

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Maksat Rakymbayev

Heard on: 14 March 2024

Location: Remotely via MS Teams

Committee: Ms Wendy Yeadon (Chair)
Ms Andrea White (Accountant)
Ms Diane Meikle (Lay)

Legal adviser: Mr Alastair McFarlane

**Persons present
and capacity:** Mr Ben Jowett (ACCA Case Presenter)
Miss Nicole Boateng (Hearings Officer)

Outcome: Student removed from register
Costs awarded to ACCA in the sum of £6,940

1. ACCA was represented by Mr Jowett. Mr Rakymbayev did not attend and was not represented. The Committee had before it a Bundle of papers, numbered pages 1 – 56, a Tabled Additional Bundle, numbered pages 1-4 and a Service Bundle numbered pages 1-20 and a File Note of one page.

SERVICE

2. Having considered the Service Bundle, the Committee was satisfied that Notice of the hearing was served on Mr Rakymbayev in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).

PROCEEDING IN ABSENCE

3. The Committee accepted the advice of the Legal Adviser.
4. The Committee reminded itself that the discretion to proceed in absence must be exercised with the utmost care and caution. It was mindful that despite attempts by the ACCA to contact Mr Rakymbayev in relation to the substantive concerns and his attendance at this hearing, no reply has ever been received. There had been no engagement from Mr Rakymbayev at all. The Committee noted that following the service of the Notice of Hearing on 15 February 2024, the Hearings Officer made attempts to telephone Mr Rakymbayev on 11 and 12 March 2024 to see if he would be attending the hearing. The phone was answered on the second occasion only and the female recipient simply said, "*no English*" and hung up. The Hearings Officer also sent chaser emails on 11 and 12 March 2024 – re-offering the services of an interpreter in the second email. There has been no response.
5. The Committee was mindful of the observations of Sir Brian Levenson in *Adeogba v. General Medical Council [2016] EWCA Civ 162* as to the burden on all professionals subject to a regulatory regime to engage with the regulator both in relation to the investigation and the ultimate resolution of allegations made against them. The Committee specifically considered the issue of fairness to Mr Rakymbayev of proceeding in his absence, but also fairness to the ACCA and the wider public interest in the expeditious discharge of the Committee's function. The Committee was satisfied that Mr Rakymbayev has voluntarily disengaged from the process. The Committee was not persuaded when balancing Mr Rakymbayev's interests and the public interest, that any adjournment was likely to secure his attendance and would not outweigh the public interest in proceeding with this hearing today. The allegations were serious, involving dishonesty and a risk to the public and the Committee considered that Mr Rakymbayev had had plenty of opportunity to respond to the investigation process. The Committee was satisfied that it was in the public interest and in the interests of justice overall to proceed in the absence of Mr Rakymbayev.

ALLEGATIONS

Mr Maksat Rakymbayev, an ACCA student:

- 1. On or around 26 March 2022 and or on or around 6 March 2023, submitted to ACCA an ACCA Diploma in International Financial Reporting with accompanying email for verification;**
- 2. The conduct referred to in Allegation 1 was;**
 - a) Dishonest in that either or both the ACCA diploma and accompanying email referred to in Allegation 1 above were false or in the alternative**
 - b) Such conduct demonstrates a failure to act with integrity.**
- 3. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Mr Rakymbayev failed to co-operate fully with the investigation of a complaint in that he failed to respond to any or all of ACCA's correspondence dated:**
 - a) 27 October 2022;**
 - b) 21 November 2022;**
 - c) 7 December 2022; and**
 - d) 9 March 2023.**
- 4. By reason of any or all of the above, Mr Rakymbayev is:**
 - a) Guilty of misconduct pursuant to Bye-law 8(a)(i), or in the alternative**
 - b) Liable to disciplinary action, pursuant to Bye-law 8(a)(iii) in relation to Allegation 3 only.**

BACKGROUND

- 6. On 10 March 2022, Mr Rakymbayev registered as an ACCA student, which he remains to date.**

7. On 26 March 2022 Mr Rakymbayev submitted to ACCA's Kazakhstan office an ACCA Diploma in International Financial Reporting certificate for verification. That office has confirmed that the certificate and accordingly, the accompanying email, are both false.
8. On 27 October 2022 the Investigation Department asked for the student's comments regarding the documents in question . No response was received.
9. On 21 November 2022, ACCA sent an email to Mr Rakymbayev's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 5 December 2022. Again, no response was received.
10. On 7 December 2022, ACCA sent a further email to Mr Rakymbayev's registered email address reminding him again of his obligation to co-operate with the investigation and again seeking his response by 21 December 2022. No response was initially provided.
11. In the meantime, ACCA obtained a translation of the email Mr Rakymbayev sent to ACCA's Kazakhstan's office on 26 March 2022 and it said *"hello Person A! Person C sent your contact details. Please confirm, diploma enclosed!!! Thank you!"*
12. Further to this a witness statement was provided by the ACCA Kazakhstan office explaining how the referral came about.
13. Mr Rakymbayev emailed the Investigator on 6 March 2023 and attached the same certificate he wanted ACCA to verify.
14. ACCA's exams team confirmed that the student did not sit the exam shown on the certificate. Accordingly, the certificate is not genuine.
15. ACCA sought Mr Rakymbayev's comments in relation to the further submission of the certificate and no response has been received to date.

ACCA's SUBMISSIONS

Allegation 1

16. ACCA relied on its records that it contends confirm that Mr Rakymbayev has not taken or passed ACCA's Diploma in International Financial Reporting. Therefore, ACCA submitted that the certificate and accompanying email purporting to confirm otherwise is clearly false.

Allegation 2 a)

17. ACCA submitted that the conduct set out at Allegations 1 amounts to dishonesty on the basis that Mr Rakymbayev must have known that the certificate was false as was the accompanying email, which referred to completion of the Diploma. It is further submitted such conduct would be regarded as dishonest by the standards of ordinary decent people.

Allegation 2 b)

18. ACCA submitted in the alternative that Mr Rakymbayev's conduct demonstrated a failure to act with integrity.

Allegation 3

19. ACCA submitted that in failing to respond to the requests of the Investigating Officer, the student has breached Complaints & Disciplinary Regulation 3(1). Mr Rakymbayev was under a duty to co-operate and therefore respond to the Investigating Officer's correspondence in which he was asked for an explanation of the allegations raised against him.
20. ACCA contended that a failure to co-operate fully with one's professional body is a serious matter, demonstrating a lack of professional responsibility and a disregard for ACCA's regulatory process. A failure to adequately respond to questions asked by ACCA during an investigation into one's conduct prevents ACCA from fully investigating and, if necessary, taking action upon, what might be a serious matter.

Allegation 4 a) - Misconduct

21. ACCA submitted that if any or all of the facts set out at Allegations 1 to 3 are found proved, Mr Rakymbayev has acted in a manner which brings discredit to himself, ACCA and to the accountancy profession and his conduct amounts to misconduct pursuant to bye-law 8(a)(i).
22. There was an alternative allegation of liability to disciplinary action in relation to Allegation 3.

The Student's Response

23. There has been no response from Mr Rakymbayev.

DECISION ON ALLEGATIONS AND REASONS

24. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the allegations is on ACCA alone and that Mr Rakymbayev's absence adds nothing to ACCA's case. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the '*balance of probabilities*'. It reminded itself of Collins J's observations in Lawrance v. GMC [2015] EWHC 581(Admin) to the effect that in cases of dishonesty, cogent evidence was required to reach the civil standard of proof.
25. The Committee heard that there had been no previous findings against Mr Rakymbayev and accepted that it was relevant to put his good character into the balance in his favour.

DECISION ON FACTS

26. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Mr Jowett on behalf of ACCA. It reminded itself to exercise caution as it was working from documents alone and carefully considered the weight to attach to the evidence and submissions it had received.

Allegation 1

On or around 26 March 2022 and or on or around 6 March 2023, submitted to ACCA an ACCA Diploma in International Financial Reporting with accompanying email for verification;

27. The Committee had sight of a witness statement from Person A, Cluster Head for Kazakhstan & Central Asia Relationships - EEMA, at ACCA Kazakhstan. It noted that their team:

“...deals with requests from students or employers to verify ACCA certificates, to satisfy local requirements from employers who would seek official confirmation that the e-certificate supplied were in fact issued by ACCA as the awarding body.”

28. The Committee accepted as credible and reliable Person B's evidence that they had checked ACCA's records, which they produced and there is no record of Mr Maksat Rakymbayev completing or passing ACCA's Diploma in International Financial Reporting.

29. The Committee noted the email chain dated 28 March 2022 between Person B and Person A, both of ACCA. At 07.03, Person A wrote:

*“Hi Person B,
Hope you had lovely week-end.
I believe attached is not genuine certificate as this student didn't sat exam yet(((
Could you please kindly re-confirm form your side
I have identified him under ACCAID1 registration number.
Thank you
Person A”*

Person B responded at 09.45:

*“Hello Person A,
Thank you for your email.
The attached certificate is not genuine and it looks as though a candidate is trying to “validate” his own fake certificate.. Registration number ACCAID2 on the attached certificate belong to someone else, who is currently a prospect.*

His actual registration number is ACCAID1 and he only just registered/ became a student in Diploma in International Financial Reporting on the 12th March 2022.

I am not sure if this person is looking for our reply in order to alter our response as I witnessed happening previously. However, since he is registered – we should investigate it further and report his actions to the legal team maybe?

@Exams Conduct please review and advise.

Thank you,

Person B”

30. The Committee also had sight of a copy of the ACCA Diploma in International Financial Reporting in Mr Rakymbayev’s name and dated January 2022, which ACCA maintained was not genuine. Further, it noted Person A’s email, received by ACCA on 26 October 2022 in which they confirmed that Mr Rakymbayev sent them the copy of the diploma on 26 March 2022. That email of 26 March 2022 and a translation from Russian was also provided to the Committee. It read as follows:

“Hello Person A! Your contact was sent by Person C

Could you confirm, please, the diploma enclosed !!

Thank you!

--

Maksat Rakymbaev”

The Committee also noted Mr Rakymbayev’s email request, dated 6 March 2023, asking ACCA to “confirm the authenticity” of this certificate.

31. The Committee was satisfied on Person A’s witness statement and the documents provided by ACCA that Mr Rakymbayev submitted to ACCA an ACCA Diploma in International Financial Reporting with accompanying email for verification. It was satisfied that he had not sat this exam. He was therefore not entitled to the certificate. Accordingly, Allegation 1 is proved.

Allegation 2 a)

- 2. The conduct referred to in Allegation 1 was;**

- a) **Dishonest in that either or both the ACCA diploma and or accompanying email referred to in Allegation 1 above were false or in the alternative**

- 32. On the basis of its acceptance of Person A's evidence and its assessment of the records, the Committee was satisfied that the Diploma in International Financial Reporting document submitted by Mr Rakymbayev for confirmation was not issued by ACCA and was a false document.
- 33. The Committee next asked itself whether submitting a false diploma and accompanying email for verification was dishonest.
- 34. The Committee considered as far as it was able what Mr Rakymbayev's belief was as to the facts. It was satisfied that Mr Rakymbayev submitted a false diploma for verification to his professional body. It was satisfied on the documents that he knew he had not passed this diploma as he had not sat the exam and therefore he knew that the diploma was false. It was an objectively dishonest act to create a forged education document. The Committee had no hesitation in determining that Mr Rakymbayev's belief at the time was dishonest according to the standards of ordinary decent people. Accordingly, it was satisfied that Allegation 2(a) was proved and did not consider the alternative of Allegation 2(b).

Allegation 3

Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Mr Rakymbayev failed to co-operate fully with the investigation of a complaint in that he failed to respond to any or all of ACCA's correspondence dated:

- a) **27 October 2022;**
- b) **21 November 2022;**
- c) **7 December 2022; and**
- d) **9 March 2023.**

35. In relation to Allegation 3, the Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Mr Rakymbayev to co-operate fully with ACCA in the investigation of any complaint. It was satisfied that Mr Rakymbayev made no response to ACCA's correspondence requesting his co-operation on the 27 October 2022, 21 November 2022, 7 December 2022 and 9 March 2023. There was no evidence before the Committee in this case to amount to a defence to the obligation on professionals to co-operate with their regulator as expressed in Regulation 3(1). It was therefore satisfied that these non-responses amounted to failures as Mr Rakymbayev had a duty to respond. Therefore, he breached the obligation under the Regulations and that Allegation 3 was proved.

Allegation 4 - Misconduct

36. The Committee next asked itself whether the proven dishonest conduct in submitting a false diploma for verification with his professional body amounted to misconduct.
37. The Committee had regard to the definition of misconduct in Bye-law 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Mr Rakymbayev's actions brought discredit on him, the Association and the accountancy profession. Trust and honesty are fundamental tenets of the profession required from all members. It was satisfied that this conduct was serious and would be considered deplorable conduct by fellow professionals. The Committee had no hesitation therefore in determining that the conduct reached the threshold for misconduct.
38. The Committee was also satisfied that failing to co-operate with their regulator was serious as it undermined public confidence in the profession and the ability of the regulator to undertake its duties so as to maintain public confidence. It was a fundamental obligation on all professionals to cooperate with a regulator. Therefore, the Committee was satisfied that it also amounted to misconduct. In the light of this judgment, the Committee did not need to consider the alternative of liability to disciplinary action under Allegation 4(b).

SANCTIONS AND REASONS

39. The Committee noted its powers on sanction were those set out in Regulation 13(4). It had regard to ACCA's Guidance for Disciplinary Sanctions and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.
40. The Committee considered that the conduct in this case was very serious. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Trust and honesty are fundamental requirements of any professional. Dishonesty by a member of the accountancy profession undermines its reputation and public confidence in it. In addition, the failure to co-operate with his regulator is serious and undermines the opportunity for the regulator to discharge its regulatory function.
41. The Committee had no evidence of any insight or understanding into the seriousness of Mr Rakymbayev's behaviour. There were no mitigating factors before the Committee, other than his previous good character and it considered the dishonest conduct, which was for unjustified personal gain, and the prolonged period of the non-co-operation to be aggravating factors.
42. Given the Committee's view of the seriousness of his conduct, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven misconduct.
43. The Committee determined that his behaviour was fundamentally incompatible with Mr Rakymbayev remaining on the student register of ACCA and considered that the only appropriate and proportionate sanction was that he be removed from the student register.

COSTS AND REASONS

44. ACCA claimed costs of £6,940 and provided a detailed schedule of costs. It noted Mr Rakymbayev was a student, but he has not provided a statement of means. The Committee decided that it was appropriate to award costs in this case and that the costs claimed were reasonable. It concluded that the sum of

£6,940 was appropriate and proportionate. Accordingly, it ordered that Mr Rakymbayev pay ACCA's costs in the amount of £6,940.00.

EFFECTIVE DATE OF ORDER

45. The Committee was not satisfied that that it was in the interests of the public to impose an immediate order, so this order will take effect following the relevant appeal period.

Ms Wendy Yeadon
Chair
14 March 2024