

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Jingrui Hao

Heard on: Tuesday, 30 April 2019

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

Committee: Mrs Judith Way (Chairman)
Ms Rubinder Sukkersudha (Accountant)
Mr Stephen Griffiths (Lay)

Legal Adviser: Miss Judith Chrystie (Legal Adviser)

Persons present

and capacity: Ms Sarah Cawley-Wilkinson (ACCA Case Presenter)
Mr Christopher Badoo (Hearings Officer)

Summary: Removal from the Student Register

Costs: Costs of £750 awarded to ACCA

Observers: Mrs Wendy Harris (ACCA Appointments Board)

ACCA



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SERVICE OF PAPERS

1. Miss Hao was neither present nor represented at the hearing.
2. The Committee was satisfied there had been effective service of the notice of the hearing in accordance with the Complaints and Disciplinary Regulations 2014 (amended 1 January 2019) ('the Regulations').

PROCEEDING IN ABSENCE

3. The Committee determined to proceed in Miss Hao's absence in accordance with its discretionary power at regulation 10(7) of the Regulations. The Committee recognised that it should only proceed with the utmost care and caution.
4. The Committee was content that Miss Hao was aware of the proceedings and had no intention to attend the hearing. Miss Hao had completed and returned the Case Management Form on 25 February 2019, in which she stated that she did not intend to attend the hearing in person, on the phone or via a video link or through a representative. She had not sought an adjournment.
5. Further, in an email to the Hearings Officer dated 12 March 2019, Miss Hao has confirmed, "I am sorry I cannot attend the Disciplinary hearing on Tuesday, 30 April 2019. I am content for the Disciplinary Committee to proceed in my absence". The Committee considered that Miss Hao had expressly and explicitly voluntarily waived her right to attend the hearing.
6. As a consequence, the Committee determined that there was no purpose in delaying consideration of the case as there was nothing to indicate that Miss Hao would, or wished to, attend the hearing at a future date if the hearing was to be adjourned.

7. Further, the Committee recognised that there was a public interest in regulatory proceedings being dealt with expeditiously and was satisfied that in all the circumstances, it was reasonable and fair to proceed in Miss Hao's absence.

ALLEGATION/BRIEF BACKGROUND

8. The Committee had the following papers before it:
 - (a) Service Bundle with page numbers 1-16;
 - (b) Main bundle with page letters A to M and numbers 1 to 70 (with pages 23 and 24 enlarged for clarity and tabled separately and the insertion of a replacement of page 14a and 15a to correct reference to an erroneous student);
 - (c) Tabled additional (1) with page numbers 71 to 72;
 - (d) Tabled additional (2) with page numbers 73 and 74
9. The Committee considered the following allegation:

Allegation 1

- (a) *During an F6 examination on 7 June 2018, Miss Jingrui Hao was in possession of (i) unauthorised materials which she had at her desk contrary to Examination Regulations 4 and/ or 5.*
- (b) *Miss Jingrui Hao intended to use any or all of the materials set out at 1(b) above to gain an unfair advantage, contrary to Examination Regulation 7 (a).*
- (c) *Miss Jingrui Hao's conduct in respect of 1(b) above was:*

- (i) *Dishonest, in that Miss Jingrui Hao intended to use any or all of the unauthorised materials which she had at her desk to gain an unfair advantage;*
 - (ii) *Contrary to the Fundamental Principle of Integrity (as applicable in 2018).*
- (d) *By reason of her conduct, Miss Jingrui Hao 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 1(a) above.*

10. On 14 November 2016, Miss Hao registered as an ACCA student.

11. On 7 June 2018, Miss Hao attended the Zhuhai C733/1 exam centre in order to sit the F6 CBE examination.

12. On the day of the exam, the exam Invigilator completed an SCRS1B form, which stated that:

- (a) the unauthorised item was found by her “under the docket on the desk”;
- (b) the unauthorised item was in the student’s possession during the exam;
- (c) she had, “watched the candidate flipped over the pages under the docket when I was standing behind the candidates work station” (sic);
- (d) the unauthorised item consisted of a “39/40 pages Size: small notes Shape: rectangle No fold.”;
- (e) Miss Hao had been, “reluctant to hand in the materials”.

13. On 11 October 2018, the invigilator sent an email which clarified that:
- (a) There were 3 rectangular pages of notes, one of which has notes on both sides;
 - (b) All the 3 pages of notes were found on Miss Hao's desk during the exam;
 - (c) Miss Hao brought the notes to the test centre and peeked them.
14. The Examiner's irregular script report dated 27 June 2018 confirmed that:
- (a) the materials were relevant to the syllabus and to the exam;
 - (b) that much of the information was in the tables provided with the exam;
 - (c) the materials had not been used in section C of the exam.
15. On the day of the examination, Miss Hao completed an SCRS2 form, which stated:
- (a) the unauthorised materials in her possession comprised of "paper";
 - (b) she accepted that the unauthorised materials were relevant to the syllabus being examined and, "contains some sheets relevant to the exam.";
 - (c) confirmed that she used the unauthorised materials and attempted to use them but that she did not intend to use the unauthorised materials (Miss Hao states, "No because all the sheets in the paper are also in the exam's help.");
 - (d) denied that she intended to gain an unfair advantage in the examination.

16. In correspondence with ACCA – most particularly on 8 June 2018 and 16 July 2018 - Miss Hao asserted that she possessed the materials but did not intend to gain an unfair advantage. She stated that:

- (a) didn't cheat;
- (b) prepared the papers to review on the subway on the journey to the exam centre and forgot to take them out of the her pocket when she arrived;
- (c) needed to use a paper towel during the exam, which was in the same pocket as the notes;
- (d) accidentally took out both the paper towel and the notes and tried to put the notes back in her pocket but they were found by the invigilator;
- (e) regretted her carelessness and was sorry;
- (f) had violated the exam rules even though this was unintentional;
- (g) was "so guilty" that her behaviour caused the disciplinary consequences of the exam.

17. In a Case Management Form dated 24 February 2019, Miss Hao admitted all the allegations.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

18. In relation to allegation 1(a), the Committee was satisfied that Miss Hao had breached Examination Regulation 4 and 5. Examination Regulation 4 prohibits unauthorised material being taken to an exam desk and Examination Regulation 5 excludes students possessing, using, or intending/attempting to use, any unauthorised materials while the exam is in progress.

19. Miss Hao had consistently admitted - on the day of the exam and in subsequent correspondence with ACCA - that she possessed the unauthorised materials at her desk during the examination. Following Miss Hao's admissions, the Committee was satisfied that factual allegation 1(a) was established and the Chair announced it was proved in accordance with regulation 12(3)(c) of the Regulations.
20. Having found a breach of Examination Regulation 4 and 5, the Committee considered whether Miss Hao intended to use the unauthorised materials to gain an unfair advantage. The Committee recognised that, under Examination Regulation 7(a), if the unauthorised materials were relevant to the exam syllabus, there was a reversal of the burden of proof and an assumption that the student intended to use the unauthorised materials to gain an unfair advantage. It therefore fell to Miss Hao to prove that she did not intend to gain an unfair advantage.
21. The Committee was satisfied that the unauthorised materials were relevant to the exam syllabus: the Examiner's report confirmed that the materials were relevant to the syllabus and to the exam.
22. Until she completed the Case Management Form in February 2019, Miss Hao had denied she intended to use the unauthorised materials to cheat. However, in the Case Management Form she admitted all of the allegations. This included that she intended to use the unauthorised materials to gain an unfair advantage. The Committee carefully considered all the material in order to determine whether Miss Hao had not intended to gain an unfair advantage. It recognised that in an email on 8 June 2018, Miss Hao expressly stated that she did not cheat and, in essence, prepared the papers to revise on her way to the exam centre but had forgotten to take them out of her pocket when she arrived. She had furthered her explanation on 16 July when stated that, when taking out a paper towel during the exam, she had accidentally taken out the notes, which were in the same pocket and this was the point at which the notes were found by the invigilator. The Committee recognised that this account conflicted with the evidence from the invigilator that the unauthorised materials were found

at the student's desk and the invigilator's evidence that she had seen Miss Hao flipping, and peeking at, the notes.

23. The Committee agreed with ACCA's submission that Miss Hao's account was not credible. It noted that Miss Hao had not offered the explanation that she provided in June on the day of the examination and supplemented in July. It considered that the account had developed some weeks after the event in an effort to excuse her conduct. In addition the Committee considered the following were relevant in forming its view that Miss Hao's explanation was not believable:

- (a) the conflicts with the invigilator's evidence;
- (b) Miss Hao would have been aware of the rules regarding unauthorised materials in ACCA's exams having sat ACCA exams previously, including the day before the F6 exam;
- (c) even on her own account she had been reluctant to hand over the notes, which suggested that she was aware that something was wrong;
- (d) the notes were relevant to the exam syllabus and could theoretically have helped her and,
- (e) the notes were small and could have been designed for concealment – although the Committee considered that, in itself, this point was not persuasive.

24. Given these factors, together with the admission in the Case Management Form, the Committee determined that Miss Hao had not discharged the burden of proof and had not demonstrated that she did not intend to gain an unfair advantage. As a consequence, the Committee found allegation 1(b) proved.

25. The Committee considered Allegation 1(c)(i). It was satisfied that Miss Hao's conduct was dishonest. In reaching its decision, the Committee applied the

two stage subjective and objective test to determine whether Miss Hao had been dishonest (*Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*). The Committee initially considered Miss Hao's state of mind. Within the Case Management Form, Miss Hao had admitted the allegation of dishonesty. In addition, the Committee considered that Miss Hao's knowingly concealed unauthorised materials and brought it into the exam. This was in spite of the announcements made, and information provided, before the exam stating that such materials were prohibited. Miss Hao was found with the unauthorised materials at her desk and seen flipping through and peeking at the notes.

26. Having identified Miss Hao's state of mind as dishonest, the Committee went on to consider whether her conduct was honest or dishonest by the standards of ordinary honest people. The Committee considered that it was plain that the ordinary person would regard, in effect, intending to cheat in a professional exam as dishonest. Accordingly, the Committee found allegation 1(c)(i) proved.
27. The Committee also found that the Fundamental Principle of Integrity was breached; the Principle requires the student to be honest and Ms Hao was dishonest. Allegation 1(c)(ii) was therefore proved.
28. The Committee considered whether the factual allegations that had been found proved amounted to misconduct. It regarded the breaches of the Examination Regulations and the dishonesty as a clear falling short of the standards expected of an individual attempting to become an accountant. Cheating in an examination was deplorable and entirely unacceptable conduct and the Committee judged that this conduct amounted to misconduct. The Committee considered that such behaviour undermined the integrity of ACCA's examination process and clearly brought discredit to Miss Hao personally but also ACCA and the accountancy profession. The Committee therefore found Allegation 1(d)(i) proved.
29. Having found Allegation 1(d)(i) proved, the Committee made no finding in relation to Allegation 1(d)(ii), which had been pleaded in the alternative.

SANCTION AND REASONS

30. The Committee had regard to the Guidance for Disciplinary Sanctions ('the Guidance').
31. The Committee considered that there was limited mitigation in the case: Miss Hao had no previous disciplinary history. Whilst she immediately admitted she possessed the unauthorised materials on the day of the exam, she originally denied that she intended to gain an unfair advantage. She had offered an immediate apology for her conduct and showed limited insight for the fact that her conduct had given rise to the need for disciplinary proceedings.
32. Given the limited mitigation and the dishonest nature of the conduct found proved, the Committee determined that it would be insufficient to conclude this matter with no order. Further the Committee considered that dishonestly cheating in an examination would detrimentally impact on the public's confidence in the integrity and credibility of ACCA's exams and qualification processes. The Committee took account of paragraph E2 of the Guidance which stated that the public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. The Committee considered that an admonishment, any form of reprimand sanction or declaring that Miss Hao was ineligible to sit ACCA examinations for a specified period would not reflect the seriousness of the deliberate and planned conduct and dishonest intention behind it. It considered that none of these orders was adequate or sufficient.
33. Miss Hao intentionally took an unauthorised item into the examination with the intention to cheat. Given the high degree of trust and integrity the public rightly expect from a prospective accountant, the Committee considered that Miss Hao's conduct was fundamentally incompatible with remaining on the student register. The Committee found no exceptional circumstances in the case and considered that the only appropriate order in the public interest was to remove Miss Hao's name from the student register unless and until

she made an application for readmission and this was granted by the Admissions and Licensing Committee. The Committee judged that such an order reflected the seriousness and significance of her misconduct and related dishonesty.

34. The Committee, therefore, ordered that Miss Hao should be removed from the student register. It made no order in relation to the period of time that should elapse before an application for readmission should be considered.

COSTS AND REASONS

35. ACCA claimed costs in the sum of £6,308.65. The Committee noted the analysis of costs provided by ACCA. It was content that the costs were reasonably incurred and commensurate with the issues in the case. It agreed with the concession by the Case Presenter that a small reduction was needed to reflect that the hearing had not lasted one day, as estimated.
36. The Committee recognised that under regulation 15(1) of the Regulations, it could direct that Miss Hao pay such sum by way of costs to ACCA as it considered appropriate. In determining whether an order for costs was appropriate, the Committee was satisfied that Miss Hao's conduct had not had any adverse impact on the costs incurred.
37. In relation to her ability to pay, the Committee recognised that Miss Hao had submitted an email in which she stated, "for me all the cost is too expensive, I can hardly pay". She had provided a Statement of Financial Position that showed that she had a small salary and some savings. Whilst the Committee considered that Miss Hao could not afford to pay the entirety of ACCA's costs, it was satisfied that an order requiring Miss Hao to pay a contribution towards the costs was proportionate and appropriate.
38. In all these circumstances, the Committee ordered that Miss Hao should pay ACCA's costs in the sum of £750.

Judith Way
Chairman
30 April 2019