailed allegations above together with the proposed sanction and costs.
3. A summary of key facts is set out below:
 - On 15 June 1998, Mr Nwalema became a Member of ACCA (pages 9-11).
 - On 05 August 2021, Person A raised a complaint against Mr Nwalema as it appeared that he was carrying on public practice activities whilst not holding an ACCA practising certificate (pages 12-22).
 - The complaint was put to Mr Nwalema by ACCA and he responded to the complaint (pages 23-45).
 - In his responses he stated that;

- i. He was unaware that he was in breach of ACCA's regulations;
 - ii. He is the sole proprietor of Sterling & Co.;
 - iii. He has been using this name since 1996;
 - iv. He only provided Income and Expenditure statement, Self - Employment Returns to friends and family;
 - v. He has ceased providing these services for anybody and is in the process of informing HMRC;
 - vi. He was never supervised for AML;
 - vii. He did not hold any professional indemnity insurance;
 - viii. He was not up to date with his CPD declarations;
 - ix. He was not aware that he needed a public practice certificate to do the services that he provided to friends or family and stated that this was an oversight or lack of knowledge as to the meaning of public practice. He had not intended to submit a false or inaccurate declarations;
 - x. He provided ACCA with an undertaking not to provide any services that fell within the remit of public practise;
 - xi. He is currently working in the construction industry.
4. On 10 January 2023 ACCA proposed that the matter be disposed of via Consent Order (pages 49-51).
 5. On 22 January 2023 Mr Nwalema provided a response confirming that he agreed for the matter to be disposed of via consent (page 52).

Sanction

6. The appropriate sanction is **severe reprimand** and pay a fine of £1708 Mr Nwalema to pay ACCA's costs in the sum of £1,710.
7. In considering this to be the most appropriate sanction, ACCA's Guidance for Disciplinary Sanctions ("the GDS") has been considered and particularly the key principles. In addition, consideration has also been given to Mr Nwalema's means in determining the appropriate level of the fine. One of the key principles is that of the public interest, which includes the following:
 - Protection of members of the public;
 - Maintenance of public confidence in the profession and in ACCA; and
 - Declaring and upholding proper standards of conduct and performance.
8. Another key principle is that of proportionality, that is, balancing the member's own interests against the public interest. Further the aggravating and mitigating features of the case have been considered.
9. The **aggravating factors** are considered to be as follows:
 - Mr Nwalema's conduct fell below the standards expected of a qualified ACCA member and brought discredit upon himself, ACCA and the accountancy profession.
 - The length of time that Mr Nwalema has undertaken public practice without holding an ACCA practising certificate or AML supervision;
 - The incorrectly signed annual CPD declarations submitted by Mr Nwalema to ACCA.
10. In deciding that a severe reprimand is the most suitable sanction paragraphs C4.1 to C4.5 of ACCA's Guidance have been considered and the following **mitigating factors** have been noted:

- Mr Nwalema has been an ACCA member in continuous good standing since 1998;
 - Mr Nwalema has no previous complaint or disciplinary history;
 - Mr Nwalema's conduct was an error of judgement and was quickly rectified when notified. ACCA considers that the conduct was a one off and is unlikely to be repeated;
 - Mr Nwalema has demonstrated insight;
 - Mr Nwalema has co-operated with the investigation;
 - There is no evidence of harm;
 - ACCA does not consider that the conduct reaches the threshold for dishonesty.
11. ACCA has considered the other available sanctions and is of the view that they are not appropriate. ACCA considers that a severe reprimand and a fine proportionately reflects Mr Nwalema's conduct and the public policy considerations which ACCA must consider in deciding on the appropriate sanction. This is a public interest sanction due to the misconduct bringing discredit to ACCA and the profession; and it conveys a message of the importance of fundamental standards of professional conduct.

CHAIR'S DECISION

5. In reaching their decision, the Chair had regard to the bundle of documents provided, which numbered 58 pages and the draft Consent Order set out above. They also had regard to ACCA's Consent Orders Guidance, dated January 2021.
6. The Chair accepted the advice of the Legal Adviser.

7. They bore in mind that, notwithstanding the parties having reached agreement on the above draft Consent Order, the final decision on whether the matter is appropriate to be dealt with by way of Consent Order is a matter for the Chair to decide. They have the power to approve, reject or propose amendments to the draft Consent Order.
8. The Chair first considered whether it is appropriate to deal with the case by way of a Consent Order in accordance with Regulation 8(1) of Complaints and Disciplinary Regulations 2014, (amended 1 January 2020). They were satisfied that it is appropriate to deal with this matter by way of Consent Order. The matter has been investigated by ACCA's Investigation Officer, who concluded that there was a case to answer and a real prospect of a reasonable tribunal finding the matters alleged proved. The Investigation Officer was also satisfied, (and the Chair agrees), that the matters are unlikely to result in the exclusion of Mr Nwalema as a member of ACCA.
9. The Chair next considered whether to approve the draft Consent Order. They considered the evidence and the facts of the case, as set out in the bundle of documents and the draft Consent Order. They were satisfied that Mr Nwalema admits the allegations. Further, the Chair agrees that his actions, in
 - carrying out public practice activities without a Practising Certificate,
 - submitting inaccurate CPD returns to ACCA, and,
 - providing accountancy services and failing to register with a supervisory authority for anti-money laundering purposes,fell seriously below the standards expected of a member of ACCA. The Chair agrees that this is sufficiently serious to amount to misconduct.
10. They also had regard to ACCA's Guidance for Disciplinary Sanctions, (January 2020), and the aggravating and mitigating factors set out in the draft Consent Order. They considered the sanctions in order starting with the least serious. They agree with the aggravating and mitigating factors outlined in the draft order and agree that a Severe Reprimand and a fine of £1708, is an appropriate and proportionate sanction to protect the public, maintain

confidence in the profession and to declare and uphold proper standards of conduct. The Chair is satisfied that taking no action or imposing an Admonishment or Reprimand would be insufficient to uphold the public interest.

11. The Chair therefore accepts the content of the draft Consent Order in its entirety and approves the draft Consent Order.

COSTS

12. ACCA is entitled to claim costs. The Chair agrees with the proposal that Mr Nwalema should pay £1710 to ACCA in costs.
13. Accordingly, the Chair approves the draft Consent Order, including the ancillary orders in relation to costs and publicity.

Mrs Wendy Yeadon
Chair
15 March 2023