



DISCIPLINARY ORDERS AND REGULATORY DECISIONS

Date published: 1 June 2016

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Miss Nisha Madhvani ACA of
10 Thistlecroft Gardens, Stanmore, Middlesex, HA7 1PN

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 8 March 2016

Type of Member Member

Terms of complaint

On 3 November 2015, ICAEW's Investigation Committee referred a formal complaint to the Disciplinary Committee against Miss Nisha Madhvani (the defendant).

Between October 2011 and June 2013 Miss Nisha Madhvani ACA dishonestly claimed expenses in the sum of £3,222.30 from her employer as set out in schedules 1 and 2:

Schedule 1: Claims for Evening Meals

CLAIM NUMBER	DATE	STORE	NO. OF RECEIPTS	TOTAL OVERCLAIMED
2000867633	12.11.12 – 13.11.12	Duty Free	1	£49.30
2000867633	12.11.12 – 13.11.12	'A'	1	£40
2000960846	26.06.13 – 26.06.13	'B'	1	£85
2000750801	01.05.12 – 30.06.12	'B'	2	£250
2000750801	01.05.12 – 30.06.12	Duty Free	1	£16
2000711560	01.11.12 – 14.12.12	'B'	11	£550
2000955054	01.05.13 – 05.06.13	'B'	2	£110
2000955058	20.03.13 – 20.06.13	'B'	1	£30
				£1,130.30

Schedule 2: Claims for taxis

CLAIM NUMBER	DATE	NO. OF RECEIPTS	TOTAL OVERCLAIMED
2000490808	27.01.11- 21.04.11	3	£150
2000599254	15.07.11- 31.10.11	30	£300
2000657496	01.11.11 – 31.01.12	13	£130
2000750801	01.05.12 – 30.06.12	25	£318
2000867650	01.11.12 – 14.12.12	6	£70
2000821562	03.09.12 – 12.11.12	23	£236
2000711560	01.11.12 – 14.12.12	21	£220
2000899262	04.12.12 – 14.12.12	4	£40
2000867636	07.01.13 – 30.01.13	7	£80
2000955058	20.03.13 – 20.06.13	14	£128
2000955051	01.01.13 – 30.04.13	2	£70
2000899293	03.01.13 – 19.03.13	20	£210
2000867651	07.01.13 – 30.01.13	5	£50
2000955054	01.05.13 – 05.06.13	7	£90
			£2,092

Miss Nisha Madhvani is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a¹.

¹ '...in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy'

Hearing date

08 March 2016

Previous hearing date(s)

None

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Sentencing order a) severe reprimand
b) costs of £8,006.50

Procedural matters and findings

Parties present Miss Madhvani
The Investigation Committee

Represented The IC was represented by Ms Dix

Hearing in public or private The hearing was in public

Decision on service In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service

Documents considered by the tribunal The tribunal considered the documents contained in the Investigation Committee's bundle together with documents from the defendant

Issues of fact and law

1. 'C' reported to ICAEW on 16 April 2014 that Miss Madhvani a senior manager within the Advisory function had been dismissed for gross misconduct on 3 September 2013 following an investigation into her expenses. Miss Madhvani appealed the decision of the disciplinary panel. Her appeal was heard on 11 November 2013. The decision of the disciplinary panel was upheld.
2. 'C' identified a number of taxi claims where it appeared the amount on the receipt had been amended, a number of claims for evening meals where the receipt was not the correct receipt for the claim and a number of claims for food outside of the expense policy such as claims when she had not worked after 9pm. 'C' required Miss Madhvani to reimburse them for £5,238.29 which she did.

3. The complaint is that Miss Madhvani dishonestly claimed expenses to the total of £3222.30. The complaint does not include all the expenses queried by 'C' and reimbursed by Miss Madhvani. The complaint includes expenses where it was submitted by the Investigation Committee that there is clear dishonesty.
4. Ms Madhvani explained that she had been working extremely excessive hours, often after midnight. This was not project based pressure, this was constant work pressure over a two year period. She had been managing significant matters and was dealing with business development and client matters. During these two years, she was going through major personal stresses.

First head of complaint – Claims for Evening Meals

5. Miss Madhvani made 8 claims totalling £1,130.30 which she was not entitled to make for evening meals. Her actions in order to make those claims were dishonest in that she provided receipts to support these claims when those receipts were not relevant to the expense incurred.
6. The 'C' evening meal policy in place from 12 April 2011 until 27 January 2013 (and from 27 January 2013 the policy remained the same) states that when working after 9pm an employee may reclaim for the purchase of meals/takeaways of a reasonable cost (up to a maximum of £15). Receipts must be provided in all instances. All claims must reflect the actual cost being incurred by an individual and the individual is personally responsible for ensuring all expense claims are processed properly. If the cost of any other individual's meals is included in a claim, the details of the individual and their specific costs must be added in the comments section and the relevant receipts attached. Receipts from online accounts will only be accepted if no alternative is available.
7. The Investigation Committee submitted that it is common sense that the receipt being provided as proof of purchase must correlate to the claim. A receipt for jewellery cannot be used as proof of purchase for a food item. Miss Madhvani told the tribunal that someone from the finance team had told her at that she could put an equivalent receipt forward. It was not said however that she could provide a completely different type of receipt forward, for instance a jewellery receipt for food. Miss Madhvani told the tribunal that at the time her administrative support at 'C' had been taken away and that had compounded her difficulties in managing her expense claims.
8. Miss Madhvani has accepted the receipts in schedule 1 were not from food vendors and were not in line with the 'C' policy. She states that she had made no personal gain as she had incurred the food expenses and has provided her credit card statements to support this. These credit card statements do show she had incurred a significant level of expenditure at food outlets. 'C' accepted that she was working long hours throughout the relevant period. She does accept that she should not have 'bundled' receipts but informed the tribunal that she was under a lot of time pressure and did not attend to her personal administration adequately.
9. She did not claim regularly. She did not get round to her administration for a few months, then bundled together and put receipts for the amount. She accepted that this was not rational, she understood the importance of an audit trail. It was a routine and she did it without much thought. She realised this was unprofessional and lacked common sense. However it was the last priority on her list, there being lots of other matters that were a higher professional and personal priority.

10. Seventeen receipts for items purchased from 'B' were submitted to support claims for evening meals. The tops of these receipts had been torn off so the supplier and product information could not be seen. These were later identified by investigating staff at 'C' as being from 'B'. 'B' is a fine jewellery chain store. In the initial fact finding meeting with 'C' Miss Madhvani claimed she did not know where the receipts were from but that they would have been from an eatery near the office.
11. A receipt for items purchased from 'A' was submitted to support a claim for a meal. 'C' identified in their report that 'A' sold tartan and wool products. In the fact finding meeting Miss Madhvani could not recall what she had purchased in that store.
12. Two receipts for items purchased from a duty free shop were submitted to support claims for meals. These were identified as from a duty free shop by the information on the back of the receipt. In the fact finding meeting Miss Madhvani could not recall what she had purchased in that store. Miss Madhvani provided a further explanation in a letter to 'C' dated 29 August 2013 that some of the duty free receipts were correct but had been incorrectly coded as they were prizes for training courses not for meals.

Second head of complaint – Claims for Taxis

13. Ms Madhvani accepted that the receipts had been changed and that sometimes she added in the extra amount, sometimes the taxi driver did. When it was a smaller journey to get home, they quoted a price in advance and the receipts were pre-filled in. On account of her stopping off to get cash or food, she would just add in an amount (which became set at £10 over time) reflecting the cash she actually gave the driver.
14. She pointed out that she had worked late on 540 nights in the 18 month period under question. She was regularly getting up to 6am and working to after midnight. She showed her bank statements to show multiple stops at cash points very late at night, on days when she was working.
15. She told the tribunal that during this period, she had two suitcases of unopened mail that she was not dealing with. She referred to the "the crazy state I was in".
16. Miss Madhvani had made 14 claims between January 2011 and June 2013 totalling £2,092. These claims enclosed 180 taxi receipts as proof of expense which had been doctored to increase the taxi fare.
17. The 'C' expenses policy states that all employees are required to use cost effective forms of transport. The firm will reimburse the cost of a taxi if an employee has to work until at least 9pm and it is impractical or unsafe to use another form of transport to get home. It is accepted that Miss Madhvani frequently worked past 9pm and therefore was entitled to claim her travel home. In line with the policy Miss Madhvani would catch the tube for most of her journey home if safe to do so and would then take a taxi to her home address. On some occasions Miss Madhvani would take a taxi from the office to her home address.

'D' Receipts

18. The majority of receipts were for 'D' and for the short journey from the tube station to her home address. The nearest tube station to her home address is Queensbury Station. Some of the receipts are marked with the details of the journey including which tube station she was collected from. Miss Madhvani informed 'C' she would be picked up from other stations such as Wembley Park, Neasdon or Willesden Green tube station. 'C' contacted 'D' who confirmed that the cost of a journey from Queensbury Station to Miss Madhvani's home address, a distance of 1.5 miles would have been £4 or £5. The receipts which form part of the complaint are all for fares of £14, £15, £16 or £18. The tribunal found that the receipts

have been doctored so that a '1' has been placed in front of the £4 or £5 fare to increase the fare by £10. The inserted '1' on a number of the receipts appear to be in different handwriting to the other letters or numbers.

19. In claim number 2000711560 which was submitted for expenses incurred between 01.11.12-14.12.12, there were 8 receipts from 'D' where the '1' inserted was with a different colour pen.
20. The Case Manager made an enquiry with 'D' as to the fare from Queensbury station to Miss Madhvani home address and was informed it was £5. She was also informed that the fare from Wembley Park station would be around £12.

Other Taxi Receipts

21. There were a number of other receipts which would appear to be fares for the journey from the office in Canary Wharf to her home address. Claim 2000955054 includes a taxi receipt from the company 'E' from E14 (where the office is) to her home address. The receipt appears to have been doctored from £68 to show that the journey was £88. The other black cab receipts all appear to have been doctored in many cases to increase the fare by £20 by amending the '6' to an '8'. In claim number 2000490808 it would appear that the three receipts have been increased by £50.

Test for dishonesty

22. There was no disagreement that the test for dishonesty in professional disciplinary proceedings was that set out in *Bryant v Law Society* [2007] EWHC 3043, as confirmed by the case of *Beata Kirschner v The General Dental Council* [2015] EWHC 1377. Thus, the questions the tribunal needed to ask itself was whether, on the balance of probabilities, the defendant had acted dishonestly by the standards of ordinary and honest members of that profession; and if it is found that she did so, whether it was more likely than not that the defendant realised that what he or she was doing was, by those standards, dishonest.

Conclusions and reasons for decision

23. The tribunal found the complaint proven.
24. In relation to head 1 it is accepted when Miss Madhvani worked after 9pm she would have been entitled to claim for food up to the value of £15. 'C' did not dispute that she was a hardworking individual who worked overtime on a frequent basis. In accordance with the policy Miss Madhvani should have provided receipts as proof of purchase of those meals. Miss Madhvani accepts she provided receipts from non-food outlets with the details torn off to support her claims. She accepts that the receipts did not relate to the expenses being claimed but told the tribunal she had been advised by the Expenses team that she could 'bundle' claims and use unrelated receipts to provide proof of purchase. The tribunal was of the view that it is unlikely that she would have been advised this by the expenses team as the purpose of the policy is to ensure that the purchase of that food item had occurred. Miss Madhvani was a Senior Manager at 'C' and she would have been well aware that 'bundling' would have undermined the purpose of providing receipts for expenses.
25. The tribunal found that Miss Madhvani's actions were dishonest. The tribunal was of the view that the honest ordinary member of the profession, and of the public, would find her actions dishonest. Even if she had been told by someone in the finance department that providing alternative receipts up to the amounts claimed was acceptable, she did, in the tribunal's view, actually know that receipts for jewellery when claiming for food would not be acceptable and so in order to avoid detection she tore off the details of receipts which were from non-food outlets to conceal their details. The tearing off of the tops of the receipts for

the purposes of checking against her bank and credit card statements did not make sense as the tops would not have shown the relevant amounts. Miss Madhvani knew that the receipts were not acceptable proof and therefore attempted to conceal this in order to be able to claim back the expenses. This was dishonest.

26. In relation to head 2 Miss Madhvani intentionally doctored the taxi receipts to increase the amount she could claim. Her actions were dishonest. In relation to the receipts from 'D' it is clear that the taxi receipts have been doctored by inserting a '1'. Some receipts seem to be doctored in a different pen and different handwriting. 'D' have confirmed that the usual fare from Queensbury to her home address would be £5. Miss Madhvani's explanations regarding taxi drivers amending a prefilled receipt, an increase in the fare for collecting food or a tip and alternatively that she was given blank receipts, does not stand up to scrutiny.
27. With regard to the longer journey's it was not credible that a black taxi driver would hand over a receipt already filled in, receive a £20 tip and then change the receipt. The normal order of things would be for the passenger to offer a tip and then the completed receipt to be handed over.
28. In conclusion, it is the tribunal's view that Miss Madhvani's dishonest conduct brings discredit on herself, the Institute and the profession. It is accepted that she was working very long hours throughout this period and was under great work pressures. This does not however excuse her dishonest conduct. Any finding of dishonesty against a Chartered Accountant is a very serious matter, as this undermines the core values of membership.

Matters relevant to sentencing

29. Ms Madhvani had set out in detail the work pressures she had been under during the relevant period and how her conduct had been out of character. During this period, she had also been having considerable personal problems.
30. She told the tribunal that she accepted that what she had done was wrong but that she had not set out in a calculating way to claim expenses she was not entitled to. She drew the tribunal's attention to testimonials from a variety of colleagues. She had no prior disciplinary record.
31. The tribunal accepted that this had been an intolerable work environment and the tribunal readily accepted that she had lapsed into a chaotic state in which she was unable to attend to her personal administration and also lost a sense of priorities. She showed insight into her wrong doing, had fully cooperated with the investigation and made full reparation. There had been no personal gain and the amounts involved in any event had been modest in relation to her remuneration. The failings had not been calculated and she lacked motivation (in the sense that she did not actually need the money). This had been out of character as evidenced by the testimonials to her hard work, standards and otherwise integrity.

Sentencing Order

32. The tribunal took into account its *Guidance on Sentencing*. In light of the exceptional mitigation in this case, it decided that it would not exclude Ms Madhvani (which would have been the normal sanction in a case of dishonesty) and instead it imposed a severe reprimand. It did not impose a fine, but ordered that she pay costs of £8,006.50p.

Decision on publicity

33. Publicity with names.

Non Accountant Chairman

Mr Richard Farrant

Accountant Member

Mr Philip Coleman

Non Accountant Member

Ms Mary Kelly

Legal Assessor

Ms Melanie Carter

021289

INVESTIGATION COMMITTEE CONSENT ORDERS

2 Mr Richard Shears FCA

Consent order made on 3 May 2016

With the agreement of Mr Richard John Shears of Parallel House, 32 London Road, Guildford, Surrey, GU1 2AB, the Investigation Committee made an order that he be severely reprimanded, fined £3,500 and pay costs of 1,505 with respect to a complaint that:

Mr Richard John Shears FCA, following a QAD visit on 15 October 2010 confirmed on behalf of his firm, that regarding:

- the incorporation of his practice that he would 'amend [his] answer to question A1.3 on next year's [annual] return';
- registration under the Data Protection Act that '[He] intend[s] registering by 31 December 2010';
- the notification of his PII details to all clients to comply with the Provisions of Services Regulations 2009 that '[He] intend[s] reviewing [his] client list and notifying all clients taken on since 28 December 2009 by 1 January 2011';
- displaying a list of companies where his office is the registered office that 'A list will be displayed in [his] office by 1 January 2011 and thereafter [he] will be gradually transferring the registered offices to [his] clients' premises'; and
- the notification to his clients of his basis of charging fees and complaints procedures that '[He] intend[s] incorporating the two items referred to in correspondence to [his] clients during the course of 2011'

but at a subsequent desk top review carried out by QAD on 3 July 2014, it was found that the matters had not been addressed.

026494

3 Harrison Beale & Owen Ltd

Consent order made on 3 May 2016

With the agreement of Harrison Beale & Owen Limited of Highdown House, 11 Highdown Road, Leamington Spa, Warwickshire, CV31 1XT, the Investigation Committee made an order that the firm be reprimanded, fined £1,500 and pay costs of £1,593 with respect to a complaint that:

Between 1 July 2014 and 13 October 2015, Harrison Beale & Owen Ltd used the description 'Chartered Accountants' when one of the partners did not hold general affiliate status in breach of Principal Bye-law 55 and regulation 6 of the Regulations governing the use of the description 'Chartered Accountants' and general affiliates of the Institute of Chartered Accountants in England and Wales.

030079

4 Mr Pradeep Shah FCA

Consent order made on 3 May 2016

With the agreement of Mr Pradeep Motichand Shah of 6th Floor, AMP House, Dingwall Road, Croydon, CR0 2LX, the Investigation Committee made an order that he be severely reprimanded, fined £7,500 and pay costs of £3,430 with respect to a complaint that:

1. On 31 May 2013 Mr P Shah FCA issued an audit report in the name of his firm, X Limited, on the financial statements of Y Limited for the year ended 30 September 2012 when, in breach of audit regulation 3.10, the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland), including:
 - a) International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that the engagement could be performed in an effective manner.
 - b) International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the auditor failed to prepare, on a timely basis, audit documentation that provides:
 - i. a sufficient and appropriate record of the basis for the auditor's report; and
 - ii. evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements.
 - c) International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.
2. On 27 June 2014 Mr P Shah FCA issued an audit report in the name of his firm, X Limited, on the financial statements of Y Limited for the year ended 30 September 2013 when, in breach of audit regulation 3.10, the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland), including:
 - a) International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that the engagement could be performed in an effective manner.
 - b) International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the auditor failed to prepare, on a timely basis, audit documentation that provides:
 - i. a sufficient and appropriate record of the basis for the auditor's report; and
 - ii. evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements.

- c) International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.

024552

5 Mr Robert Dobson FCA

Consent order made on 3 May 2016

With the agreement of Mr Robert Kirton Dobson of 37 Walton Gardens, Folkestone, CT19 5PR, the Investigation Committee made an order that he be reprimanded, fined £1,300 and pay costs of £2,755 with respect to a complaint that:

Mr R Dobson FCA advised Mr X that he could not reclaim VAT on business mileage claimed when this was wrong.

025589

6 Mrs Nicola Bowker FCA

Consent order made on 3 May 2016

With the agreement of Mrs Nicola Jane Bowker of Alexander Buildings, 37 New Road, Laxey, Isle of Man, IM4 7BQ, the Investigation Committee made an order that she be reprimanded, fined £2,500, pay costs of £1,392 and refund fees of £2,500 to the client if these fees had been paid, and if not paid, those fees should be waived with respect to a complaint:

That on 7 December 2012 Mrs N J Bowker FCA issued an audit report on behalf of her firm X & Co, in respect of the financial statements of Y Limited for the year-ended 31 December 2011 when, contrary to section 1212 of the Companies Act 2006, she was not eligible for appointment as auditor under the Audit Regulations and Guidance 2008.

030488

7 Mr Dean Zahorodnyj

Consent order made on 11 May 2016

With the agreement of Mr Dean Zahorodnyj of 100 Alfreton Road, Little Eaton, Derby, DE21 5DD, the Investigation Committee made an order that he be reprimanded and pay a contribution to costs of £500 with respect to a complaint that:

Between 19 October and 17 November 2014, Mr Dean Zahorodnyj acted recklessly in that he claimed £59.40 of expenses from his employer when he should have known that he was not entitled to do so.

026819

8 Mr Jonathan Gammon FCA

Consent order made on 12 May 2016

With the agreement of Mr Jonathan Michael Gammon of Henwood House, Henwood, Ashford, Kent, TN24 8DH, the Investigation Committee made an order that he be severely reprimanded, fined £4,000 and pay costs of £2,455 with respect to a complaint that:

Mr Gammon of X LLP did not respond in a timely manner to letters sent by Mr 'A' as Liquidator of Y Ltd on 19 December 2013, 6 August 2014, 27 August 2014 and 24 October 2014 requesting details of the books and records of Y Ltd held by X LLP.

026788

REGULATORY DECISIONS

AUDIT REGISTRATION COMMITTEE

ORDER – 19 APRIL 2016

9 Publicity Statement

Mander Duffill Limited, 65-66 St. Mary Street, Chippenham, Wiltshire, SN15 3JF, has agreed to pay a regulatory penalty of £2,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.03b, 2.07, 2.11 and 6.06, for failing to notify ICAEW within 10 business days of a change in its structure, for not ensuring that it was controlled by an entity that was audit registered and for the incorrect completion of its 2013 and 2014 annual returns.

032435

INVESTMENT BUSINESS COMMITTEE

ORDER – 14 APRIL 2016

10 Publicity Statement

'In view of the firm's admitted breach of DPB Regulation 2.07(m), Alan Secker & Co of 209 Albury Drive, Pinner, Middlesex, HA5 3RH, has agreed to pay a regulatory charge (determined by the Investment Business Committee) of £250 for failing to have adequate PII cover in place for insurance mediation activities.'

029228

ORDER – 14 APRIL 2016

11 Publicity Statement

'In view of the firm's admitted breach of DPB Regulations 4.04 and 2.07(h) for failing to carry out annual compliance reviews and for the incorrect completion of its annual returns, Edward Egglestone & Company of 3-5 Scarborough Street, Hartlepool, TS24 7DA, has agreed to pay a regulatory charge (determined by the Investment Business Committee) of £1,000.'

031022

All enquiries to the Professional Conduct Department, T +44 (0)1908 546 293