

## HEARING

**DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF  
CHARTERED CERTIFIED ACCOUNTANTS****REASONS FOR DECISION**

<b>In the matter of:</b>	<b>Mr Sylvester Fredrick Kavalo</b>
<b>Heard on:</b>	<b>Friday, 07 June 2024</b>
<b>Location:</b>	<b>Remotely by Microsoft Teams</b>
<b>Committee:</b>	<b>Ms Ilana Tessler (Chair) Dr Beth Picton (Accountant) Ms Alison Sansome (Lay)</b>
<b>Legal Adviser:</b>	<b>Ms Helen Gower (Legal Adviser)</b>
<b>Persons present and Capacity:</b>	<b>Ms Michelle Terry (ACCA Case Presenter) Miss Mary Okunowo (Hearings Officer)</b>
<b>Observers:</b>	<b>Ms Chloe Hudson (Legal Adviser)</b>
<b>Summary:</b>	<b>Allegations 1 and 2 proved. Misconduct found proved. Excluded from membership of ACCA with immediate effect.</b>
<b>Costs:</b>	<b>£5,500</b>

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## ACCA



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1. The Disciplinary Committee (“the Committee”) convened to consider Allegations against Mr Kavalo. Mr Kavalo did not participate in the hearing and he was not represented.
2. The Committee had before it the following papers: DC Report and Bundle (numbering 1- 147 pages), a Service bundle (numbering 1-15 pages), a Schedule of Pseudonymisation, and a two-page Memorandum and Agenda.
3. The Committee considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“CDR”). The Committee took into account the submissions made by Ms Terry and also took into account the advice of the Legal Adviser.
4. Included within the Service bundle was the Notice of Hearing dated 10 May 2024, thereby satisfying the 28-day notice requirement, which had been sent to Mr Kavalo’s email address as it appears in the ACCA Register. The Notice included the time, date, and remote venue for the hearing and also Mr Kavalo’s right to attend the hearing and to be represented, if he so wished. In addition, the Notice provided details about applying for an adjournment and the Committee’s power to proceed in Mr Kavalo’s absence, if considered appropriate. There was a receipt confirming the email had been delivered to Mr Kavalo’s registered email address.
5. The Committee was satisfied that Notice of the hearing had been served in accordance with the Regulations, which require ACCA to prove that the documents were sent, not that they were received.

#### **PROCEEDING IN ABSENCE**

6. The Committee heard submissions from Ms Terry inviting the Committee to proceed in Mr Kavalo’s absence. She referred the Committee to an e-mail dated 10 May 2024 from Mr Kavalo in which he stated that he would not attend the meeting because he is a member of another accountancy body and does not use his ACCA qualification.

7. The Committee accepted the advice of the Legal Adviser. It bore in mind that although it had a discretion to proceed in the absence of Mr Kavalo, it should exercise that discretion with the utmost care and caution.
8. The Committee was of the view that Mr Kavalo faced serious allegations and that there was a clear public interest in the matter being dealt with expeditiously. The Committee considered an adjournment would serve no useful purpose because it was unlikely that Mr Kavalo would attend on any other occasion, and he had not applied for an adjournment.
9. In light of Mr Kavalo's e-mail dated 10 May 2024, the Committee concluded that Mr Kavalo had voluntarily absented himself from the hearing. In all the circumstances, the Committee decided that it was in the interests of justice and in the public interest that the matter should proceed. No inference would be drawn from Mr Kavalo's non-attendance.

## **ALLEGATIONS**

The Committee convened to consider the following allegations:

ACCA member, Mr Sylvester Fredrick Kavalo (Mr Kavalo):

- 1) Between 19 April 2020 to 09 January 2023, Mr Kavalo breached the Global Practising Regulations (GPR) by virtue of not holding a valid (or ACCA) practising certificate with regards any or all of the following:
  - a) From 19 April 2020 to 12 April 2021, he was Director of Firm A which carried out public practice contrary to Paragraph 3(2)(a) of the Global Practice Regulations;
  - b) From 08 October 2020 to 12 April 2021, he held rights, which in effect put him in the position of a principal, namely 50% shares, in Firm A which carried out public practice contrary to Paragraph 3(2)(b) of the Global Practice Regulations;

- c) From 01 August 2021 to 09 January 2023, he was Director of Firm B which carried out public practice contrary to Paragraph 3(2)(a) of the Global Practice Regulations;
  - d) From 01 August 2021 to 09 January, he held rights, which in effect put in in the position of a principal, namely 100% shares, in Firm B which carried out public practice contrary to Paragraph 3(2)(b) of the Global Practice Regulations;
- 2) Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Mr Kavalo has failed to co-operate fully with the investigation of a complaint in that he failed to respond fully or at all to any or all of ACCA's correspondence dated:
- a) 01 February 2022
  - b) 01 March 2022
  - c) 10 March 2022
  - d) 21 March 2022
  - e) 05 April 2022; and
  - f) 11 May 2022;
- 3) By reason of his conduct in respect of any or all of the matters set out at 1 to 2 above, Mr Kavalo is:
- a) Guilty of misconduct pursuant to bye-law 8(a)(i); or
  - b) Liable to disciplinary action pursuant to bye-law 8(a)(iii)

## **BRIEF BACKGROUND**

- 10. Mr Kavalo was admitted as an ACCA member on 30 January 2020.
- 11. As part of a routine search into another ACCA member, Mr Kavalo was identified as being in public practice without an ACCA practising certificate and an investigation file was opened.

12. It is the position of ACCA that at all material times Mr Kavalo has not held an ACCA practising certificate.
13. ACCA identified through a company records search tool called FAME that Mr Kavalo was the director and principal of Firms A and B.
14. ACCA relied on documentary evidence obtained in the course of its investigation, particularly the Companies House records for Firm A and Firm B.
15. In the course of ACCA's investigation it was identified that Mr Kavalo had registered with the Association of International Accountants (AIA) and that he holds an AIA practising certificate which was issued in or around March 2022.
16. In respect of the allegation of failure to fully co-operate with ACCA, ACCA referred to evidence of correspondence sent by ACCA Investigations to Mr Kavalo on various dates.

### **ACCA SUBMISSIONS**

17. ACCA submits on the basis of Mr Kavalo's ACCA records that he has never held an ACCA practising certificate, however he assumed the position of a Director of Firm A from 19 April 2020 to 12 April 2021 and Principal of that firm from 08 October 2020 to 12 April 2021. In addition, he assumed the position of Director and Principal of Firm B from 01 August 2021 to 09 January 2023, as evidenced by Companies House records.
18. ACCA submits that it is Mr Kavalo's responsibility under the General Practising Regulations (GPR) to ensure he is not carrying out public practice activities without an ACCA practising certificate and that his limited response to ACCA's correspondence shows that he is aware of the need for an ACCA practising certificate.

19. ACCA relied on GPR(4)(1)(c) and (d) that Mr Kavalo had held himself out as being able to conduct public practice though it did not rely on any evidence that he had actually carried out any public practice activities.
20. ACCA submitted that although Mr Kavalo holds a practising certificate with another professional body, the GPR requires him to hold an ACCA practising certificate to be in public practice.
21. In relation to the alleged failure to cooperate, ACCA referred to the attempts made to contact Mr Kavalo to obtain his response to various questions. ACCA submitted that Mr Kavalo has a duty to engage with ACCA.
22. ACCA further submitted there is the public interest and necessity for a registered professional to declare and uphold proper standards of conduct and behaviour. Mr Kavalo not engaging with the Association frustrated ACCA's central duty to regulate its members and so undermined ACCA's reputation and public confidence in the Association.
23. In relation to misconduct, ACCA submitted that Mr Kavalo is aware of his requirement to hold an ACCA practising certificate and that this is required by the GPR. ACCA submitted that it is in the public interest that this matter is brought before a Disciplinary Committee in order to maintain the integrity of ACCA.
24. ACCA submitted that Mr Kavalo's failure to engage and cooperate with ACCA's Investigations team demonstrates a lack of professionalism and a disregard for ACCA's regulatory process in that it has hampered ACCA's ability to fully investigate the matters mentioned in the referral and the breaches that were discovered.
25. ACCA submitted that if any or all of the facts relied upon are found proved, misconduct is made out. Alternatively, it asked the Committee to find that Mr Kavalo was liable to disciplinary action.

## **RESPONSE FROM MR KAVALO**

26. Mr Kavalo did not provide any response to ACCA's investigation report, nor did he complete the case management questionnaire.

27. The Committee noted Mr Kavalo's brief response in the early stage of the investigation. On 10 March 2022 he stated as follows:

*"The question concerning Firm A and my involvement with them from April 2020 to April 2021. The issue concerning Firm A was resolved long time ago with Person A and I don't think I am in a position to answer that. The best person to answer that question possibly can be Person A themselves as they are the founder and still the owner of that company.*

*The issue of Firm B. As you rightly pointed that the company was registered on 01 August 2021. The company has not started trading as there are so many things to be done, including the application for practising certificate. Once I complete these things, I will commence trading with this company."*

28. There has been no further substantive response from Mr Kavalo since 10 March 2022, other than his e-mail dated 10 May 2024 in which he stated that he did not intend to attend this hearing.

## **DECISION ON FACTS/ALLEGATIONS AND REASONS**

### **Allegation 1**

29. The Committee accepted the advice of the Legal Adviser. She reminded the Committee that the burden of proving the factual allegations is on ACCA and that the standard of proof is the balance of probabilities. She referred the Committee to the definition of 'public practice' as set out in Regulation 4(1) of the GPR as follows:

*"Activities*

*Subject to regulations 4(2), 4(3), 4(3) and 4(5), public practice, which may be carried on by an individual or a firm (the "practitioner"), means:*

- (a) *accepting an appointment as an auditor; and/or*
  - (b) *signing or producing any accounts or report or certificate or tax return concerning any person's financial affairs, whether an individual sole-trader, an unincorporated body or a firm, in circumstances where reliance is likely to be placed on such accounts or report or certificate or tax return by any other person (the "third party"), or doing any other thing which may lead the third party to believe that the accounts or report or certificate or tax return concerning the financial affairs of such a person have been prepared, approved or reviewed by the practitioner; and/or*
  - (c) *holding oneself or itself out, or allowing oneself or itself to be held out, as being available to undertake the activities referred to in (a) and (b) above (and allowing oneself to be known as a, or a firm of "Chartered Certified Account(s), "Certified Accountant(s), "Chartered Accountant(s)", "Accountant(s)", or "Auditor(s)" or any similar description or designation stating for any such description in the context of the practitioner's business shall be regarded as an example of such a holding out); and/or*
  - (d) *holding oneself out, or allowing oneself to be held out, as a sole proprietor, partner or director of a firm, or designated member or members of a limited liability partnership, where public practice is carried on."*
30. The Committee was satisfied that at the material time Mr Kavalo did not hold and had not applied for an ACCA practising certificate. From on or around March 2022, Mr Kavalo held a practising certificate issued by AIA, but this did not satisfy the requirements of GPR3 which required Mr Kavalo, as a member of ACCA, to hold an ACCA practising certificate if he engaged in public practice as defined in GPR4.
31. The Committee noted Firm A's Companies House records. Firm A was incorporated on 09 October 2017 and the code for the Firm A's activities was [REDACTED] "Accounting and auditing activities". Mr Kavalo became a



director of Firm A on 19 April 2020 and described his occupation as “Certified Chartered Accountant”. The record shows that he became a principal of Firm A on 08 October 2020.

32. Firm A changed its name on 08 April 2021 to remove “Accountants” from the firm’s name and changed its code to [REDACTED], “Bookkeeping” on 12 April 2021. Mr Kavalo ceased to be a director and shareholder of Firm A on 21 April 2021.
33. The Committee also noted Firm B’s Companies House records. Firm B was incorporated on 01 August 2021 with the code for “Accounting and auditing activities”. Mr Kavalo was Firm B’s sole director and shareholder from 01 August 2021 to at least 09 January 2023. Mr Kavalo described his occupation as an “Accountant”.
34. GPR4(c) and (d) specify that holding oneself out encompassed what Mr Kavalo had done through the descriptions of Firms A and B on the website of Companies House, through his role as Director of both firms, and by describing himself as an accountant. The Committee was satisfied that Mr Kavalo was ‘in public practice’ by holding himself out as being involved in public practice as defined in the GPR. It therefore found Allegation 1(a) and 1(c) proved.
35. The Committee noted the evidence of Mr Kavalo’s shareholding of 50% of Firm A and 100% of Firm B, which effectively put him in the position of principal of both firms. While there was no evidence that Mr Kavalo had carried out public practice activities at either firm, it found that he was engaged in public practice as defined by GPR4(1)(c) and (d) in that he was ‘holding himself out’ as engaged in public practice because of the information lodged about the firm at Companies House.
36. The Committee was satisfied that if a member of the public viewed Firm A or Firm B on the Companies House website, they would be misled into understanding that Firm A, Firm B, and Mr Kavalo were engaged in public practice activities.

37. The Committee therefore found Allegations 1(a) to 1(d) proved on the basis that Mr Kavalo did not hold an ACCA practising certificate and had been carrying out public practice as defined by GPR4(1)(c) and (d).

## **Allegation 2**

38. The Committee reviewed the correspondence between ACCA Investigations and Mr Kavalo.
39. ACCA Investigations contacted Mr Kavalo on 01 February 2022 and Mr Kavalo was invited to respond to a list of questions by 22 February 2022. Mr Kavalo did not respond and ACCA sent a chaser on 01 March 2022.
40. Mr Kavalo responded on 10 March 2022 where he asked for the password. Mr Kavalo also provided on 10 March 2022 the brief and limited response as set out above. The information given by Mr Kavalo did not answer the questions posed by ACCA.
41. The Investigations Officer resent the chaser email of 01 March 2022 to Mr Kavalo on 10 March 2022 and requested that he respond to all the questions by 14 March 2022.
42. Mr Kavalo did not reply and another chasing email was sent on 21 March 2022. Mr Kavalo responded by asking for the password and the Investigations Officer resent the chaser on 05 April 2022. Mr Kavalo failed to respond and a final chaser letter was sent on 11 May 2022.
43. Attempts were also made by the Investigating Officer to contact Mr Kavalo by telephone on 07 April 2022, 10 May 2022, 20 July 2022, and 26 October 2022, but there was no response from Mr Kavalo.
44. Mr Kavalo was under a duty to co-operate with the ACCA investigation. A failure, or a partial failure to co-operate fully with an investigation of a complaint is a breach of regulation 3(1) of the Complaints and Disciplinary Regulations 2014 ("CDR").

45. Despite having ample opportunity to do so, Mr Kavalo provided limited comments in response to the correspondence sent to his registered e-mail address. He did not answer all the questions or provide any explanation as to why he was unable to answer the questions. When the matter was followed up by the Investigating Officer Mr Kavalo failed to reply, despite being given several opportunities to do so. In the correspondence Mr Kavalo was warned that a failure to respond might result in an allegation of failing to co-operate with ACCA. On two occasions Mr Kavalo acknowledged receipt of some of the correspondence and requested the password, indicating that he was in receipt of letters sent by email to the email address he had provided.
46. The Committee was therefore satisfied, on the balance of probabilities, that Mr Kavalo had received the emails, had failed to co-operate fully as alleged, and found Allegation 2(a) – (f) proved.

### **Allegation 3**

47. As a member of ACCA Mr Kavalo is required to comply with its regulations, including the GPR. It is Mr Kavalo's responsibility to ensure that he understands the GPR regulations and fully complies with them. The GPR regulations are not merely technical requirements but serve an important purpose of providing assurance to members of the public that those providing or offering to provide accountancy services are appropriately qualified and have the requisite skills and experience. The breaches of the GPR involved two firms and persisted over a period of time, and they continued after the matter was drawn to Mr Kavalo's attention by ACCA. The Committee considered that Mr Kavalo's breach of the GPR was a serious matter and that his conduct fell far below the standards for ACCA members. Mr Kavalo's conduct brought discredit upon himself and on the profession and ACCA as the regulator.
48. The Committee was also of the view that failing to co-operate fully with an investigation being carried out by ACCA is a serious matter. Membership of ACCA brings with it a duty to co-operate with the investigation of a complaint. The Committee was satisfied that such behaviour represented a serious falling

short of professional standards and brought discredit upon Mr Kavalo and also upon the profession and ACCA as the regulator. ACCA's purpose is to ensure standards are met and that members of ACCA comply with the Regulations put in place to protect the public. The Committee considered that other members of the profession would find Mr Kavalo's behaviour of repeatedly not co-operating with ACCA to be deplorable.

49. The Committee therefore concluded that Mr Kavalo's behaviour in breaching the GPR and failing to co-operate amounted to misconduct and that allegation 3(a) was proved.
50. Having found misconduct proved it was not necessary for the Committee to consider whether Mr Kavalo was liable to disciplinary action for failing to co-operate, because this was alleged in the alternative.

### **SANCTION AND REASONS**

51. In reaching its decision on sanction, the Committee took into account the submissions made by Ms Terry. 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 Kavalo, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser.
52. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
53. The Committee considered there to be the following aggravating features: a pattern of failing to co-operate with ACCA over a significant period of time; and an absence of evidence of insight.
54. The Committee did not consider there to be any significant mitigating features but noted that Mr Kavalo had no previous disciplinary record with ACCA.

55. The Committee did not think it appropriate, or in the public interest, to take no further action or order an admonishment in a case where a member of ACCA had breached the GPR and repeatedly failed to co-operate with his regulator. Every member of ACCA is duty bound to comply with ACCA's bye-laws and regulations and to co-operate with ACCA in its investigations.
56. The Committee then considered whether to reprimand Mr Kavalo. The guidance indicates that a reprimand would be appropriate in cases where the conduct 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 consider Mr Kavalo's conduct to be of a minor nature, and he had shown no insight into his behaviour. The Committee noted that there was no evidence that Mr Kavalo has taken steps to regularise the position with regard to Firm B and the absence of an ACCA practising certificate. The position before the Committee is that this matter remains outstanding and there is a potential ongoing risk to the public. There was nothing to reassure the Committee that there would be no repetition of similar misconduct. Accordingly, the Committee concluded that a reprimand would not adequately reflect the seriousness of the conduct in this case.
57. The Committee then considered 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.
58. The guidance adds that this sanction may be appropriate where most of the following factors are present:
- The misconduct was not intentional and no longer continuing;
  - Evidence that the conduct would not have caused direct or indirect harm;

- Insight into failings;
  - Genuine expression of regret/apologies;
  - Previous good record;
  - No repetition of failure/conduct since the matters alleged;
  - Rehabilitative/corrective steps taken to cure the conduct and ensure future errors do not occur;
  - Relevant and appropriate references;
  - Co-operation during the investigation stage.
59. The Committee considered that almost none of these factors applied in this case and that accordingly a severe reprimand would not adequately reflect the seriousness of Mr Kavalo's behaviour. Mr Kavalo has not demonstrated any understanding of the requirements of the GPR or insight into his failings; his behaviour was repeated; there has been no evidence of rehabilitative steps; no references; and the misconduct included a lack of co-operation during the investigation stage.
60. Accordingly, the Committee decided that the only appropriate and proportionate sanction was exclusion. Sustained and repeated failure to comply with the GPR and failure to co-operate with ACCA into the investigation of a complaint are serious matters. The Committee was satisfied that such behaviour represented a serious falling short of professional standards and was fundamentally incompatible with being a member of ACCA.
61. The Committee acknowledged the impact this decision would have on Mr Kavalo. However, his misconduct was so serious that no other sanction would adequately reflect the gravity of his offending behaviour. The Committee considered that a failure to exclude Mr Kavalo who had demonstrated a pattern of failure to comply with ACCA's regulations would seriously undermine public confidence in the profession and in ACCA as a regulator. In order to maintain public confidence and to uphold proper standards in the profession it was necessary to send out a clear message that this sort of behaviour was not to be tolerated.

62. The Committee therefore ordered that Mr Kavalo be excluded from ACCA's membership.

### **COSTS AND REASONS**

63. ACCA applied for costs in the sum of £5,994. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable. However, the costs of the Presenting Officer and Hearings Officer included in the sum quoted were based upon a full day when in fact the hearing took less than a whole day. Accordingly, the figure would be reduced to reflect this.
64. Despite being given the opportunity to do so, Mr Kavalo did not provide any details of his means or provide any representations about the costs requested by ACCA. There was, therefore, no evidential basis upon which the Committee could make any reduction on this ground.
65. The Committee had in mind the principle that members against whom an allegation has been proven should pay the reasonable and proportionate cost of ACCA in bringing the case. This was because the majority of members should not be required to subsidise the minority who, through their own failings, have found themselves subject to disciplinary proceedings.
66. In light of its observations above, the Committee reduced the amount requested to reflect the actual costs more likely to have been incurred and made an order in the sum of £5,500.

### **EFFECTIVE DATE OF ORDER**

67. In light of its decision and reasons to exclude Mr Kavalo and the seriousness of his misconduct, the Committee decided it was in the interests of the public to order that the sanction have immediate effect.

**Ilana Tessler**  
**Chair**  
**07 June 2024**