

**IN THE DISCIPLINARY TRIBUNAL
OF THE TAXATION DISCIPLINARY BOARD**

TDB/2018/12

THE TAXATION DISCIPLINARY BOARD (TDB)

-v-

**MR MICHAEL ROWLANDS, ATT STUDENT
(Membership No: 213024)**

DECISION

29.01.2019

1. The Disciplinary Tribunal sat on Tuesday 29th January 2019 at 30 Monck Street, Westminster, London, SW1P 2AP. The Tribunal was chaired by Mr Peter Cadman (Solicitor) who was sitting with Mr Andrew Gell and Mrs Teresa Payne. The Clerk to the Tribunal was Mr Nigel Bremner (Solicitor).
2. The presenter for the TDB was Mr Alex Mills, Counsel. Mr Rowlands did not attend.
3. The Tribunal had read and considered the case papers, pages 1 – 120 and some additional emails between Mr Bremner and Mr Rowlands and, indeed, one email received on the morning of the hearing.

PRELIMINARY MATTERS:

4. In his response to the charges, Mr Rowlands had indicated that he wished the matter to be disposed of without an oral hearing. However the Tribunal, prior to the hearing, had decided that the matter should proceed by way of oral hearing in all the circumstances of the case and, in particular, because Mr Rowlands contested many of the allegations against him.
5. The Tribunal noted the date of the service of the proceedings on Mr Rowlands. The Tribunal was satisfied there had been good service of the notice of hearing in

accordance with Regulation 14.1 of the Taxation and Disciplinary Scheme Regulations 2014.

- 6.1 The Tribunal then considered whether it was appropriate in the current circumstances to proceed in the absence of Mr Rowlands. The Tribunal noted that Mr Rowlands had engaged in the process and had in fact specifically not wanted an oral hearing. The Tribunal also took into account the email received on 29th January at 10.02 raising health issues. The Tribunal noted that these particular health issues were raised now for the first time. The Tribunal also noted that there was no medical evidence to support the assertion to those health issues.
- 6.2 In considering whether to proceed in the absence of Mr Rowlands the Tribunal gave this decision the utmost care and caution. The Tribunal did decide to proceed with the hearing in the absence of Mr Rowlands. There was no suggestion that he would wish to participate in any oral hearing even if the matter was adjourned. There had been no request by Mr Rowlands to adjourn the proceedings. The public interest in disciplinary proceedings being heard promptly outweighed any possible prejudice to Mr Rowlands.
- 7.1 The Tribunal then considered whether the hearing should in whole or in part be heard in private. The Tribunal had regard to Regulation 29.1 of the Taxation and Disciplinary Scheme Regulations 2014.
- 7.2 In Mr Rowlands' response to the allegations, he indicated that the matter should be heard in private because of assertions he made against his employers. The Tribunal had noted what was on the paperwork and as asserted by Mr Rowlands. In this regard the Tribunal decided there was no reason for the hearing to be other than in public.
- 7.3 The second matter considered by the Tribunal was whether the reference to health issues in Mr Rowlands' email of 29th January meant that the proceedings should be in private. The Tribunal decided, that if any specific consideration needed to be made to his current health issues, the Tribunal would deal with those matters in private.

CHARGES:

Charge 1

- 1.1. On an occasion between May 2017 and around 3 September 2017 Mr Rowlands stated falsely to Ms Youll of Melrose UK Ltd ("Melrose") that he had passed an ATT Personal Taxation exam sat in May 2017.

- 1.2. On 4 October 2017 Mr Rowlands stated falsely to Ms Youll of Melrose that he had passed an ATT Personal Taxation exam sat in May 2017.
- 1.3. At the time of making the false statement(s) detailed above, Mr Rowlands:
- (a) knew he was making a false statement;
or
 - (b) was reckless to the making of a false statement.
- 1.4. Mr Rowlands:
- (a) Acted dishonestly, contrary to rule 2.2.1 and 2.6.1; and/or
 - (b) Acted contrary to rule 2.2.1; and/or
 - (c) Acted contrary to rule 2.6.1.

Charge 2

- 2.1 On 1 February 2018 Mr Rowlands made a false representation to Ms Cox of Melrose that he had passed an ATT VAT exam sat in November 2017 in that he stated to Ms Cox that he would provide confirmation of his passing that exam.
- 2.2 On 5 February 2018 Mr Rowlands made a false representation to Ms Youll of Melrose that he had passed an ATT VAT exam sat in November 2017 in that he represented that an email recording his having passed the exam existed.
- 2.3 At the time of making the false representation(s) detailed in Charges 2.2 and 2.3 above, Mr Rowlands:
- (a) knew he was making a false representation;
or
 - (b) was reckless to the making of a false representation.
- 2.4 On 8 February 2018 Mr Rowlands knowingly made a false representation to Ms Youll of Melrose that he had passed an ATT VAT exam sat in November 2017 in that he gave Ms Youll by hand a forged document purporting to be a copy of an email from the ATT to him confirming that he had passed the exam.

2.5 On or before 8 February 2018 Mr Rowlands made the forged document referred to in Charge 2.4.

2.6 Mr Rowlands:

- (a) Acted dishonestly, contrary to rule 2.2.1 and 2.6.1; and/or
- (b) Acted contrary to rule 2.2.1; and/or
- (c) Acted contrary to rule 2.6.1.

RESPONSE TO THE CHARGES:

Charge 1

1.1 – Accepted by Mr Rowlands

1.2 – Contested

1.3 – Contested

1.4 – Admitted. The Tribunal did, however, note that this admission was inconsistent with Mr Rowlands' denial of allegation 1.3 and was also inconsistent with his other written submissions. In the circumstances the Tribunal decided to deal with allegation 1.4 as a contested allegation.

Charge 2

2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 – all these allegations were contested by Mr Rowlands.

BACKGROUND

8. Mr Rowlands had taken two exams. The first was in May 2017 and the second was in November 2017. The Tribunal was presented with evidence that he had failed both exams. Indeed, Mr Rowlands did not assert in these proceedings that he had in fact passed either exam.
9. Mr Rowlands was employed by Melrose UK Ltd from 7th April 2015 to 19th February 2018.
10. The employer's complaints about Mr Rowlands included the following:
 - (a) He had on the dates particularised in the charges informed the employers that he had passed the May 2017 exam.
 - (b) He had on the dates particularised in the charges informed the employers that he had passed the November 2017 exam and, subsequently, had produced to them a document suggesting that he had passed that exam.

11. The Tribunal's attention was drawn to the statement of Ms Sarah Youll, a director of Melrose UK Limited. This statement gave further particulars of the complaint.
12. (a) With regard to the May 2017 exam, Mr Rowlands' response to the charges stated that *"I do admit to saying to Sarah that I had passed my exam when asked"*. However, in his email to the Tribunal on 29th January 2019 his response was *"I did say I had thought I had passed the exams but I just needed to check"*.

(b) With regard to the November 2017 exam, Mr Rowlands stated that each time that he was asked whether he had passed the exams he said that he had not got the result yet. He denied that he had provided anything in writing to the employers.
13. The Tribunal's attention was also drawn to a statement from Ms Jude Maidment, an employee of the Chartered Institute of Taxation and the Association of Taxation Technicians about the exams taken by Mr Rowlands and an email sent to him on 17th January 2018.

DECISION

14. The Tribunal reminded itself that the burden of proof is on the Taxation Disciplinary Board and that the standard of proof is the civil standard.
15. The Tribunal considered all matters and all the documentation that it had received. This included the witness statement of Ms Sarah Youll, a director of Melrose Limited; the statement of Jude Maidment, an employee of the Chartered Institute of Taxation and the Association of Taxation Technicians about the exams taken by Mr Rowlands. The Tribunal also considered all of the representations made by Mr Rowlands.
16. In reaching its decision there were stark conflicts of evidence to be determined including:
 - (a) Did Mr Rowlands state categorically to his employers that he had passed the May 2017 examination or had he said that he thought that he had passed that exam?
 - (b) Did Mr Rowlands state categorically that he had passed the November 2017 exam and did he both create and produce a forged email appearing to confirm that he had passed? Or did he say that he had not received the results yet and never produced any document to his employer?
17. The Tribunal considered the statement of Ms Youll to be compelling and consistent supported by contemporaneous records. In contrast the Tribunal found the account of events given by Mr Rowlands inconsistent, contradictory and (in many respects) inherently implausible. The Tribunal in particular found the following:
 - (a) The employer had a real need to know whether the May exam had been passed. It is accepted by Mr Rowlands that the question was asked of him. The Tribunal find it inherently implausible that Mr Rowlands would have said, well after the event, that he was not aware of the results. The Tribunal find that he did tell his

employers that he passed an exam. The Tribunal accept that, as a result of receiving information that he had passed the May exam, his employers entered him into the November exam.

- (b) With regard to the November exam, the Tribunal find that Mr Rowlands did receive the email of the results of those exams on 17th January confirming that he had failed the exam with a mark of 24. The Tribunal find that he was asked on the dates in February particularised in the charges for the result of this exam and he did inform his employers that he had passed. Even the answer he says he gave was itself untrue. He asserts that he had not received the results when asked in February, whereas on 18th January, he was fully aware that he had failed. The Tribunal conclude that he was asked the questions in February and gave answers that were untrue.
 - (c) The Tribunal then found that he had created the forged document by altering the email he had received on 17th January from a failure with 24 marks to a pass with 54 marks.
 - (d) The Tribunal find that this document was produced by Mr Rowlands to Ms Youll. The Tribunal noted that Ms Youll promptly contacted ATT and received formal confirmation that that email was incorrect.
18. The Tribunal therefore found that allegations 1.1, 1.2, 2.1, 2.2, 2.4 and 2.5 were proved.
19. With regard charges 1.3 and 2.3 the Tribunal has therefore concluded that at the time of making the false representations in paragraphs 1.1, 1.2, 2.1 and 2.2, Mr Rowlands knew that he was making false representations.
20. With regard to charges 1.4 and 2.6, the Tribunal has concluded that Mr Rowlands had acted dishonestly. Mr Rowlands knew that he had passed neither exam. Despite this he asserted to his employers that he had and subsequently produced a forged document to support those lies. The Tribunal concluded that his conduct was dishonest in the eyes of ordinary decent people. Further, on the basis of the evidence produced and the Tribunal's findings, the Tribunal here concluded that Mr Rowlands himself knew that he was acting dishonestly.

Sanction

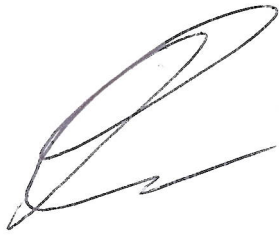
21. The Tribunal took note of the Indicative Sanctions Guidance. The Tribunal concluded that the appropriate sanction here is exclusion. The conduct here is so serious to undermine confidence of the profession if a lesser sanction were to be imposed. The Tribunal has found that Mr Rowlands has engaged in a dishonest course of conduct over a period of months.

Costs

22. Mr Rowlands did not produce any evidence as to his means. He had been notified that a costs application would be made if the allegations were made against him and he made no submissions. The actual costs claimed were £3,472.49 and the Tribunal ordered that Mr Rowlands pays that sum in full.

Publicity

23. The Tribunal orders that this matter be publicised in the ordinary course of events in accordance with Regulation 28.1

A handwritten signature in dark ink, appearing to be 'P. Asman', with a large, stylized loop at the top and a horizontal line extending to the right.

PETER ASMAN (CHAIR)

29/1/19