

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Madhusudan Natvarlal Morjaria
Heard on:	Thursday, 10 December 2020
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	Mrs Valerie Paterson (Chair) Ms Wanda Rossiter (Accountant) Mrs Jackie Alexander (Lay)
Legal Adviser:	Mr Robin Havard (Legal Adviser)
Persons present and capacity:	Mr Benjamin Jowett (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer) Mr Madhusudan Natvarlal Morjaria (Member) Mr Chris Cope (Representing Mr Morjaria)
Observers:	None
Summary:	Exclusion from membership Ineligible to apply for readmission for 3 years
Costs:	£7,212.50

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

PRELIMINARY APPLICATIONS

AMENDMENT TO ALLEGATIONS

1. Following communications between Mr Cope on behalf of Mr Morjaria and ACCA, ACCA proposed that Allegation 4 should be amended. The amendment refined the Allegation of dishonesty such that it would be restricted to the facts of Allegations 2 and/or 3.
2. In addition, in respect of Allegation 4.3, the proposal was to amend the Allegation so that it related to section 350 of ACCA's Code of Ethics and Conduct, or the equivalent of section 350 since 2001. The Allegation was in respect of Allegation 1 and, in the alternative, in respect of Allegations 2 and 3.
3. As the application for the amendment had arisen out of discussions between ACCA and Mr Cope, the Committee was satisfied that the proposed amendment would not cause any prejudice to Mr Morjaria in the conduct of his case.
4. The Committee, therefore, allowed the application.

ALLEGATIONS

Schedule of Allegations as amended

Mr Morjaria, ACCA member and principal of Simon Cooper & Co,

1. That from about 10 July 2001 to 09 June 2016, without client authority, accumulated and retained client tax rebates in Simon Cooper & Co's client account which by 09 June 2016 totalled about £63,198, as set out in Schedule A.
2. That on or about 09 June 2016, without client authority, caused or permitted the transfer of the client tax rebates referred to in 1 above to

a non-client account controlled by him and thereafter to other non-client accounts in his control, save for the following brief periods when the monies were returned to Simon Cooper & Co's client account; 31 March 2017 to 02 April 2017 and 29 March 2018 to 03 April 2018.

3. That on or about 31 October 2018, without client authority, arranged for the transfer of the client tax rebates referred to in 1 and 2 above to a non-client account of another practice, Probitts & Co Ltd, which he had recently acquired and used such monies for or towards initial funding for that practice.
4. That his conduct in relation to Allegations 2 and /or 3 above was,
 - 4.1. Dishonest, in that the tax rebate sums as set out in Schedule A belonged to clients and he had no authority to retain them and /or use them for his own benefit.
 - 4.2. In the alternative, contrary to the Fundamental Principle of Integrity, as applicable in 2001 to 2019, in that such conduct demonstrates a failure to be straightforward and honest.
 - 4.3. In breach of Section 350 (or corresponding provisions) of ACCA's Code of Ethics and Conduct relating to Custody of Client Assets in respect of Allegation 1 and, in the alternative, in respect of Allegations 2 and 3.
5. In light of any or all of the facts set out above, Mr Morjaria is,
 - 5.1. Guilty of misconduct pursuant to byelaw 8(a)(i);
 - 5.2. In respect of Allegation 4.3, and in the alternative to misconduct as alleged, liable to disciplinary action pursuant to byelaw 8(a)(iii).

Schedule A		
2895.18	197.99	27.94
699.10	177.73	510.62
587.50	623.48	193.47
105.75	11.68	494.11
229.12	153.81	1,770.04
68.75	3.32	3,340.12
220.94	5.05	1,704.33
58.75	1,642.37	2,032.83
263.08	2,280.83	581.57
352.50	80.70	675.95
25.00	257.91	1,304.50
3,231.25	914.26	763.44
245.68	817.92	735.40
3,945.86	241.08	2,487.25
2,872.48	3,067.39	336.93
215.31	789.29	
940.00	18,018.78	

BACKGROUND

5. On 07 October 1993, Mr Morjaria became a member of ACCA. On 07 October 1998, he became a Fellow.

6. Since September 2000, Mr Morjaria has been a director of Simon Cooper & Son Limited ("the Firm"). Throughout the material time, Mr Morjaria has been sole director, and sole practitioner of the Firm, exercising considerable control over its activities with a shareholding of 75% or more. Until 14 January 2020, he held a practising certificate with audit qualification. Currently, he holds a general practising certificate.

7. Simon Cooper & Co has held a firm's practising certificate until 31 December 2019.
8. From October 2018, Mr Morjaria became sole director of Probitts & Co Ltd ("Probitts"), also an accountancy practice, over which he exercised significant control. Probitts held a firm's practising certificate from 30 January 2019 to 31 December 2019.
9. On 16 August 2019, a Compliance Officer from ACCA's Monitoring Department and a Supervision Officer from ACCA's Anti-Money Laundering Department, carried out an Anti-Money Laundering Compliance Visit at Simon Cooper & Co. These proceedings are as a result of that visit and subsequent investigations.
10. During that visit and subsequent correspondence, evidence was obtained which showed Mr Morjaria had, over a number of years, retained HMRC tax rebates due to clients totalling in excess of £63,000. In June 2016, Mr Morjaria had transferred this sum to non-client accounts controlled by him, and in October 2018, had used it towards his acquisition of Probitts & Co Ltd.

DECISION ON FACTS/ALLEGATIONS AND REASONS

11. The Committee had considered the following documents: a hearing bundle (pages 1 to 564); a Tabled Additional 1 (pages 1 to 5), a Tabled Additional 2 (pages 1 to 6) and a Tabled Additional 3 (pages 1 to 9). It had also listened to the submissions of Mr Morjaria's representative, Mr Cope, and those made by Mr Jowett on behalf of ACCA.

Allegations 1, 2 and 3

12. Mr Morjaria admitted Allegations 1, 2 and 3 and the Committee found them proved.
13. Mr Jowett stated, and the Committee found, that there were two relevant periods, the first of which was from 10 July 2001 to June 2016. During that period, which was relevant in respect of Allegation 1, Mr Morjaria failed to repay

to a number of his firm's clients tax rebates amounting to £63,198 which had accrued in varying amounts over this period of some 15 years. At no stage had Mr Morjaria's clients consented to the retention of those monies and it was clear that, whilst Mr Morjaria may have attempted initially to return those funds to his clients, when he realised that the cheques which he had sent to them had not been banked, he made no effort to find out why or chase up the clients for an explanation. He simply left the funds in his firm's client account.

14. The second period concerns the period from June 2016. This relates to the circumstances giving rise to Allegation 2.
15. On or about 09 June 2016, Mr Morjaria arranged for the transfer of the clients' tax rebates to his firm's office account. It was conceded by Mr Cope that, whilst the funds on client account had not been earning interest, the interest the funds accumulated whilst in the firm's office account was taken for Mr Morjaria's benefit and not the clients.
16. Mr Morjaria had, therefore, taken clients' funds and derived a personal benefit from them.
17. Subsequently, on or about 31 October 2016, Mr Morjaria utilised the tax rebates belonging to his clients to fund his purchase of another practice, Probitts. As a result of him using client monies in this way, he became sole director and shareholder in Probitts. This forms the facts of Allegation 3.
18. On the basis of the Committee's findings of fact, Mr Morjaria had admitted, and the Committee found, that, from about 10 July 2001 to 09 June 2016, without client authority, accumulated and retained client tax rebates in Simon Cooper & Co's client account which by 09 June 2016 totalled about £63,198, as set out in Schedule A above. Indeed, it consisted of 49 client tax rebate repayments which had accumulated over a period of years from 2001.
19. On the basis of the Committee's findings of fact, Mr Morjaria had admitted, and the Committee found, that, on or about 09 June 2016 without client authority he caused or permitted the transfer of the client tax rebates referred to in

paragraph 33 above to a non-client account controlled by him and, thereafter, to other non-client accounts in his control save for the following brief periods when the monies were returned to Simon Cooper & Co's client account; 31 March 2017 to 02 April 2017 and 29 March 2018 to 03 April 2018.

20. On the basis of the Committee's findings of fact, Mr Morjaria had admitted, and the Committee found, that, on or about 31 October 2018 without client authority, Mr Morjaria arranged for the transfer of the client tax rebates to a non-client account of another practice, Probitts & Co Ltd, which he was able to acquire with the use of funds belonging to clients of Simon Cooper and Co.

Allegation 4.1

21. Mr Morjaria admitted this allegation to the extent that his conduct in respect of the facts of Allegations 2 and 3 was dishonest. The Committee found the allegation proved on that basis.
22. The Committee relied on its findings of fact in respect of Allegations 2 and 3.
23. The sums accumulated were transferred out of his firm's client account on 09 June 2016 and transferred back to the firm's client account on 09 September 2019. The Committee found, on the balance of probabilities, that the monies were only transferred back to the firm's client account following Mr Morjaria being pressed for an explanation by ACCA's officers following the AML Compliance visit.
24. The Committee had found that, without any authority or permission from the clients who were entitled to the funds, the client funds had been removed from the firm's client account for a continuous period of in excess of three years, save for two periods of about four days each when the entire sum was transferred back to the client account to coincide with the tax year ends for 2017 and 2018.
25. Mr Cope had stated that Mr Morjaria's intention was that the £63,450 should be a loan, which he would be pay in due course. However, no consent had been

obtained, let alone sought, from clients for such a "loan" to be made. On the basis of its overall findings of fact, the Committee did not find it credible that Mr Morjaria looked upon this cumulative sum as a loan, particularly as it was only after the intervention of ACCA that the money was returned to the firm's client account.

26. Indeed, and as stated, there was no evidence to suggest that, after Mr Morjaria purported to return the tax rebate to his clients, he made any effort to find out why the cheques had not been presented by any of the many clients to whom he had sent such cheques.
27. The Committee was, therefore, satisfied that Mr Morjaria deliberately retained, and then misappropriated, client money in order to earn interest for his own benefit and then to fund the purchase of Probitts. By the standards of ordinary decent people, such behaviour would be considered to be dishonest.

Allegation 4.2

28. This Allegation was pleaded in the alternative to allegation 4.1. Consequently, having found Allegation 4.1 proved, the Committee made no separate findings in respect of this Allegation.

Allegation 4.3

29. Mr Morjaria admitted this Allegation on the basis of the admitted facts of Allegation 1 as set out above. The Committee found the Allegation proved on that basis.

Allegation 5.1

30. Taking account of its findings in respect of Allegations 1 to 4 and that Mr Morjaria had acted dishonestly, the Committee was satisfied that Mr Morjaria was guilty of misconduct. Such dishonest conduct could properly be described as deplorable and falling below the standard expected of an ACCA member. Transparency and honest dealing are central to the protection of the public

interest and maintaining the reputation of, and confidence in, the profession. The dishonest conduct of Mr Morjaria brought discredit to himself, the Association and the accountancy profession.

31. Therefore, the Committee found Allegation 5.1 proved in respect of Allegations 1, 2, 3 and 4.

Allegation 5.2

32. This Allegation was pleaded in the alternative to Allegation 5.1. Consequently, having found Allegation 5.1 proved, the Committee made no separate findings in respect of this allegation.

SANCTIONS AND REASONS

33. The Committee considered what sanction, if any, to impose taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had listened carefully to the submissions made by Mr Cope on behalf of Mr Morjaria and also the remarks made by Mr Morjaria at the conclusion of the hearing. It had also listened to legal advice from the Legal Adviser, which it accepted.
34. The Committee considered the available sanctions in increasing order of severity, having decided that it was not appropriate to conclude the case with no order.
35. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
36. The Committee considered whether any mitigating or aggravating factors featured in this case.

37. In mitigation, Mr Cope confirmed that Mr Morjaria had been a member of ACCA for some 27 years and this was the first occasion on which he had found himself before his regulator.
38. Mr Cope confirmed that, once ACCA had discovered the improper use Mr Morjaria had made of tax rebates due and owing to a significant number of his clients, Mr Morjaria had cooperated fully. He had not sought to conceal his wrongdoing and took steps to rectify what he had done.
39. Mr Cope referred the Committee to documents which illustrated that, of the £63,198 which had been improperly retained and dishonestly utilised, £48,599 had been returned to clients. Unfortunately, £14,698.47 could not be returned to clients, whether as a result of companies ceasing to exist or individual clients not being traced or having died. That amount had, therefore, been returned to HMRC.
40. Mr Morjaria fully understood the seriousness of his conduct and had a level of insight into his actions. Mr Cope apologised on behalf of Mr Morjaria and Mr Morjaria had apologised in person to the Committee, stating that he felt very remorseful for the damage his conduct was likely to have caused to the reputation of ACCA and the profession as a whole.
41. The Committee considered that the following aggravating features applied. On the basis of its findings, it was satisfied that Mr Morjaria's dishonest behaviour had been deliberate, calculated and repeated over a period of some three years. He knew he was not entitled to utilise clients' funds in the way that he did, first to earn himself some interest (the Committee did not consider it was relevant that the sum of interest that may have accrued was small) and secondly to fund the acquisition of another practice.
42. It was not appropriate for Mr Morjaria to describe the use he made of clients' funds as a loan. There was no evidence of any intention of repaying that loan, the funds were taken without clients' permission, and the process of repayment only commenced when ACCA started its investigation.

43. The Committee was satisfied that, as soon as the funds left the firm's client account, they were at risk.
44. No attempt had been made to track down clients who had not banked cheques which had been sent to them.
45. Finally, some clients had never received, and enjoyed the benefit of, the tax rebates which should have been paid to them many years' earlier.
46. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.
47. The Committee then considered whether a severe reprimand would be an appropriate sanction. The Committee was prepared to accept that Mr Morjaria had shown a level of insight and contrition in admitting his dishonest behaviour once such behaviour had been uncovered and he had not sought to blame anyone else. He had also expressed his remorse to ACCA for his actions. However, taking account of the seriousness of its findings, which involved a deliberate and repeated course of conduct which had the effect of depriving clients of their tax rebates, the Committee did not consider that a severe reprimand would be sufficient or proportionate. Such behaviour, in the Committee's judgement, was fundamentally incompatible with that expected of an accountant and a member of ACCA.
48. The Committee balanced those factors which had been outlined above which represented aggravating factors and mitigating factors. It looked carefully at, and focussed on, the nature and extent of the dishonesty and whether there were any remarkable or exceptional circumstances which related to Mr Morjaria's dishonest conduct. The Committee determined that it had heard nothing which could be described as either remarkable or exceptional which would entitle the Committee to deviate from a finding that a sanction other than exclusion was possible or justified in order to protect the interests of the public and the reputation of the profession. In fairness to Mr Cope, he had not sought to make such submissions and confirmed that Mr Morjaria believed that this would mark the end of his career with ACCA.

49. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Morjaria shall be excluded from membership of ACCA. Furthermore, taking account of the seriousness of its findings, the Committee concluded that it was necessary to extend the minimum period within which an application for re-admission can be made for three years.

COSTS AND REASONS

50. The Committee considered the documents containing details of ACCA's claim for costs (Costs bundle pages 1-7). It had also taken account of ACCA's Guidance on costs.
51. The Committee concluded that, in principle, ACCA was entitled to be awarded costs against Mr Morjaria. The amount of costs for which ACCA applied was £7,212.50.
52. Taking account of the investigation, the preparation for the hearing, and the length of hearing, the Committee did not consider that the claim was unreasonable. Indeed, the reasonableness of the claim had not been challenged.
53. The Committee noted that Mr Morjaria had only provided details orally of his financial circumstances even though he would have been requested to provide such information in advance of the hearing. In any event, on the basis of what he had to say, the Committee concluded that he was able to pay the amount claimed.
54. In all the circumstances, the Committee considered that ACCA was entitled to an award of costs in the full amount of £7,212.50.

EFFECTIVE DATE OF ORDER

55. In the light of its findings, the Committee considered it was necessary and in the interests of the public for its order to take immediate effect.

56. In accordance with Regulation 12(5)(b) of the Complaints and Disciplinary Regulations 2014 as amended, the Committee hereby revokes the Interim Order currently in force in respect of Mr Morjaria in relation to the allegations that have been under consideration.

Mrs Valerie Paterson
Chair
10 December 2020