

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Jia Yi Han

Heard on: Monday, 04 March 2019

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

Committee: Ms Wendy Yeadon (Chairman), Ms Ruby
Sukkersudha (Accountant) and Mr Lynne Jones (Lay)

Legal Adviser: Mr Alastair McFarlane

Persons present

and capacity: Mrs Emily Healy-Howell (ACCA Case Presenter)
Ms Pamela Ramphal (Hearings Officer)

OUTCOME: **Removal from the Student Register**
Costs of £1500.00

1. ACCA was represented by Mrs Healy-Howell. Miss Han did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages A-J and 1 – 101, and a service bundle numbered pages 1-18.

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SERVICE/ PROCEEDING IN ABSENCE

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Miss Han in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).
3. The Committee next considered whether it was in the interests of justice to proceed in Miss Han’s absence. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Miss Han had a right to attend the hearing and to participate and that the discretion to proceed in her absence must be exercised with the utmost care and caution.
4. The Committee noted that ACCA’s notice dated 28 January 2019, sent to Miss Han’s registered e-mail address, offered her the opportunity of attending via video or telephone link, with the costs being met by ACCA. Miss Han had not availed herself of this opportunity or made any communication with ACCA about attending this hearing. She had not engaged with ACCA about the case since September 2018. The Hearings Officer had sent 4 further emails to Miss Han’s email address chasing her position as to whether she would be attending and attempted to telephone her on two occasions without success. The Committee was satisfied that all reasonable attempts had been made to secure Miss Han’s attendance at the hearing. The Committee was not persuaded that any adjournment would increase the chance of Miss Han participating further in the case. On the information before it and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice to proceed in the absence of Miss Han. The Committee reminded itself that her absence added nothing to ACCA’s case and was not indicative of guilt.

ALLEGATIONS

Allegation 1 (a)

During an F7 Financial Reporting examination on 05 June 2018, Miss HAN Jia Yi:

- i. was in possession of unauthorised materials, which she had at her desk, contrary to Examination Regulation 4, and/or 5.
- ii. used or intended to use any or all of the items set out at 1(a)(i) above to gain an unfair advantage, contrary to Examination Regulation 7;

Allegation 1 (b)

Miss Han 's conduct in respect of Allegation 1 (a) above was:

- i. Dishonest, in that Miss HAN used or intended to use any or all of the unauthorized materials that she had at her desk to gain an unfair advantage; and
- ii. Contrary to the Fundamental Principle of Integrity (as applicable in 2018);

Allegation 1 (c)

By reason of her conduct, Miss HAN is:

- i. Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of all or any of the matters set out at (a) and (b) above; or
- ii. Liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of the above.

BACKGROUND

5. Miss Han was admitted onto ACCA's student register on 29 December 2016. She was awarded F1, F2 and F3 exemptions and sat and passed the FMA, FAB, F4 ENG, and FFA exams.
6. On 5 June 2018, Miss Han sat the F7 Financial Reporting examination in Beijing. During the exam, Exam Invigilators, Person A and Person B, were alerted by a student who alleged Miss Han was cheating. Person A and Person B positioned themselves behind Miss Han and saw her flipping, and looking at, notes behind her workbook. They took her workbook and found that it contained 13 sheets of handwritten notes.
7. In the SCRS 2B form that Miss Han completed in response to the allegation, she admitted that she had unauthorised materials in her possession – namely her notebook – and that those unauthorised materials were relevant to the syllabus being examined. Further she accepted that she had used the

notebook to confirm her answers and “to get some information”. She explained that she was nervous and worried about passing this exam as she had failed it before and said she was “so sorry”.

8. In addition, the Examiner confirmed that the unauthorised material was relevant to the F7 exam.

ACCA's CASE

9. ACCA submitted that it was not disputed that Miss Han was in possession of an unauthorised item that contained information, which was relevant to the exam and that therefore Allegation 1(a) was proved. It further contended that to use the notes to gain an unfair advantage was both dishonest and contrary to the Fundamental Principle of Integrity.
10. ACCA submitted that the conduct amounted to dishonesty as Miss Han, by her own admission, knew that taking unauthorised items into exams was not allowed and that she did this to gain an unfair advantage. ACCA further submitted that such conduct would be regarded as dishonest according to the standards of ordinary decent people.
11. ACCA also submitted that this conduct is contrary to the Fundamental Principle of Integrity, which imparts a duty on students and members to be *"straightforward and honest."*
12. In addition, ACCA contended that such dishonest conduct amounted to misconduct.

MISS HAN'S CASE

13. In her email response dated 10 July 2018, Miss Han expressed her sincere apologies for her behaviour. She stated this was the second time that she had sat the F7 exam but “had too much study in school before the exam” and did not have enough time to prepare. In addition her parents had great expectations of her and if she did not pass this time, she would have wasted an expensive test fee again and was “really afraid to disappoint my parents”. She said she was very scared she would not pass and was “blinded by the desire of my heart.” She repeated her apology and had deep regret for her behaviour. She expressed the same apologies and regret in her response to ACCA Investigations in an email of 19 September 2018.

DECISION ON ALLEGATIONS AND REASONS

14. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving that Miss Han possessed unauthorised materials relevant to the syllabus being examined rested upon ACCA. However, pursuant to Examination Regulation 7, if this was established, the burden of proving that she did not intend to use them to gain an unfair advantage was on her. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the 'balance of probabilities'.
15. The Committee heard that there had been no previous findings against Miss Han and accepted that it was relevant to put her good character into the balance in her favour.

DECISION ON FACTS

16. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Mrs Healy-Howell on behalf of ACCA and Miss Han's written responses.
17. The Committee was satisfied that Miss Han sat the F7 exam on 5 June 2018. On the basis of Person A's and Person B's evidence, which it accepted as credible, as well as Miss Han's admissions, it was satisfied that Miss Han had the materials with her during the exam. It is further satisfied on the basis of the undisputed Irregular Script document and Miss Han's admissions, that these materials were relevant to the F7 exam that she was undertaking. It therefore determined that she possessed "unauthorised materials." Accordingly, Miss Han breached Exam Regulation 4, which states; "You are not allowed to take to your exam desk any books, notes or other materials " (unauthorised materials).
18. Exam Regulation 7 provides that where unauthorised materials relevant to the syllabus being examined are found in the possession of an examinee, it is presumed that the examinee intended to use them to gain an unfair advantage. This presumption can be rebutted by the examinee. Therefore, there was a burden upon Miss Han to establish, on the balance of probabilities, that she did not intend to use the unauthorised materials to gain an unfair advantage in the exam.

19. Miss Han admitted her intention to use, and that she had used, the materials for confirmation of her answers. She had not sought to rebut the presumption that she intended to use the unauthorised materials to gain an unfair advantage.
20. On the evidence before it, the Committee was satisfied, on the balance of probabilities, that Miss Han intended to use the unauthorised materials in her possession to gain an unfair advantage in the exam. By virtue of this finding of fact, the Committee was satisfied that this was an intentional act by Miss Han. Therefore the allegation, as drafted, that she used these materials to gain an unfair advantage, is proved. This is a breach of Examination Regulation 7.

Dishonesty

21. 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 Han's belief was as to the facts. The Committee was satisfied that Miss Han knew she was not permitted to have her notebook with her in the exam and that by her own admission she did this to gain an unfair advantage. The Committee was satisfied that the intention on her part was to cheat, to try and ensure she passed this exam. It had no hesitation in concluding that Miss Han's conduct was dishonest according to the standards of ordinary decent people. Allegation 1(b)(i) was found proved.

Fundamental Principle of Integrity

22. Having found Allegation 1(a) and 1(b)(i) proved, the Committee next considered Allegation 1(b)(ii) and whether Miss Han's conduct in respect of 1(a) was contrary to the Fundamental Principle of Integrity. This imposed "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 concluded that attempting to cheat in exams by using unauthorised notes was not being straightforward and honest and was a clear breach of the Fundamental Principle of Integrity. The Committee found Allegation 1(b)(ii) proved.

24. The Committee next asked itself whether, by reason of her conduct Miss Han was guilty of misconduct.
25. The Committee had regard to the definition of misconduct in Bye-law 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Miss Han's actions brought discredit on her, the Association and the accountancy profession. It was satisfied that intending to cheat in a professional exam was deplorable conduct and reached the threshold for misconduct.
26. In the light of its finding on Allegation 1(c)(i), no finding was needed upon Allegation 1(c)(ii).

SANCTIONS AND REASONS

27. The Committee noted its powers on sanction were those set out in Regulation 12(3). It had regard to ACCA's Guidance for Disciplinary Sanctions and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.
28. The Committee considered that the attempt at cheating in this case was very serious. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Trust and honesty are fundamental requirements of any professional. Dishonesty by a member of the accountancy profession undermines its reputation and public confidence in it.
29. The mitigating factors before the Committee were:
 - Miss Han's previous good character ;
 - She made full admissions to ACCA;
 - She has apologised and expressed her regret and remorse.
30. The aggravating factors the Committee identified were:
 - That Miss Han's actions were deliberate;
 - The conduct involved dishonesty;
 - She had sought to gain an advantage over other students by cheating;

- The Committee had seen little evidence from Miss Han of insight or understanding into the seriousness of her misconduct and its adverse impact on the standing and reputation of the profession.

31. Given the Committee's view of the seriousness of her conduct, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven conduct.

32. The Committee determined that her behaviour was fundamentally incompatible with Miss Han remaining on the student register of ACCA. The conduct involved dishonesty and is a serious departure from professional standards. The Committee was satisfied that the only appropriate and proportionate sanction was that she be removed from the student register.

COSTS AND REASONS

33. ACCA claimed costs of £6,053.72, based on an estimated assessment of what work this case involved. The Committee decided that it was appropriate to award costs in this case, as it was properly brought, but was not persuaded that the costs claimed by ACCA were fully justified. It noted Mrs Healy-Howell's concession as to the reduced hearing time this case had taken and has made a reduction of £2000 for this. The Committee also noted that Miss Han made prompt admissions. Further, it inferred from Miss Han's status and the papers that Miss Han's means are likely to be limited. It concluded in these circumstances that the sum of £1,500 was appropriate and proportionate. Accordingly, it ordered that Miss Han pay ACCA's costs in the amount of £1,500.00.

EFFECTIVE DATE OF ORDER

34. This order shall take effect from the date of the expiry of the appeal period unless notice of appeal is given prior to the expiry of that period, in which case it shall become effective (if at all) as described in the Appeal Regulations. The Committee was not persuaded that the ground for imposing an immediate order was made out given the facts of this case and that public protection is not involved.

Wendy Yeadon

Chairman

4 March 2019