

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

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| In the matter of: | Mr Zehui Gong |
| Heard on: | Thursday, 15 August 2019 |
| Location: | ACCA's Offices, The Adelphi, 1-11 John Adam Street, WC2N 6AU |
| Committee: | Mr James Kellock (Chairman) Mrs Wanda Rossiter (Accountant), Mr Jonathan Broad (Lay) |
| Legal Adviser: | Mrs Fiona Barnett |
| Persons present and capacity: | Mr Mohammed Ismail (ACCA Case Presenter) and Miss Rachael Davies (ACCA Hearings Officer) |
| OUTCOME: | Allegation 1(a) – proved, Allegation 1(b) proved in part, Allegation 1(c)(i) – not proved, Allegation 1(c)(ii) – breach of fundamental principle of integrity found, Allegation 1(d)(i) – misconduct found, Allegation 2(a) – |

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**proved in its entirety, Allegation
2(b)(i) – misconduct found
Removal from student register
Costs of £5,000**

EFFECTIVE DATE OF ORDER: Immediate order

SERVICE OF PAPERS

1. Mr Gong was neither present nor represented.
2. The Committee had before it a service bundle, numbering pages 1 to 14. The documents in the bundle showed that the Notice of Hearing, dated 15 July 2019, and accompanying documentation was sent to Mr Gong by email on that date, to the email address shown on ACCA's register.
3. The Committee was therefore satisfied that proper notice had been given, and that service had been effected in accordance with Regulations 10 and 22 Complaints and Disciplinary Regulations 2019 ("CDR").

PROCEEDING IN ABSENCE

4. Mr Ismail submitted that the Committee should proceed in the absence of Mr Gong. He said that Mr Gong has not responded during the investigation, has voluntarily absented himself and, given the seriousness of the allegations, it was in the public interest to proceed.
5. In reaching its decision, the Committee accepted the advice of the Legal Adviser. It bore in mind that whilst it has a discretion to commence and conduct proceedings in the absence of the member, it should exercise that discretion with the utmost care and caution. The Committee had regard to the factors set out by Lord Bingham in the case of *R v Jones 2002 UKHL 5* and the case of *General Medical Council v Adeogba and Visvardis 2016 EWCA Civ 16*.

6. ACCA served the Hearing Notice upon Mr Gong by email in accordance with the CDR, but there had been no response from him. ACCA sent Mr Gong a “chaser” email on 12 August 2019, to which there was also no response. The documents were sent to his registered email address, and the Committee was provided with the delivery receipt; he should therefore be aware of the hearing, given that the onus was on him to maintain an effective registered address. In the Committee’s view, it was reasonable to infer, from Mr Gong’s lack of response to the hearing notice and his non-engagement with ACCA, that he has disengaged with the regulatory process, and waived his right to attend the hearing. There was no information before the Committee to persuade it that adjourning this hearing would serve any useful purpose.
7. In the Committee’s view, the matters before it were serious, involving allegations of dishonesty, and there was a pressing public interest in ensuring that they were concluded expeditiously.
8. The Committee acknowledged that if it proceeded in the absence of Mr Gong there may be some prejudice to him. However, having borne in mind the factors set out above, and the public interest in concluding regulatory matters expeditiously, the Committee was satisfied that the factors in favour of proceeding outweighed any consequential prejudice to Mr Gong.
9. The Committee decided that in the circumstances, it was fair and reasonable to proceed in the absence of Mr Gong. The Committee reminded itself that it must take appropriate steps to ensure the hearing is fair, and would draw no adverse inference from his absence.

ACCA application to amend Allegation 2(a)

10. Mr Ismail invited the Committee to amend Allegation 2(a), which currently reads:

“He failed to respond at all to any to all of ACCA’s correspondence....”

He submitted that the allegation should read:

“He failed to respond at all to any or all of ACCA’s correspondence.....”

11. The Committee agreed that the allegation as drafted contained a typographical error, and that this amendment would cause no injustice to Mr Gong. It therefore granted Mr Ismail’s application to amend Allegation 2(a).

ALLEGATIONS

Allegation 1:

1. During an F3 Financial Accounting computer based exam (CBE) on 28 November 2017:
 - a. Mr GONG Zehui used and/or was in possession of a device capable of taking photographs which he had at or on his desk.
 - b. Mr GONG Zehui caused and/or permitted an image or images of exam questions to be made using the device referred to at 1 a above and/or shared the said image or images on the following platforms:
 - (i) Taobao Marketplace
 - c. Mr GONG Zehui 's conduct in respect of any or all of the matters set out at 1(a) and/or 1(b) above was:
 - (i) Dishonest in that he intended to assist another/ other exam entrants to gain an unfair advantage; or in the alternative
 - (ii) Contrary to the fundamental principle of integrity (as applicable in 2017) in that such conduct demonstrates a failure to be straightforward and honest.

d. By reason of his conduct Mr GONG Zehui is:

- (i) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of 1(a) and/or 1(b) and/or 1(c) above

Allegation 2:

2. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Mr GONG Zehui has failed to co-operate fully with the investigation of a complaint in that:

a. He failed to respond at all to any or all of ACCA's correspondence dated:

- (i) 20 December 2018;
- (ii) 22 January 2019; and
- (iii) 14 February 2019;

b. By reason of his conduct in respect of any or all of the matters set out at 2(a) above, Mr GONG Zehui is:

- (i) Guilty of misconduct, pursuant to bye-law 8(a)(i);
- (ii) Liable to disciplinary action, pursuant to bye-law 8(a)(iii)

BRIEF BACKGROUND

12. In December 2018, ACCA was informed that ACCA Computer Based Exam questions were being offered on sale on Taobao Marketplace. A test purchase was conducted by a local ACCA contact, Person A.

13. Further investigation by ACCA Investigations into the test purchase made by Person A found that the photographs of questions sold on Taobao Marketplace contained questions from Mr Gong's F3 CBE.

14. In its consideration of this matter, the Committee had before it a bundle of papers, numbering pages 1 - 100.

DECISION ON ALLEGATIONS AND REASONS

15. The Committee accepted the advice of the Legal Adviser. In reaching its decisions, it reminded itself that the burden of proof rests with ACCA, and that the standard of proof is the civil standard, which is the balance of probabilities.

Allegation 1(a) – found proved

16. The Committee was provided with a statement from Mr 1, a CBE delivery manager employed by ACCA. His evidence was not challenged, and the Committee accepted it in its entirety.

17. Mr 1 explained that an ACCA Investigations Officer shared with him the contents of a folder which had been downloaded from Baiduyun, a Chinese Cloud Service. Mr 1 reviewed a sample of files from that folder which contained 38 “jpegs”/images.

18. Mr 1 explained that the registration numbers of students could be seen at the top of the screens on photographs of exam questions downloaded from Baiduyun, allowing the students to be identified. He said this also meant that the “on demand” exam centres could be identified, as ACCA’s internal databases allow for all centres at which students attempt their exams to be shown. Mr 1 also said that he examined four jpegs in detail, and the header on the photographs showed that the exam sat was F3 – Financial Accounting.

19. Mr 1 confirmed that Mr Gong could be identified from the ACCA number at the top of the screen on exam questions he looked at, and he confirmed, from checking the ACCA database, that Mr Gong sat the F3 Financial Accounting Exam on two dates - 28 November 2017 and 7 December 2017. He said F3 is an on-demand exam. The Committee accepted that images he reviewed were questions from the F3 exam sat by Mr Gong on 28 November 2017.

20. The Committee bore in mind that there was no evidence from any examination invigilator in relation to what occurred during the F3 exam taken by Mr Gong on 28 November 2017. However, in the light of the evidence from Mr 1, the

Committee was satisfied, on the balance of probabilities, that Mr Gong must have been in possession of a device at his desk during the F3 exam, and that it was a device which was capable of taking photographs. The Committee therefore found this allegation proved.

Allegation 1(b)(i) - found proved in part

21. The Committee was satisfied, following its findings in Allegation 1(a), that Mr Gong caused or permitted images of exam questions to be made using the device he had with him in the F3 exam. Its view was that this followed from the findings made in relation to Allegation 1(a).
22. The Committee was also provided with a witness statement from an ACCA teaching assistant, confirming that he/she made a test purchase and was able to purchase F3 exam questions on the Taobao marketplace.
23. However, although there was evidence that some of the images displaying Mr Gong's registration number/exam questions appeared later on Taobao marketplace, ACCA produced no evidence to connect Mr Gong to the sharing of those images on Taobao. It seemed likely, from the evidence, that Mr Gong must have shared the images with another person, but there was no evidence adduced by ACCA to persuade the Committee, on the balance of probabilities, that Mr Gong himself had shared the images on the Taobao marketplace. The Committee therefore found this allegation proved in relation to Mr Gong causing or permitting the making of images, but not proved in relation to the sharing of the images on Taobao Marketplace.

Allegation 1(c)(i)

24. The Committee then decided whether Mr Gong's actions were dishonest as alleged. In deciding this, the Committee reminded itself, as advised, of the test set out by Lord Hughes at paragraph 74 of *Ivey v Genting Casinos 2017 UKSC 67*. The Committee must first ascertain, subjectively, the actual state of the individual's knowledge or belief as to the facts. Then, once his actual state of mind as to knowledge or belief as to facts is established, the question whether

his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people.

25. The Committee had found that Mr Gong had a device capable of taking photographs with him during the exam, and that he caused images of exam questions to be made during that exam. However, it found that there was insufficient evidence to connect him to the sharing of those images on Taobao marketplace. In the light of these findings, it was not satisfied that he intended to assist another/other exam entrants to gain an unfair advantage. Taking a device into an exam and using it to take photographs of exam questions does not, in the Committee's view, necessarily give rise to a sole suggestion that Mr Gong intended to assist others to gain an unfair advantage. It was equally likely that Mr Gong intended to benefit himself only. Given that ACCA had not proved the underlying intention set out in Allegation 1(c)(i), it found this allegation not proved.

Allegation 1(c)(ii) – breach of the fundamental principle of integrity

26. The Committee was, however, satisfied that Mr Gong breached the fundamental principle of integrity by taking a device capable of taking photographs into an exam, and using it to take photographs. The evidence provided to the Committee shows that Mr Gong has taken a number of ACCA exams, and consequently must be familiar with the exam regulations. Mr 1 in his evidence also stated that Mr Gong should have been provided with a copy ACCA's exam regulations. Exam regulation 14 states:

“You are not permitted to remove either your candidate answer booklet(s) or your question paper from the exam hall.....”

Although the F3 exam sat by Mr Gong was a computer-based exam, the Committee's view was that taking photographs of the exam questions amounts to the same thing as removing a question paper from the exam hall. This conduct does not meet with the high professional standards expected of an ACCA student, and amounts to failure to act in a straightforward and honest way.

Allegation 1(d) – misconduct found

27. The Committee was satisfied that Mr Gong's conduct, in taking photographs during an ACCA professional exam and breaching the fundamental principle of integrity, was sufficiently serious to amount to misconduct. It was a serious and deliberate breach of ACCA's exam regulations, and would bring discredit to Mr Gong and to ACCA.

Allegation 2(a)(i), (ii), (iii) – found proved

28. The Committee had sight of the three letters referred to in Allegations 2(a)(i), (ii) and (iii). It was self-evident from the wording of the letters that Mr Gong had not replied to any of them. The letters all provided a deadline date for a response, and the second and third letters made it clear in the wording that no response had been provided to previous letters.

29. Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 imposed a duty on every relevant person to co-operate with any investigating officer and any assessor in relation to the consideration and investigation of any complaint. The Committee was satisfied that, in the absence of a response from Mr Gong to the letters dated 20 December 2018, 22 January 2019 and 14 February 2019, he had failed to co-operate with that duty. It therefore found Allegation 2(a) proved in its entirety.

Allegation 2(b)(i) – misconduct found

30. The Committee decided that Mr Gong's failure to co-operate with ACCA's investigation amounted to misconduct. It is a fundamental basis of regulatory enforcement that members of the regulatory body co-operate with the regulator during an investigation. His failure to do so fell seriously short of the standards expected of an ACCA student.

Allegation 2(b)(ii) – liability to disciplinary action

31. In the light of the Committee's findings in Allegation 2(b)(i) above, the Committee did not go on to consider Allegation 2(b)(ii).

SANCTIONS AND REASONS

32. The Committee accepted the advice of the Legal Adviser who referred the Committee to ACCA's current Guidance on Disciplinary Sanctions ("GDS"). It bore in mind that it must act proportionately at this stage, balancing the member's interests against the public interest, and that any sanction imposed must be no more than necessary to meet the purpose of a disciplinary sanction.

33. The Committee first considered the seriousness of the conduct found proved, before deciding upon any sanction (in accordance with paragraph E3 of the Guidance). Failing to act with integrity and failing to co-operate with a disciplinary investigation were both categorised in Section F of the GDS, as conduct which was "very serious".

34. In the Committee's view, the conduct was aggravated by the fact that the failure to co-operate was deliberate, and persisted over a period of time. The conduct underlying the failure to act with integrity was also deliberate, and Mr Gong's behaviour had the potential to undermine ACCA's exam system.

35. The Committee was told that Mr Gong had no previous disciplinary findings against him. It found that this amounted to a mitigating factor.

36. The Committee first considered whether to conclude this case without taking further action, but decided that to do so would not uphold the public interest.

37. The Committee next considered, in ascending order, whether an Admonishment or Reprimand would be an appropriate and proportionate sanction in this case. It decided that neither of these sanctions would be sufficient to uphold the public interest, given the serious nature of the matters

found proved. None of the factors set out in the GDS which would support the imposition of an Admonishment or Reprimand were applicable in this case.

38. The Committee next considered whether a Severe Reprimand would be an appropriate and proportionate sanction. In so doing, it had regard to the factors set out at paragraph C4 of the Guidance. The Committee decided that a Severe Reprimand would not be appropriate or sufficient. Mr Gong's misconduct was deliberate, and having disengaged completely from the regulatory process, there was no evidence of any insight, remorse or remediation, which would persuade the Committee that Mr Gong did not present an on-going risk to the public, and would not repeat his misconduct. Mr Gong did not have any previous regulatory findings against him, but the Committee's view was that this alone was insufficient to justify imposing a Severe Reprimand, when most of the other factors which would support this sanction were not present. The Committee therefore decided that a Severe Reprimand was not an appropriate and proportionate sanction in all the circumstances.
39. The Committee then considered Removal from the Student Register and had regard to the factors set out at paragraph C5 GDS.
40. Mr Gong had acted without integrity and persistently ignored his regulatory body during the investigation over a period of months. His actions were a serious departure from the standards expected of ACCA students, and undermined the integrity of the ACCA computer-based examination process. Mr Gong had shown no insight into the seriousness of his actions. In the Committee's view, his conduct was fundamentally incompatible with continued membership. The mitigation was very limited, and carried negligible weight when weighed against the seriousness of the misconduct and the aggravating factors.
41. Taking into account the seriousness of the case and balancing the interests of Mr Gong, the interests of ACCA and the public interest, the Committee concluded that Removal from the Student Register was the only proportionate sanction in the circumstances of this case. Its view was that any sanction other

than Removal would be insufficient to protect the public, maintain confidence in the profession and uphold proper standards of conduct.

42. The Committee therefore ordered that Mr Gong's name be removed from the student register.

COSTS AND REASONS

43. Mr Ismail applied for costs in the sum of £7,294.60. He submitted that although the allegations were not all proved, it was appropriate for ACCA to investigate these matters.

44. The Committee had found some allegations not proved, and these included the serious allegation of dishonesty. However, it had made findings of misconduct and decided that Mr Gong's name should be removed from the student register. The Committee acknowledged that ACCA had taken appropriate steps in investigating all matters. It decided that a costs order should be made in principle, however, its view was that some reduction should be made to reflect its findings and the fact that the matter had not taken a full day.

45. The Committee had received no information from Mr Gong about his means.

46. The Committee decided that a costs order of £5,000 was an appropriate sum in all the circumstances.

EFFECTIVE DATE OF ORDER

47. This Order shall take effect immediately, pursuant to Regulation 20(1)(b) CDR. In the light of the Committee's findings that Mr Gong's conduct was fundamentally incompatible with continued ACCA membership, the Committee concluded that it was in the interests of the public to remove his name immediately. This was to ensure that the public is protected, confidence is maintained in ACCA and proper standards of conduct and behaviour are upheld.

ACCA POLICY ON COSTS

48. A disciplinary order has now been imposed against Mr Gong as a student of ACCA. She will be receiving an invoice from ACCA soon after the appeal period has expired, and this will be due for immediate payment. ACCA works with a third party legal firm to chase debts owed, and they will be instructed to contact Mr Gong if payment is not received, which could result in legal action.

**Mr James Kellock
Chairman
15 August 2019**