

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Yingxi Ai
Heard on:	Thursday, 25 July 2019
Location:	The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
Committee:	Mr Ian Ridd (Chairman), Mr William Hay, (Accountant) and Dr Pamela Ormerod (Lay)
Legal Adviser:	Mrs Fiona Barnett
Persons present and capacity:	Mr Mohammed Ismail (ACCA Case Presenter) and Miss Rachael Davies (ACCA Hearings Officer)
OUTCOME:	All allegations proved Removal from Student register Costs £4,500 Order to come into effect at the end of the appeal period

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SERVICE OF PAPERS

1. Miss Yingxi Ai was neither present nor represented.
2. The Committee had before it a service bundle, numbering pages 1 to 12. The documents in the bundle showed that the Notice of Hearing, dated 24 June 2019, and accompanying documentation was sent to Miss Yingxi Ai 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 absence of Miss Yingxi Ai. He said that she has not responded during the investigation, 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 Miss Yingxi Ai in accordance with the CDR's, and she should therefore be aware of the hearing. The onus was on her to maintain an effective registered address. In the Committee's view, it was reasonable to infer, from her lack of response to the hearing notice and her non-engagement during the investigation, that she has disengaged with the regulatory process and waived her 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 Miss Yingxi Ai, there may be some prejudice to her. 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 Ms Yinxi Ai.
9. The Committee decided that, in the circumstances, it was fair and reasonable to proceed in the absence of Miss Yingxi Ai. The Committee reminded itself that it must take appropriate steps to ensure the hearing is fair, and would draw no adverse inference from her absence.

ACCA application to amend Allegation 2(a)

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

"She failed to respond at all to any to all of ACCA's correspondence...."

He submitted that the allegation should read,

"She 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 Miss Yingxi Ai. It therefore granted Mr Ismail's application to amend Allegation 2(a).

ALLEGATIONS

Particular 1:

1. During an F4 (ENG) Corporate and Business Law computer based exam (CBE) on 23 December 2017:
 - a. Miss Ai Yingxi used and/or was in possession of a device capable of taking photographs which she had at or on her desk.
 - b. Miss Ai Yingxi 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) F4 WeChat group
 - (ii) Taobao Marketplace
 - c. Miss Ai Yingxi'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 she intended to assist another/ other exam entrants to gain an unfair advantage;
 - (ii) Contrary to the fundamental principle of integrity
 - d. By reason of her conduct Miss Ai Yingxi 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;

Particular 2

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

- a. She failed to respond at all to any or all of ACCA's correspondence dated:
 - (i) 11 September 2018;
 - (ii) 08 October 2018; and
 - (iii) 01 November 2018;

- b. By reason of her conduct in respect of any or all of the matters set out at 2(a) above, Miss Ai Yingxi 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. Miss Yingxi Ai has been registered as a student member of ACCA since 16 May 2016.

13. On 23 July 2018, ACCA received an email from Person A, who raised concerns about the integrity of ACCA's Computer-based exams (CBE) after he found F4 CBE questions on the internet. Person A provided a web link and sample photographs.

14. Person A's e-mail was reviewed by ACCA's CBE Delivery Team and they identified ACCA ID: [REDACTED], Miss Yingxi Ai, from photographs submitted by Person A.

15. ACCA commenced an investigation into these matters. There was no response from Ms Ai Yingxi during the investigation.

16. In its consideration of this matter, the Committee had before it a bundle of papers, numbering pages 1 to 153.

DECISION ON ALLEGATIONS AND REASONS

17. 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

18. 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.

19. Mr 1 set out the details of the initial email provided by Person A on 23 July 2018, which included a web link and a series of sample photographs from the internet. Mr 1 said that ACCA's investigations team opened the link and downloaded the contents.

20. Mr 1 explained that the registration numbers of students could be seen at the top of the screens on photographs of exam questions provided by Person A, 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 the header on the photographs showed that the exam sat was F4 (ENG) – Corporate and Business Law. There were folders which included numerous images of F4 CBE questions.

21. Mr 1 confirmed that Miss Yingxi Ai 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 she sat the F4 (ENG) Corporate and Business Law exam on 23 December 2017, which is an on-demand exam. He further confirmed that questions from the internet link

were questions from the F4 exam sat by Miss Yingxi Ai on 23 December 2017.

22. In the light of the evidence from Mr 1, the Committee inferred that Miss Yingxi Ai must have had a device at her desk during the F4 exam, that it was a device which was capable of taking photographs, and that she used that device to take photographs of the exam questions during the exam. The Committee therefore found this allegation proved.

Allegation 1(b)(i) and (ii) – found proved

23. There was unchallenged evidence before the Committee that questions from the F4 exam sat by Miss Yingxi Ai were subsequently available for purchase on the internet. Given the Committee's findings at Allegation 1(a), and in the absence of any explanation from Miss Yingxi Ai, it was reasonable to infer that Miss Yingxi Ai had shared photographs of the exam questions on the internet. The Committee therefore found this allegation proved.

Allegation 1(c)(i) – found proved

24. The Committee then decided whether Miss Yingxi Ai's actions were dishonest. 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 concluded, when assessing the state of Miss Yingxi Ai's knowledge or belief as to the facts, that by sharing photographs of ACCA exam questions on the Internet, she must have intended to assist others

taking the F4 exam, to gain an unfair advantage. In the absence of any explanation from her, this was the most likely inference that could be drawn from the facts. Further, she must have known that sharing exam questions in the public domain was wrong.

26. In addition, the Committee was satisfied that her actions in sharing the exam questions publicly would be regarded as dishonest by the standards of ordinary decent people. It therefore concluded that she had acted dishonestly, and it found Allegation 1(c)(i) proved.

Allegation 1(c)(iii) – breach of fundamental principle of integrity

27. The Committee was satisfied that, by taking photographs of exam questions and sharing these on the Internet, Miss Yingxi Ai acted contrary to the fundamental principle of integrity. She had been neither truthful nor straightforward in her dealings with ACCA.

Allegation 1(d)(i) – misconduct found

28. The Committee was in no doubt that Miss Yingxi Ai's conduct, as outlined above, amounted to misconduct. Using a camera during an exam to take photographs, and sharing these publicly on the Internet, was a significant falling short of the standards expected of an ACCA student. Such conduct would discredit her, the Association, and the profession as a whole.

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

29. 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 Miss Yingxi Ai 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.

30. 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 Miss Yingxi Ai to the letters dated 11 September 2018, 8 October 2018 and 1 November 2018, she had failed to co-operate with that duty. It therefore found Allegation 2(a) proved in its entirety.

Allegation 2(b)(i) – misconduct found

31. The Committee decided that Miss Yingxi Ai'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. Her failure to do so fell seriously short of the standards expected of an ACCA student.

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

32. 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

33. 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.

34. The Committee first considered the seriousness of the conduct found proved before deciding upon any sanction. It took account of its finding that Miss Yingxi Ai had acted dishonestly and persistently ignored her regulator,

which it found to be aggravating factors which rendered her conduct very serious.

35. Mr Ismail told the Committee that Miss Yingxi Ai had no previous disciplinary findings against her. The Committee accepted that this was a mitigating factor, but decided that it carried little weight given Miss Yingxi Ai's relatively short history as a student member.
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. Miss Yingxi Ai'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 Miss Yingxi Ai did not present an on-going risk to the public, and would not repeat her misconduct.
39. The Committee then considered Removal from the Student register and considered the factors set out at paragraph C5 and E2 of the GDS. The Committee reminded itself of paragraphs E2.1 and 2.2 of the GDS, which state:

“Dishonesty, even when it does not result in direct harm and/or loss, or is related to matters outside the professional sphere undermines trust and confidence in the profession....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 reputation of ACCA and the accountancy profession is built upon the public being able to rely on a member to do the right thing in difficult circumstances. It is a cornerstone of the public value which an accountant bring”.

40. Miss Yingxi Ai had acted dishonestly, and persistently ignored her regulatory body during the investigation. She had acted without integrity, and consequently damaged the trust which the public place the accountancy profession. Her conduct was particularly serious in that it undermined the integrity of the ACCA computer-based examination process and severely damaged the reputation of ACCA. The complaint to ACCA was, in fact, made by an individual who had raised these concerns. In the Committee’s view, her conduct was fundamentally incompatible with continued membership. The mitigation was very limited, and carried little 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 Miss Yingxi Ai, the interests of ACCA, and the public interest, the Committee concluded that Removal from the student register would be 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 ordered that Miss Yingxi Ai’s name be removed from the student register.

COSTS AND REASONS

43. Mr Ismail applied for costs in the sum of £5,361. He suggested that the Committee may wish to reduce the costs to reflect the fact that the hearing had taken a relatively short period of time.
44. The Committee's view was that ACCA was entitled to claim its costs. It was obliged to investigate this matter, and succeeded in proving the allegations made against Miss Yingxi Ai.
45. The Committee took account of the fact that this hearing had taken less than half a day, and that 2 cases had been listed today. It decided that £4,500 would be a fair costs figure to reflect this. The Committee found no basis to reduce the costs further, in the absence of any response from Miss Yingxi Ai about her means.
46. The Committee therefore made a costs order of £4,500.

EFFECTIVE DATE OF ORDER

47. This Order shall take effect on the date of expiry of the appeal period referred to in the Appeal Regulations.

**Mr Ian Ridd
Chairman
25 July 2019**