

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Mohammed Yousouf Farook Odawally

Heard on: Tuesday, 17 March 2020

Location: ACCA Head Offices, The Adelphi, 1-11 John Adam Street,
London WC2N 6AU

Committee: Mr Martin Winter (Chair)
Mr Ryan Moore (Accountant)
Mrs Samantha Lipkowska (Lay)

Legal Adviser: Mrs Fiona Barnett

**Persons present
and capacity:** Mr Phillip Law (Case Presenter on behalf of ACCA)
Mr Jonathan Lionel (Hearings Officer)
Mr Mohammed Owadally (Member)
Mr Ian Stern QC (Counsel for Mr Owadally)
Mr Peter Yirimambo (Solicitor for Mr Owadally)

Summary: Allegations admitted
Severe reprimand
Costs £7,826.68
Order to take effect at the end of the appeal period

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PRELIMINARY

1. The Committee convened to consider the following allegations against Mr Owadally, who attended and was represented by Mr Ian Stern QC.

ALLEGATIONS

Allegation 1 re: 99 Star Street, Bayswater

- (a) On 07 July 2016, Mr Mohammed Yousouf Farook Owadally was convicted of two charges of executing, or causing to be executed, works of alteration to a Grade II listed building without listed building consent, contrary to sections 7, 9(2) and (4) of the Planning (Listed Buildings and Conservation Areas) Act 1990 at Hammersmith Magistrates Court, which was discreditable to the Association or the accountancy profession.
- (b) By reason of his conduct at 1(a) above, Mr Mohammed Yousouf Farook Owadally is liable to disciplinary action pursuant to bye-law 8(a)(ix).

Allegation 1: re 6 Marylands Road, Maida Vale

- (a) On 05 October 2018, Mr Mohammed Yousouf Farook Owadally was convicted of three counts of failing to comply with enforcement notices, contrary to section 179(2) of the Town and Country Planning Act 1990.
- (b) By reason of his conduct at 1(a) above, Mr Mohammed Yousouf Farook Owadally is liable to disciplinary action pursuant to bye-law 8(a)(ix).

BRIEF BACKGROUND

99 STAR STREET BAYSWATER

2. On 07 July 2016, Mr Owadally, a member of ACCA since 1992, was convicted of the matters set out above in Allegation 1 – 99 Star Street. The conviction related to a property he owned at that address in Bayswater, which was a Grade II listed building; the conviction was founded upon the removal of parts of the building, and the construction of a new roof, without listed building consent.

3. Hammersmith Magistrates Court imposed fines of £15,000 and £2,000, and ordered Mr Owadally to pay costs of £15,082.12 and a victim surcharge of £120.
4. Mr Owadally appealed against the conviction and the sentence. The appeal was heard at Southwark Crown Court over five days, and the decision was announced on 25 August 2017. Mr Owadally did not succeed in his conviction appeal for these matters, except that in relation to the first charge, the court decided that his culpability related only to the removal of the roof and the chimney breast.
5. The fine imposed by Hammersmith Magistrates was reduced to £13,500 in relation to the first charge. The fine for the second charge remained at £2,000. Mr Owadally was also required to pay the costs imposed by Hammersmith Magistrates Court, and costs of the appeal of £8,738, together with a victim surcharge of £120.

6 MARYLANDS ROAD MAIDA VALE

6. Mr Owadally owned a property at 6 Marylands Road, Maida Vale. The conviction relating to this property involved failures by Mr Owadally to comply with three enforcement notices issued by Westminster City Council on 05 January 2012. The notices related to:
 - The unauthorised use of the property as eight separate flats;
 - An unauthorised roof extension at the property; and
 - The installation of unauthorised UPVC windows and door at the basement level of the property.
7. Mr Owadally originally entered guilty pleas. These were subsequently replaced with not guilty pleas and Mr Owadally was tried by a jury at Southwark Crown Court. He was convicted on 05 October 2018 and fined a total of £90,000. A confiscation order was also made in the sum of £400,000.
8. Mr Owadally appealed against the sentence, and this appeal was heard by the Court of Appeal on 27 February 2020. The Court of Appeal quashed one of the fines, substituting it with a fine of £10,000, which reduced the total fines payable to £60,000.

EVIDENCE

9. In relation to the 99 Star Street matter, the Committee had before it a bundle of papers from ACCA, numbering pages A to M, and 1 to 155.

10. In relation to the Marylands Road matter, the Committee had an addendum bundle from ACCA, numbering pages 1 to 23.
11. The Committee was also provided with a Service Bundle, numbering pages 1 to 14, an Additional Bundle (1), numbering pages 1 to 4, and an Additional Bundle (2), numbering pages 1 to 41.

DECISION ON ALLEGATIONS

12. Mr Owadally admitted both allegations, and accepted that he is liable to disciplinary action.
13. The Committee found the factual matters proved by way of Mr Owadally's admissions.
14. The Committee was also of the view that the convictions were discreditable to the accountancy profession and to ACCA. The convictions were publicised in various media publications and referred to Mr Owadally as a "Chartered Accountant" and "accountant".

MITIGATION

15. Mr Stern addressed the Committee in mitigation.
16. He said that both convictions relate to matters which began some years ago, and that dealing with these matters has caused distress and turmoil to Mr Owadally and his family. Mr Stern said that Mr Owadally was remorseful, and never wished to cause embarrassment to the profession or ACCA.
17. Mr Stern explained the background to the convictions. He told the Committee that Mr Owadally employed a planning consultant and a structural engineer for both buildings. He said that it was always Mr Owadally's intention to comply with the processes.
18. Mr Stern referred the Committee to Mr Owadally's previous ACCA Reprimand in 2015 for an audit matter. He said that Mr Owadally has learned from that incident and taken steps to ensure there will be no repetition.
19. Mr Stern informed the Committee about Mr Owadally's personal circumstances. He also referred the Committee to a number of testimonials from people who confirmed that they are aware of these proceedings, and have known Mr Owadally for a long time. Mr Stern informed the Committee that the authors of the references have confirmed that they will continue their professional/social relationship with Mr Owadally, in spite of his convictions.

20. Mr Stern said that no client or member of Mr Owadally's firm had suffered as a result of the convictions. He submitted that a Severe Reprimand would be a proportionate sanction, and that Exclusion would be disproportionate.

SANCTIONS AND REASONS

21. The Committee accepted the advice of the Legal Adviser, who referred the Committee to ACCA's current Guidance on Disciplinary Sanctions ("the Guidance"). It was mindful that the purpose of a sanction was not to punish Mr Owadally a second time for his offending. It bore in mind that it must act proportionately at this stage, balancing the member's interests against the public interest, and that any sanction imposed must be no more than necessary to meet the purpose of a disciplinary sanction.
22. The Committee first considered the seriousness of the conduct found proved, before deciding upon any sanction (in accordance with paragraph E3 of the Guidance). In reaching this decision, it considered whether there were any aggravating and mitigating factors.
23. The Committee found that there were some aggravating factors; it found that there was a degree of repetition, given that Mr Owadally owned two properties, and his conduct had led to convictions in respect of both. Mr Owadally also has a previous disciplinary finding against him from ACCA. This related to a failure by one of Mr Owadally's colleagues to carry out a hot review of an audit file. The Committee was satisfied that this matter was of a different nature, and it attached little weight to this.
24. Mr Owadally had also benefitted financially from his failure to comply with the enforcement notices for Marylands Road; he received rent from tenants living in the property, following the service of the enforcement notices. This was addressed by the sentencing court, which made a confiscation order in the sum of £400,000.
25. The Committee also identified a number of mitigating factors, which were as follows.
26. The Committee was satisfied, from its reading of the character references provided, and Mr Owadally's written statement, that he has a strong work ethic, and is committed to serving his community and carrying out charity work.
27. The Committee was impressed with the references from clients, friends and colleagues, all of whom were aware of the convictions and these proceedings, and attested to Mr Owadally's good character and work ethic. Many of the authors of the testimonials confirmed that they will continue to use Mr Owadally's professional services, even though

they were aware of these convictions. The Committee was therefore able to attach significant weight to these testimonials.

28. Mr Owadally also took steps to regularise the regulatory/planning permission for both properties. He was also co-operative and open with ACCA during the investigation. The Committee also accepted that Mr Owadally had suffered a number of personal difficulties during the time the matters involving the two properties were occurring. [Private]. The Committee accepted that these matters all amounted to persuasive mitigation.
29. The Committee also found, from its reading of Mr Owadally's witness statement, that he now has considerable insight into his wrongdoings and is genuinely remorseful. His remorse was also evidenced within the testimonials, in which several of the writers commented upon Mr Owadally's remorse for his actions. The Committee accepted that Mr Owadally acted on the advice of others in relation to his conduct for both properties. However, he now accepts that the responsibility lay with him all along to comply with the regulatory and planning requirements, and he should not have been so reliant on others.
30. Overall, having identified and weighed the aggravating and mitigating factors, the Committee categorised the convictions as "serious".
31. The Committee first considered whether to conclude this case without taking further action. It decided that the matters were too serious for no action to be taken, and that doing so would not uphold the public interest.
32. The Committee next considered whether an Admonishment would be an appropriate and proportionate sanction in this case. It considered paragraph C2 of the Guidance. It acknowledged that some of the factors set out in paragraph C2 of the Guidance which could support an Admonishment were applicable. However, it decided that this would not overall be a sufficient sanction to mark the seriousness of the convictions.
33. The Committee next considered whether a Reprimand would be an appropriate and proportionate sanction. The Guidance states that this sanction is usually applied, "*...where the conduct is of a minor nature..*". Having decided that the conduct was serious, the Committee concluded that a Reprimand would not be a sufficient sanction to address the public interest.
34. The Committee next considered a Severe Reprimand. It had regard to paragraph C4 of the Guidance. It was satisfied that the conduct which led to the convictions is no longer continuing. There was also no evidence before the Committee that any individual had been caused direct or indirect harm. Mr Owadally has demonstrated that he now has insight into

his failings, and has made a genuine expression of regret and remorse in his witness statement. The Committee had been made aware of another disciplinary finding, but had formed a view that these were unrelated to this matter and did not serve as an aggravating factor in these proceedings. Mr Owadally has also taken steps to rectify the planning and regulatory position, has provided positive testimonials, and co-operated with ACCA during the investigation.

35. The Committee bore in mind that the underlying offences do demonstrate a repetition of the conduct, therefore Mr Owadally's conduct could not be described as "isolated". However, this was the only factor in paragraph C4 which was not present. The Committee's view was that whilst the convictions were not "isolated", it balanced the aggravating and mitigating factors, and concluded that there was persuasive mitigation to satisfy it that a Severe Reprimand was a sufficient sanction in all the circumstances.
36. The Committee therefore ordered that Mr Owadally be Severely Reprimanded.

COSTS AND REASONS

37. Mr Law provided the Committee with a costs schedule, (Additional Bundle 3, numbering pages 1 to 6) and applied for costs in the sum of £9,436.68.
38. Mr Stern accepted that, in principle, a costs order should be made against Mr Owadally. He raised concerns about the amount of costs claimed and the possibility of duplication of costs, given that person A (the other owner of Star Street) also appeared before ACCA's Disciplinary Committee in February 2019 for the conviction relating to Star Street.
39. The Committee, upon request, was provided with the costs schedule from the case of Person A.
40. It was accepted by Mr Law that incoming and outgoing correspondence to Mr Owadally and Person A would have been dealt with on an individual basis. However, the Committee observed that the collation of documents, and production of the Assessor's report scheduled on 26 and 27 April 2018, appears in the costs schedule for both members. Therefore, the Committee concluded that an amount of duplication must have taken place. For this reason, the Committee deducted £1,610 from the costs requested.
41. The Committee ordered that Mr Owadally pay ACCA £7,826.68 in costs.

EFFECTIVE DATE OF ORDER

42. This Order shall take effect on the date of expiry of the appeal period referred to in the Appeal Regulations.

Mr Martin Winter
Chair
17 March 2020