

HEARING

ADMISSION AND LICENSING COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Jacob Rakban

Heard on: Monday, 08 January 2024

Location: Remotely by Microsoft Teams

Committee: Mr Martin Winter (Chair)
Mr George Wood (Accountant)
Ms Samantha Lipkowska (Lay)

Legal Adviser: Ms Margaret Obi

Persons present

and Capacity: Ms Elaine Skittrell (ACCA Case Presenter)
Miss Mary Okunowo (Hearings Officer)
Mr Jacob Rakban (was present but was not represented)

Outcome: Application for admission refused.

INTRODUCTION

1. The Admission and Licensing (“the Committee”) convened to consider Mr Rakban’s application for admission to the student register. The hearing was conducted remotely via Microsoft Teams. The Committee was provided with a hearing bundle with pages numbered 1-148, and a service bundle numbered 1-15.

2. Ms Skittrell presented the case on behalf of ACCA.

PRELIMINARY MATTERS

3. There was no response to the Notice of Hearing from Mr Rakban; nor any response following service of the documentation and password. The Committee was provided with a telephone attendance note which recorded that on 05 January 2023, a Hearings Officer had attempted to speak to Mr Rakban. It was recorded that the phone rang out before it disconnected and there was no opportunity to leave a voice message. The Committee also noted that ACCA sent an email to Mr Rakban, on the same date (05 January 2023), in which he was invited to confirm whether he would be attending the hearing but there was no response.
4. Prior to the commencement of the hearing Mr Rakban had not accessed the link. Therefore, the Chair directed the Hearings Officer to make another attempt to contact Mr Rakban by telephone. The Committee was subsequently informed that the phone had been answered by Mr Rakban's mother. She provided an alternative number for Mr Rakban. The Hearings Officer spoke to Mr Rakban and shortly afterwards he joined the hearing link.
5. Mr Rakban confirmed that he had originally provided ACCA with his mother's mobile number and has since changed the email address that he initially provided. Arrangements were then made for Mr Rakban to be sent a copy of the hearing bundle.
6. The Chair invited Mr Rakban to confirm whether he wished to apply for an adjournment. However, Mr Rakban declined the offer. He stated that he was content for the hearing to proceed. The hearing was postponed until the afternoon for reasons unconnected with Mr Rakban, but he was encouraged by the Chair to use the time to familiarise himself with the hearing bundle (which included his application and documents he had submitted) and consider the submissions he would like to make.

BACKGROUND

7. Mr Rakban first applied to join ACCA's student register on 20 November 2022.

8. Previously, on 26 October 2017, in the Magistrates Court Malta, Mr Rakban was found guilty and admitted the following offences he committed in June 2016:
- *“theft of a gold necklace...aggravated by violence against a 66-year-old woman”* - on 13 June 2016.
 - *‘caused light injuries to the same person...’* - on 13 June 2016.
 - *‘simple theft of a gold necklace from an 83-year-old woman’* - on 11 June 2016.
 - *‘theft of a gold necklace from a 66-year old woman... aggravated by a value not exceeding not exceeding €2329.37’* - on 16 June 2016.
 - *‘simple theft of a gold necklace from a 62-year old woman’* - on 03 June 2016.
 - *‘is accused of being a recidivist under Art 49 and 50 of the Laws of Malta, Chapter 9, with definitive sentences issued by the Courts of Malta’*
9. Mr Rakban was given an *“Order for probation for a period of three years”* effective from the date of issue. Notably, Mr Rakban was warned *“of the consequences under law if [he committed] another offence during this probation period or if [he] failed to comply with any of the conditions specified in the Probation Order...”*.
10. Furthermore, on 24 November 2017, in the Magistrates Court Malta, Mr Rakban pleaded guilty to four offences that took place on 22 November 2017. Namely, *“the intention to commit theft”* of two vehicles, which if carried out, for one the offences, would be *‘theft aggravated by means of the amount exceeding €2,329.37.’* On the same date, Mr Rakban *“intentionally/voluntarily caused damage to or destroyed someone else’s movable or immovable property”* on two occasions. Mr Rakban was sentenced to *“one year of imprisonment at the [PRIVATE],”* and was subject to a *[PRIVATE]* and *[PRIVATE]*.
11. In January 2018, on application by the Attorney General to appeal/reform the Probation Order imposed by the first court in October 2017, the Court of Criminal Appeal reformed the penalty imprisoning Mr Rakban for a period of eight years. The aforementioned offences committed by Mr Rakban in November 2017, along with a *‘serious complaint’* about Mr Rakban’s *[PRIVATE]* and suitability

under a Probation Order filed by his Probation Officer, [PRIVATE] were factors taken into consideration when imposing this sentence.

12. In November 2022 Mr Rakban submitted an application for admission to ACCA's student register.
13. In January 2023 ACCA wrote to Mr Rakban informing him that ACCA were unable to consider his application due to his incarceration at the relevant time.
14. Mr Rakban was released early, from [PRIVATE], where he was serving his prison sentence. In his application he states, '*I have been out on parole since March 2023*'. In April 2023, Mr Rakban contacted ACCA, via email, requesting reconsideration of his readmission application. Mr Rakban was advised to complete and resubmit his application using the correct form.
15. On 23 August 2023, Mr Rakban submitted a further application for admission to ACCA's student register.

MR RAKBAN'S APPLICATION

16. Mr Rakban, in his most recent written application for admission ("the application form/the application") under the heading "*Further Information*" was asked, "*to detail the underlying facts and surrounding circumstance of the matter which you have disclosed*". He did not provide a factual account nor any specific details regarding the offences for which he was convicted. He stated:

"I served my sentence at [PRIVATE], and I have been out on parole since March 2023. I am attending [PRIVATE], Malta for the ACCA Course...I am also working full time as a Junior Audit Assistant..."

17. Mr Rakban went on to confirm, in the application form, that he '*pled guilty to the charges of theft related [PRIVATE]*'.
18. Under the section of the form which poses the question: "*In relation to the matter disclosed, what was your attitude at the time and now?*", Mr Rakban stated:

“...I am committed to my studies and [PRIVATE]. I now have a different moral compass compared to what I had in the past where I was wasting my life. Now I embrace every minute of it and I am working towards a better future”.

19. Under the section of the application form which asks “*why, do you consider that, given similar circumstances and events in the future, you will not commit a similar offence or offences?*”, Mr Rakban stated:

“In the past [PRIVATE] controlled my life and my judgement. I plead guilty and my sentence provided me with the time to reflect and heal. During my incarceration I was given the opportunity to further my education... I also successfully completed a [PRIVATE]...instilling in me the determination to never do the same or similar mistakes again given any type of circumstances. I have learnt my lesson the hard way, but I do not regret it because it led me to where I am now...”.

20. In response to the section of the form which invited Mr Rakban to explain why he should be admitted to ACCA membership, he stated:

“I was always good with numbers and loved the field of accounting since childhood...Since I started the ACCA course, I fell in love even more I believe I have the drive and determination to succeed... My tutors at [PRIVATE] as well as my employer believe in my potential and support my abilities...Despite my past, I believe I deserve a chance to follow my dream and become a registered ACCA student...I am ready to work hard to achieve my goals and prove ...that it is possible to turn your life around, paving the way for my future in becoming a highly competent member of society”.

MR RAKBAN'S CIRCUMSTANCES

21. Mr Rakban is currently employed by Company A as a Junior Audit Assistant. He has been in their employment since April 2023.
22. Person A, on behalf of Company A, provided an employment reference in support of Mr Rakban's application. They confirmed that they are aware of “all the events leading to [Mr Rakban's] conviction’ and describes Mr Rakban as punctual, smart and eager to learn. Person A expresses that they hope “Jacob

- will continue this journey with [Company A]...paving the way for him to eventually become a professional accountant”.*
23. Mr Rakban’s Probation Officer - Person B, also provided a reference. Person B confirms that Mr Rakban’s parole license was issued on 17 March 2023, and states that he *“has been adhering to the parole conditions set out by the Parole Board.”* In their reference, they highlight Mr Rakban’s *“increased self-awareness”* and *“consistent effort in addressing the aspects that facilitated his past involvement in deviant behaviour”*.
24. Person C, Head of Prison Inmates Programme, at [PRIVATE], confirms that Mr Rakban was under their care within the programme between 26 October 2021 to 13 September 2022. Person C comments on Mr Rakban’s determination to succeed and states *“I have no hesitation in recommending Mr Rakban in achieving his Accountancy degree and wish him every success and happiness in the future”*.
25. On 28 September 2023, Mr Rakban provided ACCA with a copy of his Parole Agreement (‘the Agreement’) dated 16 March 2023. The Agreement requires Mr Rakban’s adherence to 7 minimum conditions whilst on parole including the following:
- “6. Special Provisions: The 'Parolee' will be given [PRIVATE], as directed by the Parole Officer. Apart from that, the 'Parolee' is to pay a total of fifty euro to the victims in this case. He is also to keep in contact with [PRIVATE].*
- 7. Your Parole Expiry Date is: July 25, 2026... This parole license is granted to yourself, and is accepted, by you, subject to the following conditions, and with the knowledge that the Parole Board has the power to, at any time, in case of violation of any parole case, cause your return to prison.”*

ACCA’S POSITION AND RESPONSE

26. On 16 October, ACCA sent an email to Mr Rakban informing him that ACCA *“will be opposing your application on the basis that you remain subject to your parole conditions until July 2026. It is our view that your application has been submitted prematurely and it is too early to assess whether you are suitable for admission*

to the student register until your sentence and/or parole conditions has been completed without recall”.

27. Considering ACCA's position, Mr Rakban was given the option to withdraw or proceed with his current application. Mr Rakban was advised that should he wish to proceed, his application would be referred to the Admissions and Licensing Committee for the Committee's consideration and decision.
28. On 18 October 2023, Mr Rakban responded requesting that ACCA proceed with his application.

MR RAKBAN'S SUBMISSIONS

29. Mr Rakban informed the Committee that he is no longer a student at [PRIVATE]. He stated that the application process has taken a long time and so he is pursuing an alternative route. He explained that in October 2023 he embarked on a Bachelor of Commerce degree in Business (including Accountancy and Management) at the [PRIVATE]. He stated that once he has completed his degree he intends to undertake a 2 year master's degree which will enable him to qualify as an accountant in Malta.
30. In response to questions from Ms Skittrell, Mr Rakban accepted that he has two sets of convictions; one set relates to the thefts from older women in June 2016 and the other to attempted thefts from vehicles in November 2017. He stated that he re-offended [PRIVATE] at the time and [PRIVATE]. He stated that he was “[PRIVATE]” but acknowledged that [PRIVATE]. He informed the Committee that he received a 1-year prison sentence for the 2017 offences and during that year his 3-year probation order for the 2016 matters was overturned on appeal and he was made subject to an 8-year term of imprisonment.
31. Mr Rakban stated that [PRIVATE] and is now a “role model”. He stated that he is not a risk to society and is only asking that he be given the opportunity to sit ACCA exams.

ACCA SUBMISSIONS

32. Ms Skittrell, on behalf of ACCA, referred the Committee to relevant caselaw with regards to general principles regarding the completion of sentences and the need to protect the reputation of the profession. She submitted that Mr Rakban's application is premature as he has not yet completed his sentence and has not demonstrated that he has been sufficiently rehabilitated.
33. Ms Skittrell invited the Committee to conclude that Mr Rakban has not discharged the burden upon him to satisfy the Committee that he should be admitted to the register as a student member.

DECISIONS AND REASONS

34. The Committee took into account the following documents:
 - Mr Rakban's applications for admission;
 - Mr Rakban's Criminal Record;
 - Copies of the sentencing reports;
 - Copy of Mr Rakban's parole agreement
 - Various personal and professional references
35. The Committee also took into account oral submissions of both parties and the advice of the Legal Adviser. The Committee was mindful that the burden is on Mr Rakban to establish that he meets the eligibility requirements for student membership in accordance with regulation 9 of the Membership Regulations, which requires an individual to *"[satisfy]...the Admissions and Licensing Committee as to [their] general character and suitability"*.
36. The Committee noted that Mr Rakban was convicted of several counts of theft, aggravated by violence between 2016-2017. The Committee also acknowledged that Mr Rakban's offending behaviour occurred more than 6 years ago and he spent approximately 7 years in prison until his early release on parole in March 2023. The Committee was impressed by Mr Rakban's motivation, his constructive approach [PRIVATE], and his positive attitude, as evidenced by his compliance with his parole conditions and the efforts he has made to pursue academic qualifications which will enable him to qualify as an accountant. The Committee found Mr Rakban to be sincere, open, and

transparent. There was clear evidence before the Committee that his offending behaviour occurred [PRIVATE]. His criminal convictions, although not isolated incidents, were directly related to a specific set of circumstances which he is working hard to overcome.

37. Mr Rakban acknowledges and accepts that his offending behaviour was serious and wholly unacceptable. He pleaded guilty to the criminal offences and has taken the opportunity to make changes to his life. The Committee concluded that he has done everything that could be reasonably asked of him. He has demonstrated sufficient insight into the circumstances that led to his convictions and has taken advantage of the opportunities to remediate his past conduct and learn from the experience. Furthermore, the Committee were satisfied that Mr Rakban has expressed genuine remorse and regret.
38. However, Mr Rakban is currently on parole and is subject to conditions which will continue to apply until July 2026. The Committee noted that in Council for the Regulation of Health Care Professionals v GDC and Fleischmann [2005] EWHC 87 Admin Mr Justice Newman stated:

“...as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.”

The Committee noted that the “Fleischmann Principle” was endorsed in Jideofe v The Law Society Court of Appeal (civil) [2007] WLR 511 6865 where it was stated that the same standards apply to both pre-admission and post-admission. It was stated that even though there may be subtly different considerations with regard to those that are fully qualified and those applying for registration it would be irrational for different standards to apply.

39. In these circumstances, the Committee concluded that notwithstanding the efforts Mr Rakban has made to ensure that [PRIVATE] and offending behaviour are firmly in the past, he has not yet completed his sentence. His sentence will not be completed for another 30 months. The Committee noted that the public are entitled to expect that those subject to parole for serious offences will not be admitted to the ACCA register save in exceptional circumstances. Although the Committee acknowledged the significant progress that Mr Rakban has made, it concluded that the steps he has taken cannot properly be characterised as exceptional circumstances, in that, the very purpose of parole is to provide prisoners with a structured, supported, and supervised transition so that they can adjust from prison back into the community. To Mr Rakban's credit he is on track to make a successful transition but that process has not yet been completed. Whilst he remains subject to parole conditions admission to ACCA's student register would undermine rather than uphold trust and confidence in the profession.

40. For these reasons, the application for admission is refused.

ORDER

41. The Committee made the following order:

- Mr Rakban's application for admission to ACCA student membership is refused.

Mr Martin Winter
Chair
08 January 2024