

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss The Nu Aye

Heard on: Tuesday, 26 February 2019

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

Committee: Mrs John Crawley (Chairman)
Mr Trevor Faulkner (Accountant)
Mr John Walsh (Lay)

Legal Adviser: Mr Leighton Hughes

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case Presenter)
Mr Christopher Badoo (Hearings Officer)

Observers: None

Summary: (i) Allegations 1(a), 1(b), 1(c), 1(d), 1(e) and 1(f) found proved by way of admission.
(ii) Allegations 1((g)(i),1(g)(ii) and 1(h)(i) found proved by the Committee.
(iii) Removal from the student register, any application for re-admission to the student register must be referred to the

ACCA



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Admissions and Licensing Committee and no such application may be considered until the expiry of five years from today's date.

(iv) Costs £5,000

(v) Effective date of order: Immediate

1. The Disciplinary Committee ("the Committee") had before it bundles of papers paginated A-L, 1-90, 91-96 (being costs schedules not before the Committee before the conclusion of the fact finding stage), and 97-111, together with a service bundle numbered pages 1-30.
2. ACCA was represented by Mr Jowett. Miss Aye was neither present nor represented.

SERVICE AND PROCEEDING IN ABSENCE

3. The Committee's attention was drawn to the service bundle, which established that Miss Aye had been given notice of the hearing, in accordance with Regulation 10 of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ("the Regulations"). The formal notice dated 22 January 2019, was sent to the email address provided by her to ACCA. Mr Jowett submitted that, there having been compliance with the regulations, the Committee had the power to proceed in the absence of Miss Aye.
4. Mr Jowett told the Committee that on 7 December 2018, Miss Aye completed and returned to ACCA a Case Management Form, in which she indicated that she did not intend to attend a hearing, and that she consented to the Committee proceeding with the case in her absence. He submitted that in the circumstances it was fair and appropriate for the Committee to conclude that Miss Aye had voluntarily absented herself from the hearing, and to exercise its discretion to proceed in her absence.
5. The Committee was satisfied that Miss Aye had been given notice of today's hearing in accordance with the Regulations. It next considered whether it was appropriate to hear the allegations faced by Miss Aye in her absence. It bore in mind its discretion to do so, in accordance with Regulation 10(7). The Committee noted that it should approach the exercise of its discretion with the

utmost care and caution. It had regard to all the information before it in order to determine the nature and circumstances of Miss Aye's absence, and in particular, whether she had voluntarily absented herself from today's proceedings and so waived the right to be present. It noted that, in addition to the Case Management Form, Miss Aye acknowledged in her email of 28 January 2019, that she had received the notice of today's hearing.

6. The Committee had regard to the general public interest in the expeditious disposal of a hearing without unnecessary delay. It determined that Miss Aye had decided not to attend this hearing, and had waived her right to be present, and that an adjournment would be unlikely to secure her attendance at a future date. The Committee concluded that it would be fair and reasonable to proceed in Miss Aye's absence and that to do otherwise would fly in the face of the efficient despatch of these regulatory proceedings.

APPLICATION TO AMEND THE ALLEGATION

7. At the outset of the hearing Mr Jowett applied to amend the allegation of which Miss Aye had been given notice by the insertion of the word "then" in Allegations 1(a)-(c). He withdrew an earlier proposed application to amend Allegation 1(h)(ii).
8. Mr Jowett's application was made pursuant to Regulation 10(5)(a) of the Regulations. He submitted that the proposed amendment was to reflect the evidence and amounted to no more than clarification.
9. The Committee granted the application, having been satisfied that the amendments could be made without prejudice to Miss Aye. In the following allegation, deleted words are scored through, and in bold, and additional words are underlined and in bold.

THE ALLEGATION (AS AMENDED)

Allegation 1

Miss The Nu Aye, who is registered with ACCA as a student:

- a) On 31 October 2016, Miss The Nu Aye informed her then employers that she had passed ACCA's Professional Level exams for 'Business Analysis' and 'Audit' when, in fact, she had not;
- b) On 15 November 2017, Miss The Nu Aye informed her then employers that she had passed the ACCA exam for 'Advanced Taxation' when, in fact, she had not;
- c) On 15 November 2017, Miss The Nu Aye informed her then employers that she was an ACCA affiliate when, in fact, she was not;
- d) On 23 April 2018, Miss The Nu Aye submitted to an ACCA Compliance Officer, an ACCA Professional Level certificate which purported to be issued by ACCA when, in fact, it had not;
- e) On 23 April 2018, Miss The Nu Aye submitted to an ACCA Compliance Officer an ACCA member declaration form in which she had recorded that she was an ACCA affiliate when, in fact, she was not;
- f) On 23 April 2018, Miss The Nu Aye told an ACCA Compliance Officer that she was an ACCA affiliate when, in fact, she was not;
- g) Miss The Nu Aye's conduct as set out in paragraph 1 (a) and/or 1 (b) and/or 1 (c) and/or 1 (d) and/or 1 (e) and/or 1 (f) above was:
 - (i) Dishonest, in that she knew that she was not an ACCA affiliate and/or that she did not pass the 'Business Analysis', 'Audit' and 'Advanced Taxation' exams, and/or that the ACCA Professional Level Certificate was not issued by ACCA;

- (ii) Contrary to the Fundamental Principle of Integrity, as applicable in 2016 - 2018.
- h) By reason of her conduct in respect of paragraphs 1 (a) and/or 1 (b) and/or 1 (c) and/or 1 (d) and/or 1 (e) and/or 1 (f) and /or 1 (g) above, Miss The Nu Aye is:
- (i) Guilty of misconduct pursuant to bye-law 8(a)(i); or
 - (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii).
10. Miss Aye admitted the allegation in its entirety in the Case Management Form dated 7 December 2018. The Committee accepted that admission, save in respect of Allegations 1(g) and 1(h); the determination of which the Committee considered should be carefully considered notwithstanding Miss Aye's admissions.
11. Accordingly the Committee found Allegations 1(a), 1(b), 1(c), 1(d), 1(e) and 1(f) proved by way of admission.

ACCA'S CASE

12. Miss The Nu Aye was registered as a student member with ACCA on 15 August 2006. At all times material to this matter she was employed by Firm A.
13. On 30 April 2018, ACCA's Licensing Compliance team notified ACCA Investigations that during the course of an ACCA Approved Employer monitoring visit on 23 April 2018, to Firm A Miss Aye had admitted to forging a Professional Level Certificate. Miss Aye had also presented the Licensing Compliance Officer at the visit with a membership form, that claimed she was an 'Affiliate', when ACCA records indicated she was a student.
14. In its referral to Investigations, the Licensing Compliance team included the following documents Miss The Nu Aye had given to ACCA's Licensing Compliance Officer on 23 April 2018:

- (i) A Professional Level Certificate which purported to have been issued to The Nu Aye by ACCA for completing the Professional Level exams in June 2017, at a time when she had not passed the stated exams;
 - (ii) A Fundamental Level Certificate which certified that Miss The Nu Aye had passed her Fundamental Level exams in December 2010 (page 5);
 - (iii) An 'ACCA member declaration' form signed by Miss The Nue Aye on 23 April 2018, in which she declared she was an 'ACCA Affiliate', at a time when she was not; and
 - (iv) An 'ACCA trainee declaration' form signed by Miss The Nue Aye on 23 April 2018 (page 8).
15. The evidence of Mr 1, a partner at Firm A, in a signed witness statement was that Miss The Nu Aye had been employed by the firm from 07 July 2015 to 30 April 2018. During her employment she had made the following assertions:
- (i) On 31 October 2016, at her annual appraisal, that she had passed the ACCA Audit module with a 55% mark and 'Business Analysis' module with a 52% mark, and had one 'final paper' to take for 'Advanced Taxation'; and
 - (ii) On 15 November 2017, at her annual appraisal, that she had passed the ACCA 'Advanced Taxation' module with a mark of 53 and referred to herself as an 'ACCA affiliate'.
16. On 12 May 2017, the firm had written to Miss Aye proposing that if she passed her final paper, they would review her salary in December 2017, prior to the salary review which would otherwise have been carried out in April 2018. They also granted Miss Aye an extra week's paid leave before her exams in June 2017.
17. On 06 December 2017, the firm emailed Miss Aye agreeing to increase her salary to £38,000 per annum. Mr 1 states that this increase was only approved because Miss Aye claimed to have passed her final exam.

18. Following the discovery made by ACCA's Licensing Compliance Officer at the visit on 23 April 2018, Miss Aye was summarily dismissed on 30 April 2018.

MISS AYE'S CASE

19. On 29 June 2018, Miss Aye emailed ACCA in response to the allegation. She made full admissions and expressed remorse, having already authorised her former employer to disclose any otherwise confidential information to ACCA in the furtherance of its disciplinary investigation. In her Case Management Form Miss Aye admitted the allegation in its entirety, and this included an admission that she considered her behaviour as set out in Allegations 1(a) - (f) to be dishonest, in breach of the Fundamental Principle of Integrity and to amount to misconduct.

The Committee's decision and reasons in respect of Allegations 1(g) and 1(h)

20. The Committee bore in mind that ACCA had brought these allegations and the burden remained throughout upon ACCA to prove its case. In respect of Allegation 1(g) the standard of proof was on the balance of probabilities, but the determination of Allegation 1(h) was a matter for the Committee's independent and professional judgement, with no party bearing any burden of proof.
21. The Committee was mindful that Miss Aye considered her behaviour in Allegations 1(a) - (f) to be dishonest and in breach of the Fundamental Principle of Integrity. The Committee applied the test as set out by the Supreme Court in *Ivey v Genting Casinos Limited*. It specifically considered, as far as it could on the information before it, what Miss Aye's belief was as to her conduct in Allegations 1(a) - (f). The Committee was satisfied that Miss Aye had deliberately and repeatedly sought to falsely represent that she had acquired qualifications and professional standing when she had not. It had no hesitation in concluding that Miss Aye's conduct was dishonest according to the standards of ordinary decent people. Accordingly, Allegation 1(g)(i) was found proved.
22. Having found Allegation 1(g)(i) proved the Committee next considered Allegation 1(g)(ii) and whether Miss Aye's conduct in respect of Allegations 1(a)

- (f) was contrary to the Fundamental Principle of Integrity. This imposes "an obligation on all professional accountants to be straightforward and honest in all professional and business relationships." It also implied "fair dealing and truthfulness".

23. The Committee was in no doubt that Miss Aye's sustained and repeated acts of dishonesty represented a clear breach of the Fundamental Principle of Integrity. Accordingly, Allegation 1(g)(ii) was found proved.
24. The Committee was satisfied that Miss Aye's dishonest behaviour was morally culpable, and discreditable to her, ACCA and the accountancy profession. The Committee considered her conduct to represent significant departures from the high standards expected of an ACCA student, and was conduct that brought ACCA and the profession into disrepute. The Committee found there to have been a course of dishonest conduct perpetrated by Miss Aye which was calculated, and designed, to secure early increases of pay to which she was not entitled. The Committee was satisfied that Miss Aye's failures were sufficiently serious to reach the threshold of misconduct.

SANCTION AND REASONS

25. The Committee had regard to ACCA's Guidance for Disciplinary Sanctions. It had at the forefront of its consideration the public interest, which included not only the protection of members of the public, but also the maintenance of public confidence in the profession and in ACCA, and the declaring and upholding of proper standards of conduct and behaviour. The Committee recognised that the purpose of sanctions was not to be punitive, although a sanction may have a punitive effect.
26. Miss Aye had not provided any references or testimonials. However the Committee considered the following mitigating factors were present:
 - the absence of any previous disciplinary findings;
 - Miss Aye's full admissions when challenged and expression of remorse;
 - Miss Aye's engagement with the regulatory process prior to this hearing;
 - Miss Aye's repayment to her former employer of the sums wrongfully obtained by her securing a pay increase through her deception.

27. The Committee considered Miss Aye's serious misconduct was aggravated by the following factors:
- The misconduct represented premeditated and repeated acts of dishonesty over a sustained period of time;
 - The dishonest fabrication of documents goes to the heart of the basic expectations of accountants in professional practice;
 - The breach of trust;
 - Miss Aye's financial motivation for and personal gain derived from her dishonesty;
 - Miss Aye's attempt to mislead the ACCA Compliance Officer.
28. The Committee had regard to the explanation given to her employer at her disciplinary meeting on 27 April 2018, namely: "You said that you did not know why you lied about the completion of your professional ACCA qualification. You had initially intended to complete the exams within 18 months of starting employment with [Firm A]. You stated that you were scared and insecure and were struggling with balancing life at home, at work and studying."
29. The Committee noted that a similar explanation had been given in correspondence with ACCA subsequently, but the Committee noted that Miss Aye had not raised any of these matters with her employer prior to conducting her lengthy and repeated subterfuge.
30. Whilst acknowledging Miss Aye's demonstration of remorse for her conduct, the Committee was concerned that Miss Aye had shown little, if any, insight into the seriousness of her misconduct, to which she referred as a "mistake" in correspondence with ACCA, or its wider impact upon the reputation of ACCA and the profession. In the absence of sufficient insight into the seriousness of her misconduct, the Committee considered that there remains a real risk of repetition of similar misconduct by Miss Aye.
31. The Committee first considered taking no further action in this case. It was in no doubt that to do so would fail properly to mark the misconduct of Miss Aye and would undermine confidence in ACCA as a regulator.

32. Having decided that it was necessary to impose a sanction, the Committee considered the question of sanction in ascending order, starting with the least onerous.
33. The Committee first considered whether the appropriate sanction would be the Admonishment of Miss Aye. In light of the seriousness of her misconduct, and the serious aggravating features set out above, the Committee determined that an Admonishment would not adequately reflect the nature of the misconduct in this case and would undermine public confidence in the regulatory process.
34. For the same reasoning the Committee determined that neither a Reprimand, nor a Severe Reprimand, was appropriate by way of sanction and that to impose either of these sanctions would not sufficiently publicly mark the nature and seriousness of the misconduct in this case, nor would it suitably declare and uphold proper standards of conduct.
35. The Committee considered that Miss Aye's misconduct reflected grave departures from the standards expected of a student member of ACCA. In particular, the Committee was satisfied that dishonesty was fundamentally incompatible with being a student member of ACCA and that no sanction short of removal from the student register was appropriate in this case. The Committee considered that a failure to remove a dishonest student from the Register would fail properly to uphold proper standards of professional behaviour, and would seriously undermine public confidence in the profession, and in ACCA as a regulator. Accordingly the Committee ordered that Miss Aye be removed from the student register.
36. The Committee further directed that any application for re-admission to the student register must be referred to the Admissions and Licensing Committee, and no application for re-admission to student membership may be considered until the expiry of five years from today's date.

COSTS

37. ACCA claimed costs in the sum of £7,295.41. The Committee had regard to ACCA's "Guidance for costs orders" (March 2018) and the statement of means and transparent supporting documentation provided by Miss Aye. It decided that

it was appropriate to award costs and that the sum claimed was fair and reasonable in principle. However, the Committee considered some reduction should be made for Miss Aye's modest means and proactive co-operation throughout the regulatory process. Accordingly, Miss Aye was ordered to pay £5,000 to ACCA by way of costs.

EFFECTIVE DATE OF ORDER

38. In light of the Committee's findings it was satisfied that it is in the public interest that this order shall have immediate effect. To direct otherwise would be inconsistent with its reasons hitherto.

Mr John Crawley
Chairman
26 February 2019