



DISCIPLINARY ORDERS AND REGULATORY DECISIONS

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Disciplinary orders

Disciplinary Committee tribunal orders

- | | | |
|---|---------------------------------|-------|
| 1 | Mrs Susannah Jane Bywater [FCA] | 2 – 4 |
|---|---------------------------------|-------|

Investigation Committee consent orders

- | | | |
|----|--|-------|
| 2 | Mr William John Kelly | 5 |
| 3 | Mr Wai Yui Jimmy Lau ACA | 5 |
| 4 | No publication of name | 6 |
| 5 | Mr David Nigel Whitehead | 6 |
| 6 | Integra Corporate Finance Limited | 7 – 8 |
| 7 | Mr Richard Hilton Savage | 8 |
| 8 | Mr Richard Hilton Savage | 8 – 9 |
| 9 | Cranleys Partnership LLP | 9 |
| 10 | Mr Jonathan Charles Rowell Morley-Kirk FCA | 9 |
| 11 | Mr Gerard Nicholas Ratcliffe | 10 |

Regulatory orders

Audit Registration Committee

- | | | |
|----|--------------|----|
| 12 | S4B (UK) Ltd | 11 |
|----|--------------|----|

DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Mrs Susannah Jane Bywater [FCA] of
1 Bull Cottages Church Road Brasted, Westerham, Kent, TN16 1HY

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 6 October 2015

Type of Member Member

Terms of complaint

Between December 2011 and April 2014 Mrs S Bywater ACA acted dishonestly in that she stole funds totalling £191,303.21 from her employer.

Mrs Susannah Jane Bywater is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a

Hearing date

06 October 2015

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes on defendant's own admission

All heads of complaint proven Yes

Sentencing order Exclusion
Costs of £2,500

Procedural matters and findings

Parties present Mrs Bywater (present and not represented)
The Investigation Committee (IC)

Represented Ms Dix of ICAEW represented the IC

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 to service

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

Issues of fact and law

1. ICAEW received an anonymous complaint stating that Mrs Bywater had been dismissed from her position as Financial Controller at a casino on 2 June 2014 for gross misconduct following the discovery that she had misappropriated funds from the company over a three year period.
2. Mrs Bywater had attended a disciplinary meeting on 2 June 2014. She was questioned regarding transactions made into a bank account at the same branch as her personal bank account. In this meeting she explained that she believed her dual authorisation had been removed following an issue with payroll enabling her to transfer these funds as she was then entitled to single authority (super user) status. She was also questioned about transactions on her company credit card. She stated that she had to book flights for other colleagues when their credit card was maxed out. She also suggested that she made the transfers whilst under the influence of alcohol.
3. Mrs Bywater provided ICAEW with a schedule of unauthorised transfers from April 2012 to February 2014 totalling £119,740.01 and a schedule of unauthorised credit card transactions which she annotated marking what she believed to be genuine business expenses. The total of the credit card schedule is £104,340.77, minus Mrs Bywater's annotations it totals £71,663.20. The total amount agreed that she misappropriated is £191,303.21.
4. Mrs Bywater has provided a medical note confirming that she saw her GP on 2 June 2014 the day she attended the disciplinary meeting. Her doctor diagnosed her as suffering from extreme anxiousness. The letter from her GP dated 4 December 2014 confirmed that she was not seen by her GP between July-December 2014 with any related problems.
5. In response to a letter outlining the complaint Mrs Bywater stated "*I haven't got a schedule of the amounts taken... With regards to the reason why, I have been undergoing regular counselling sessions since June this year in an attempt to try and understand the reasons why*". She stated she had not felt herself since her daughter was born and that alcohol had also played a part.
6. She provided a letter from her employer dated 18 September 2014 confirming that they had received from her £60,000 which was seen as full restitution, £12,991.32 as refund for a cancelled holiday booked in her name and £3,463.20 for her season ticket loan. The letter confirmed that following receipt of these funds they deemed the matter resolved. Her former employer did report the matter to police for fear of adverse publicity.

Conclusions and reasons for decision

7. The tribunal found the complaint proven on Mrs Bywater's own admission.
8. The tribunal was of the view that this was a serious breach of trust calling into question Mrs Bywater's honesty and integrity. The amounts stolen were used to fund an extravagant lifestyle with her business credit card being used. If this matter had been reported to police and she had been convicted, due to the amount stolen a custodial sentence would have been inevitable. It was her employer's decision not to take the matter to the police as they were fearful of adverse publicity.
9. In all the circumstances there was a high likelihood of Mrs Bywater's actions bringing discredit to herself, the profession of chartered accountancy and the Institute. She was in breach of Disciplinary Bye-law 4.1.a.

Matters relevant to sentencing

10. The tribunal was told that Mrs Bywater had no prior disciplinary record. She addressed the tribunal in mitigation and expressed remorse and suggested that the last 18 months had been a very difficult period for her. Losing her job and facing investigation by ICAEW. She said that she had been affected by the birth of her child at the time and had not been completely stable. The tribunal noted however that there was no contemporary medical evidence to this effect.
11. Breach of trust of an employer is a serious matter. Her dishonest conduct called into question her fitness to remain a member of ICAEW. The public are entitled to have complete confidence in the integrity and honesty of those within the profession – her conduct greatly undermines that confidence. As such no lesser sanction than exclusion was warranted.

Sentencing Order

12. The tribunal took into account its *Guidance on Sentencing* and Mrs Bywater's limited means. It ordered that:-
 - a) she be excluded from membership; and
 - b) pay costs of £2,500.

The tribunal ordered that she pay the costs over 12 months as follows:

- a) An initial payment of £300 due on 1 December 2015
- b) 11 subsequent monthly payments of £200 payable on the first day of the ensuing 11 months.

Decision on publicity

13. Publicity with names.

Chairman

Mr David Wilton FCA

Accountant Member

Mr Martin Ward FCA

Non Accountant Member

Mrs Jane Rees

Legal Assessor

Mr Dominic Spenser Underhill

023491

INVESTIGATION COMMITTEE CONSENT ORDERS

2 Mr William John Kelly

Consent order made on 22 August 2016

With the agreement of Mr William John Kelly of 3rd Floor, Temple Point, 1 Temple Row, Birmingham, B2 5LG, the Investigation Committee made an order that he be reprimanded, fined £1,000 and pay costs of £3,080 with respect to a complaint that:

On 16 February 2015 Mr Kelly, in his capacity as joint administrator of X Limited, sent to creditors his first notification of the pre-packaged sale he completed which did not comply with Statement of Insolvency Practice 16 in that it failed to disclose:

1. Sufficient detail on the valuation and the sale consideration, with no comparison of the same.
2. Any background information or reasons for the administration.
3. Any reference to the statutory purpose of the administration and no statement confirming that the statutory purpose has been achieved by the pre-packaged sale.
4. Any information on the rationale for the pre-packaged sale and the reasons why it was in the best interests of the creditors.

030646

3 Mr Wai Yui Jimmy Lau ACA

Consent order made on 1 September 2016

With the agreement of Mr Wai Yui Jimmy Lau of Room 1001, 100 Granville Road, Kowloon, Hong Kong SAR, the Investigation Committee made an order that he be reprimanded, and pay costs of £1,355 with respect to a complaint that:

Mr Wai Yui Jimmy Lau ACA held himself out to hold a Masters Degree in Professional Accounting:

1. at a seminar at Lingnan University on 25 May 2013 called “QP Exam Skills and Sharing Seminar”; and
2. on his Linked-in profile

when he was only a student of the programme at the relevant time, contrary to section 110.2 of The Code of Ethics.

029659

4 No publication of name

Consent order made on 1 September 2016

With the agreement of a member the Investigation Committee ordered that the member pay costs of £967 with respect to a complaint that:

On 15 October 2013 a member entered into an Individual Voluntary Arrangement within the provisions of the Insolvency Act 1986.

The Committee directed that the member should not be identified by name when the order is publicised.

030024

5 Mr David Nigel Whitehead

Consent order made on 1 September 2016

With the agreement of Mr David Nigel Whitehead of King Street House, 15 Upper King Street, Norwich, Norfolk, NR3 1RB, the Investigation Committee made an order that he be severely reprimanded, fined £7,500 and pay costs of £3,493 with respect to a complaint that:

1. Mr Whitehead failed to comply with Rule 2.33(1) of the Insolvency Rules 1986 read with Paragraph 49 of Schedule B1 of the Insolvency Act 1986 in his capacity as joint administrator of X Limited as he filed the administrators' proposals with the Registrar of Companies 53 months late.
2. Mr Whitehead failed to comply with Rule 2.47(4)(b) of the Insolvency Rules 1986 in his capacity as joint administrator of X Limited as he did not file the first six month progress report with the Registrar of Companies.
3. Mr Whitehead failed to comply with Rule 2.117 of the Insolvency Rules 1986 in his capacity as joint administrator of X Limited as he incorrectly filed the final progress report with the Registrar of Companies that did not cover the correct period of the administration, reporting to 16 March 2011 when the administration ended on 15 April 2011.
4. Mr Whitehead failed to comply with Rule 4.49C(7) of the Insolvency Rules 1986 in his capacity as joint liquidator of X Limited as he filed three annual progress reports late with the Registrar of Companies.

024581

6 Integra Corporate Finance Limited

Consent order made on 1 September 2016

With the agreement of Integra Corporate Finance Limited of Town House Farm, Marton, Marton cum Grafton, York, YO51 9QY, the Investigation Committee made an order that the firm be severely reprimanded, fined £26,000 and pay costs of £6,250 with respect to a complaint that:

1. On 3 November 2008 Integra Corporate Finance Limited issued an audit report on the financial statements of X for the year ended 5 April 2008, in breach of Audit Regulation 3.08, in that the audit was not conducted in accordance with:
 - i. International Standard on Auditing (UK and Ireland) 250 “Consideration of laws and regulations in an audit of financial statements” in that the firm failed to obtain a general understanding of the legal and regulatory framework applicable to the audited entity and how the entity is complying with that framework, and in particular failed to identify the entity had:
 - a) Failed to comply with Regulation 4 (5) of the Occupational Pension Schemes (Investment) Regulations 2005 (the Investment Regulations) as the assets of the scheme had not been invested predominantly in investments admitted to trading on regulated markets.
 - b) Failed to comply with Regulation 5 of the Investment Regulations in that the scheme had incurred borrowings which were liable to be repaid out of the assets of the scheme.
 - ii. International Standard on Auditing (UK and Ireland) 500 ‘Audit evidence’ in that the firm failed to obtain and document sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion in respect of the following freehold properties:
 - a) ‘A’
 - b) ‘B’
2. On 29 October 2009 Integra Corporate Finance Limited issued an audit report on the financial statements of the X for the year ended 5 April 2009, in breach of Audit Regulation 3.08, in that the audit was not conducted in accordance with:
 - i. International Standard on Auditing (UK and Ireland) 250 “Consideration of laws and regulations in an audit of financial statements” in that the firm failed to obtain a general understanding of the legal and regulatory framework applicable to the audited entity and how the entity is complying with that framework, and in particular failed to identify the entity had:
 - a) Failed to comply with Regulation 4 (5) of the Occupational Pension Schemes (Investment) Regulations 2005 (the Investment Regulations) as the assets of the scheme had not been invested predominantly in investments admitted to trading on regulated markets.

- b) Failed to comply with Regulation 5 of the Investment Regulations in that the scheme had incurred borrowings which were liable to be repaid out of the assets of the scheme.

- ii. International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain and document sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion in respect of the following freehold properties:
 - a) 'A'

 - b) 'B'

015580

7 Mr Richard Hilton Savage

Consent order made on 9 September 2016

With the agreement of Mr Richard Hilton Savage of Fairclough House, Church Street, Adlington Chorley, Lancashire, PR7 4EX, the Investigation Committee made an order that he be reprimanded, fined £3,000 and pay costs of £1,895 with respect to a complaint that:

Mr Savage as supervisor of the IVA of Ms X:

1. Did not explain sufficiently to Ms X between November 2011 and 13 March 2012 that the lump sum payment offered in full and final settlement of her IVA may not lead to the conclusion of the IVA within a reasonable timescale as she anticipated.

2. Misled Ms X in a letter dated 28 June 2012 in that he stated the case would be sent to the closures team to complete the arrangement and that the process could take 3-6 months.

020344

8 Mr Richard Hilton Savage

Consent order made on 9 September 2016

With the agreement of Mr Richard Hilton Savage of Fairclough House, Church Street, Adlington Chorley, Lancashire, PR7 4EX, the Investigation Committee made an order that he be reprimanded, fined £4,000 and pay costs of £2,343 with respect to a complaint that:

Mr Savage as supervisor of the IVA of X:

1. Did not explain sufficiently to Ms X prior to her approving a variation report that the lump sum payment offered in full and final settlement of her IVA may not lead to the conclusion of the IVA within a reasonable timescale as she anticipated.

2. Between 19 April 2013 and 28 August 2014 failed to issue a certificate of completion in a timely manner.

024104

9 Cranleys Partnership LLP

Consent order made on 13 September 2016

With the agreement of Cranleys Partnership LLP of Winton House, Winton Square, Basingstoke, Hampshire, RG21 8EN, the Investigation Committee made an order that the firm be severely reprimanded, fined £6,600 and pay costs of £4,967 with respect to a complaint that:

1. On 10 July 2014 an email was sent from Cranleys Partnership LLP in the name of Mr X which gave the following incorrect advice to a client:

'the dividend position indeed was insolvent but this hardly had any affect. It is perfectly possible to pay beyond reserves where the directors are liable for the company', which is incorrect.
2. On 3 January 2014 Cranleys Partnership LLP trading as Cranleys Chartered Accountants, prepared accounts for X Ltd for the period ended 30 April 2013 which are misleading in that;
 - There is no going concern note
 - There is no related party transaction note
 - There is no share capital

024408

10 Mr Jonathan Charles Rowell Morley-Kirk FCA

Consent order made on 13 September 2016

With the agreement of Mr Jonathan Charles Rowell Morley-Kirk of Babrow Building, The Valley, Anguilla, the Investigation Committee made an order that he be reprimanded, fined £500 and pay costs of £1,718 with respect to a complaint that:

Between 12 February 2015 and 21 October 2015 Mr J Morley-Kirk FCA engaged in public practice without holding a practising certificate contrary to Principal Bye-law 51a.

029684

11 Mr Gerard Nicholas Ratcliffe

Consent order made on 15 September 2016

With the agreement of Mr Gerard Nicholas Ratcliffe of 3 The Studios, 320 Chorley Old Road, Bolton, BL1 4JU, the Investigation Committee made an order that he be reprimanded, fined £1,000 and pay costs of £2,380 with respect to a complaint that:

Between January 2012 and 11 February 2014, Mr G N Ratcliffe, as supervisor of the individual voluntary arrangements of Mr and Mrs X did not issue a notice of breach in a timely manner.

028784

REGULATORY DECISIONS

AUDIT REGISTRATION COMMITTEE

ORDER – 13 JULY 2016

12 Publicity Statement

S4B (UK) Ltd, Burlington House, 1-13 York Road, Maidenhead, Berkshire, SL6 1SQ, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.20 for failing to carry out annual cold file reviews since 2011.

034404

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