

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Shiguang Cui

Heard on: Wednesday, 17 April 2019

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

Committee: Mr John Crawley (Chairman)
Mr Edward Weiss (Accountant)
Mrs Judith Venables (Lay)

Legal Adviser: Mr Robin Havard (Legal Adviser)

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case Presenter)
Ms Pamella Ramphal (Hearings Officer)
Mr Shiguang Cui (Attended by telephone)

Summary: **Removal from Student Register**
Costs of £500.00 awarded against Mr Shiguang

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PRELIMINARY APPLICATIONS

APPLICATION TO AMEND

1. In an email dated 1 April 2019, ACCA informed Mr Shiguang that it intended to apply for an amendment to the allegations. It was proposed by ACCA that allegation 1(b) should be amended so that it read that Mr Shiguang intended and also attempted to use any or all of the unauthorised materials which he had at his desk to gain an unfair advantage.
2. The application was for the allegation of dishonesty to be amended in the same way.
3. It was suggested that the proposed amendments were intended to reflect more accurately the evidence of the Invigilator and Supervisor. It also aligned with the admissions which had been made by Mr Shiguang. Mr Jowett submitted that Mr Shiguang was not prejudiced by the proposed amendments.
4. Mr Shiguang confirmed that he did not object to the application.
5. On considering the application, the Committee concluded that it was appropriate to allow the amendments on the basis that Mr Shiguang had not objected to them and it would not cause prejudice.
6. In addition, the Committee considered that the facts of allegation 1(a) concerned a breach of Education Regulation 4 but not Education Regulation 5. Furthermore, the facts of allegation 1(b) reflected a breach of Education Regulation 5. Mr Jowett conceded this to be so and Mr Shiguang did not object to the further refinement.
7. Finally, as a result of the amendments, there was a consequent amendment that needed to be made to allegation 1(d)(ii) to reflect the fact that it should relate to all the above allegations and not restricted just to allegation 1(a).

8. The amended allegations to be considered by the Committee are as set out under paragraph 9 below.

ALLEGATIONS

9. Allegation 1
- (a) During an F8 examination on 4 June 2018, Mr Shiguang Cui was in possession of unauthorised materials which he had at his desk contrary to Examination Regulations 4.
 - (b) Mr Shiguang Cui intended and also attempted to use any or all of the materials set out at 1(a) above to gain an unfair advantage, contrary to Examination Regulation 5.
 - (c) Mr Shiguang Cui's conduct in respect of 1(b) above was:
 - (i) Dishonest, in that Mr Shiguang Cui intended and also attempted to use any or all of the unauthorised materials which he had at his desk to gain an unfair advantage;
 - (ii) Contrary to the fundamental principle of integrity (as applicable in 2018)
 - (d) By reason of his conduct, Mr Shiguang Cui is:
 - (i) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(c) above; or
 - (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of the above.

DECISION ON FACTS/ALLEGATIONS AND REASONS

ALLEGATIONS 1(a) and (b)

10. The Committee had considered the following documents: a hearing bundle (pages 1 to 103); tabled additional (1) (pages 104 to 105); tabled additional (2) (pages 106 to 107); additional bundle (1) (pages 108 to 114); additional bundle (2) (pages 115 to 122); additional bundle (3) (pages 123 to 125) and a service bundle (pages 1 to 16).
11. The evidence presented by ACCA was largely unchallenged by Mr Shiguang.
12. Mr Shiguang admitted the facts of allegations 1(a) and (b) and the Committee found them proved.
13. Mr Shiguang first registered as an ACCA student on 27 June 2017. He had not made any previous attempts at the F8 CBE examination and had previously passed the F6 ACCA examination.
14. On 4 June 2018, Mr Shiguang attended the Zhuhai C733/1 exam centre in order to sit the F8 CBE examination. The exam commenced at 14.00pm and was due to last for 3 hours 20 minutes. Due to unforeseen circumstances that day, to include the slow process of admission of a number of candidates, the start times, and thereby finishing times, had to be staggered. This meant that, due to their start times, some candidates finished their exam as late as 6 p.m.
15. All candidates for ACCA examinations were made aware of the Examination Regulations as follows:
 - (a) Prior to an examination, all CBE candidates registering for CBE in advance of each CBE session receive a student information sheet which contains the ACCA guidelines and Regulations;

- (b) Before an examination commences the invigilators' announcements draw candidates' attention to the regulations and guidelines outlined in the student information sheet. In particular, point 3 is a clear instruction to all candidates to remove all unauthorised materials from their desks.
16. The exam centre Invigilator, Person A, stated in her SCRS1B form, completed on the day of the exam that unauthorised materials were found in Mr Shiguang's possession on the top of his desk at "around 17.40" and that Mr Shiguang was, turning the notes over and reading. When he saw that he was being observed, Mr Shiguang attempted to hide the notes. Person A then called Person B, the Exam Centre Supervisor, who supported the account provided by Person A. Person B then took photographs of the notes on the desk.
 17. Person B confirmed that Mr Shiguang had been found with the unauthorised materials when he had approximately five minutes left to complete his exam.
 18. On the day of the examination, Mr Shiguang completed an SCRS2 form in relation to the incident and asserted that the unauthorised materials in his possession comprised of "notes" and was found at "17.40" by "a teacher." He said he was "*not well prepared and have to pass (sic).*" When asked to confirm the purpose for which he had the unauthorised materials, Mr Shiguang asserted, "*To fill in the answer.*"
 19. Mr Shiguang denied actually using the unauthorised material. However, when asked whether he attempted to use the unauthorised materials, Mr Shiguang asserts, "*yes – to fill in the answer.*"
 20. When asked whether he intended to gain an unfair advantage from the unauthorised material, Mr Shiguang states, "*Yes the time is going to be up and many questions are not answered.*"

21. Mr Shiguang confirmed that he was told that he was suspected of “cheating” and confirmed that he agrees with the account.
22. The Committee relied on the evidence of the Examiner, Person C, and found that the material was relevant to the syllabus and was relevant to the examination. He said, “*Question 7507(d) required bank substantive procedures. All t5 tests provided were as per the unauthorised material notes. Question 7515(a) notes used – although incorrectly used as question on revenue not receivables.*”
23. On 16 July 2018, Mr Shiguang provided a response to a letter from Exams Conduct of 10 July 2018 asserting, “*I am an ACCA candidate from China and I just took part in F8 examination in June 2018. Before the exam, I took printed notes with me which is a breach of the regulation. I feel really regretted and ashamed about my behaviour. I admit my stupid mistake and I promise that I will never make such a mistake again. No matter how my F8 result is, I sincerely hope that my apology can be received.*”
24. On 2 August 2018, Mr Shiguang provided an email response to a letter from the Investigations Officer of 1 August 2018 stating, “*First of all, I feel very sorry for the inconvenience and I'm guilty about my dishonest behavior. Now I am writing to respond to several questions in your letter.*
 - (a) *Yes, I accept that the enclosed copy of unauthorised materials were the materials that I had in my possession and they were found at my desk by the invigilator during the F8 exam on 4 June 2018.*
 - (b) *I admit that I took the unauthorised materials with me during the exam and intended to use them, but I failed to use the unauthorised materials because I was sitting in the front row and I felt very afraid. When I finally tried to take out the notes hidden by me, I was caught by the examiner and she confiscated my notes and took photos of them. So I did not use the unauthorised materials although I was in possession of them.*

(c) *I feel really sorry and guilty about my foolish behavior and I apologize again for troubling you. I promise that I will strictly obey each regulation of ACCA and will never make such mistakes again. Please give me a chance (sic).*"

25. On 4 September 2018, Mr Shiguang provided the Investigations Officer with a further response within which he stated, "*I feel sorry for the inconvenience again. I was involved in an investigation a month ago and I'm really guilty about my behavior. I know it is absolutely a big mistake but I really like learning ACCA and I beg you for just one chance. I added my resume in the attachment and could you please read my resume at your convenience? I'm working hard in my university and I really enjoy ACCA courses. I have never made similar mistakes before so I feel regret for my dishonest and stupid behavior which is against ACCA regulations.*"
26. On 24 September 2018, Mr Shiguang provided a final response to the Investigations Officer stating, "*Sorry for the inconvenience again... Before the final result of the investigation come out, I'd like to show two of my certificates of honour to you. One is ACCA Job Hunting Competition in which I won the second runner-up team award. The other is certificate of scholarship from Overseas Koreans Foundation. I'd like to prove that I am really working hard and I love ACCA. I have never made such mistakes before and I feel so ashamed of myself for making such a silly mistake.*"
27. In conclusion, on the basis of the evidence presented by ACCA, which the Committee accepted, and the admissions of Mr Shiguang, the Committee found that Mr Shiguang had taken unauthorised materials with him into the examination. The Committee was satisfied that the materials were found on his desk and comprised of notes, the content of which were directly relevant to the examination he was sitting. As a consequence, the notes clearly amounted to unauthorised material. Mr Shiguang's conduct was therefore contrary to the requirements of Examination Regulations 4.

28. Based on his own admissions, Mr Shiguang was in possession of unauthorised materials. Person A had seen him looking through the notes he had on his desk which, he accepted, was with the intention of assisting him in answering questions in the examination. The Committee noted that this took place with only five minutes remaining in the examination. Mr Shiguang stated that he had not been able to look at the notes before as he was seated in the front row of the examination room. Nevertheless, in looking at the notes, the Committee was satisfied that he intended to use them, and indeed, attempted to use them in an effort to gain an unfair advantage contrary to Examination Regulation 5.
29. The Committee repeated that it found allegations 1(a) and (b) proved.

Allegation 1(c)(i)

30. The Committee repeated, and relied upon, its findings of fact in respect of allegations 1(a) and (b). Mr Shiguang knew that he was not permitted to take the notes into the examination with him. He accepted that, at the very least, he intended, and had attempted, to use them in order to assist him in answering questions in the exam, thereby deriving an unfair advantage over those students who were sitting the exam without the assistance of such notes.
31. The Committee was satisfied that, by the standards of ordinary decent people, such conduct was dishonest. Indeed, in his response of 4 September 2018, Mr Shiguang had accepted that his behaviour had been dishonest. He had also admitted the allegation when put to him at the outset of the hearing.
32. The Committee therefore found allegation 1(c)(i) proved.

Allegation 1(c)(ii)

33. The Committee repeated, and relied upon, its findings of fact as set out above and on its finding that Mr Shiguang had acted dishonestly.
34. The Committee was satisfied that Mr Shiguang had failed to adhere to the ethical standards expected of ACCA members, to include its student members, and the accountancy profession in that he had failed to act in a way which ensured fair dealing and truthfulness.
35. The Committee therefore found allegation 1(c)(ii) proved.

Allegation 1(d)(i)

36. The Committee repeated, and relied upon, its findings of fact as set out above.
37. Taking account of its findings that Mr Shiguang had acted dishonestly and also in breach of the Fundamental Principle of Integrity, the Committee was satisfied that Mr Shiguang was guilty of misconduct in that such conduct could properly be described as deplorable. It brought discredit to Mr Shiguang, the Association and the accountancy profession.
38. The Committee therefore found allegation 1(d)(i) proved.

Allegation 1(d)(ii)

39. As the Committee had found allegation 1(d)(i) proved, there was no requirement to make a separate finding in respect of this allegation.

SANCTION AND REASONS

40. 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 (January 2019) and the principle of proportionality. It had also listened to legal advice from the Legal Adviser which it accepted.

41. 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.
42. 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.
43. The Committee considered whether any mitigating or aggravating factors featured in this case.
44. The Committee accepted that there were no previous findings against Mr Shiguang.
45. The Committee noted that Mr Shiguang had immediately accepted his wrongdoing and had apologised. He had also engaged with the proceedings. He had cooperated with the investigation and participated at the hearing.
46. Indeed, the Committee had taken into consideration Mr Shiguang's responses on the day of the exam and his subsequent correspondence with ACCA to which the Committee had referred above. To that extent, the Committee was satisfied that he had shown a level of insight, that his contrition was genuine and that he recognised the seriousness of his conduct. The Committee had also taken account of the fact that Mr Shiguang was a young man when these events took place.
47. The Committee had not been provided with any testimonials or references as to Mr Shiguang's character.

48. As for aggravating features, on the basis of the findings, it had been established that his behaviour had been premeditated and deliberate. He had taken notes into an exam which were relevant to that exam and for which, on his own admission, he was under-prepared. The Committee was concerned that this was only the second ACCA exam that he had sat and he was prepared to cheat in order to overcome his lack of preparation.
49. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.
50. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, the Committee did not consider that a severe reprimand would be sufficient or proportionate.
51. Mr Shiguang had been found to have acted dishonestly in a premeditated manner. The Committee was also concerned that, based on its findings, the objective of his dishonest conduct was to gain an unfair advantage which may have enabled him to pass the exam. It ran the risk that, in this way, Mr Shiguang may have gained his qualification when not competent to do so. This was conduct which was fundamentally incompatible with being a student member of ACCA.
52. The Committee had considered whether there were any exceptional reasons why the Committee should consider that it would not be necessary to remove Mr Shiguang from the student register but could find none.
53. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Shiguang shall be removed from the student register.

COSTS AND REASONS

54. The Committee concluded that ACCA was entitled to be awarded costs against Mr Shiguang. The amount of costs for which ACCA applied was £6,512.97. All parts of the allegation, to include dishonesty, had been found proved. The Committee did not consider that the claim was unreasonable. Therefore, the Committee restricted its deliberations on the amount it should award to an assessment of Mr Shiguang's ability to pay.
55. Mr Shiguang had provided ACCA with details of his means which were clearly very limited. Indeed, as a student, he was reliant on his parents for financial support. Whilst that information had not been supported by any documents to verify the amounts, the Committee accepted Mr Shiguang's submission.
56. In exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £500.

EFFECTIVE DATE OF ORDER

57. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mr John Crawley

Chairman

17 April 2019