

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Jomis Johnny

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)
Mrs Lynne Jones (Lay)

Legal Adviser: Mr Alastair McFarlane

Persons present

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

OUTCOME: **Removal from the Student Register**
Costs of £4000.00

1. ACCA was represented by Mrs Healy-Howell. Mr Johnny did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages A-1 and 1 – 45, and service bundles numbered pages 1-18 and 19-21.

SERVICE/ PROCEEDING IN ABSENCE

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served 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 Mr Johnny's absence. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Mr Johnny had a right to attend the hearing and to participate and that the discretion to proceed in his absence must be exercised with the utmost care and caution.
4. The Committee noted that ACCA's notice dated 24 January 2019 sent to Mr Johnny's registered email address, offered him the opportunity of attending via video or telephone link, with the costs being met by ACCA. Mr Johnny had not availed himself of the opportunity or made any communication with ACCA about attending this hearing. He had not engaged with ACCA substantively about the case since September 2018. ACCA had also attempted to telephone him and e-mail him. The Hearings Officer telephoned his number on 3 occasions on 25 February 2019, but on each occasion the call was hung up, twice after a woman answered after the Hearings Officer introduced herself. However, by an e-mail dated 2 March 2019 to the Hearings Officer, Mr Johnny confirmed that he did "not wish to attend the hearing via phone or video conference" and was content for the hearing to proceed in his absence. The Committee was satisfied that all reasonable attempts had been made to secure Mr Johnny's participation in the hearing and that he had voluntarily waived his right to attend. The Committee was not persuaded that any adjournment would increase the chance of Mr Johnny attending or 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 Mr Johnny. The Committee reminded itself that his absence added nothing to ACCA's case and was not indicative of guilt.

ALLEGATIONS

Allegation 1

1. Mr Jomis Johnny who is registered with ACCA (Association of Chartered Certified Accountants) as a student:
 - a. On 16th June 2018, Mr Johnny submitted a request to Oxford Brookes University for certified copies of a Bachelor of Science in Advanced Accounting certificate on the basis of providing a copy certificate which purported to confirm he had

obtained a Bachelor of Science in Advanced Accounting from Oxford Brookes University, when in fact, he had not.

- b. Mr Johny 's conduct as set out in paragraph 1(a) was:
 - i. Dishonest, in that he knew he had submitted a false document to Oxford Brookes University in order to obtain certified copies;
 - ii. Contrary to the Fundamental Principle of Integrity.
- c. By reason of his conduct as set out in 1a) and/or 1b) i and ii, Mr Johny is:
 - i. Guilty of misconduct pursuant to bye-law 8(a)(i); and
 - ii. Liable to disciplinary action pursuant to bye-law 8(a)(iii).

BACKGROUND

- 5. Mr Johny was admitted onto ACCA's student register on 5 July 2017.
- 6. ACCA obtained a statement from Person A, the Programme Administrator in the Department of Accounting Finance and Economics in Oxford Brookes University. Person A asserted that on 1 June 2018, the University received an email from Mr Johny's registered email address claiming they were an external recruiter in India and asking for advice as to how to identify if an Oxford Brookes certificate was an original or fake. Person A responded on 4 June 2018 indicating that they could verify whether a particular student was awarded a BSc in Applied Accounting, if it received a verification request and a signed consent letter for each student. Then on 16 June 2018, Mr Johny sought to obtain certified copies of a BSc certificate in Advanced Accounting in his name through the Oxford Brookes University Student Central online shop.
- 7. On 16 June 2018, the Oxford Brookes University Student Central team received an email and a certificate purportedly issued by the University from Mr Johny's email

address which was forwarded to Person A on 5 July 2018. The University records showed that Mr Jomis Johny was a registered student with the University but had only completed the F1 and F4 papers with the University and therefore had not been awarded the BSc in Applied Accounting. Person A confirmed that the BSc certificate submitted by Mr Johny had not been issued by the University.

8. Person A contacted Mr Johny on 18 July 2018 informing him that the certificate he had supplied in an attempt to obtain a certified copy was a fraudulent document. On 19 July 2018, Mr Johny responded:

“Sorry for the inconvenience caused. Actually it was just a project work to check the relevance of the certificate copy that you provide. Not meant to make a fraudulent copy. Just to clarify the certificate copy’s accuracy. Hope you will take it as a sense” [sic].

9. By an email dated 14 September 2018, in response to ACCA’s questions Mr Johny referred to the matter as a ‘mistake’ and stated that he was working as an “external job recruiter” as well as being an ACCA student and that when he met some job applicants, he came to understand that “they are fake certificates of bsc in advanced accounting”. He stated that he thought these candidates had obtained the certificate copies from Brookes University “so I just took my name to check it. But it was by mistake.” He states that “I mailed them only to check the originality of certified copies. Not mentioned to cheat anyone. I apologise, ACCA and BROOKES UNIVERSITY, for wasting your time.” [sic]

ACCA’S SUBMISSIONS

10. ACCA relied on Person A’s evidence and submitted that the BSc certificate Mr Johny submitted in his name to the University was false. Mr Johny agreed the certificate was false but disputed dishonesty.
11. ACCA submitted that Mr Johny’s conduct amounted to dishonesty on the basis that this was a deliberate attempt by Mr Johny to subvert and undermine the integrity of the University’s and ACCA’s qualifications by producing a false certificate in his name and submitting the false document. It submitted that this conduct would be regarded as dishonest according to the standards of ordinary decent people. It further submitted this was contrary to the Fundamental Principle of Integrity and that the conduct amounted to misconduct.

MR JOHNY'S CASE.

12. Mr Johnny had consistently denied dishonest conduct. He explained that he worked as a recruiter and in the course of this employment encountered Oxford Brookes University certificates that he suspected were false. He further stated he submitted a false certificate in his name only to check the validation process of the University.

DECISION ON ALLEGATIONS AND REASONS

13. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the facts was on ACCA alone. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the 'balance of probabilities'.
14. The Committee heard that there had been no previous findings against Mr Johnny and accepted that it was relevant to put his good character into the balance in his favour.

DECISION ON FACTS

15. The Committee carefully considered the documentary evidence it had received, as well as the submissions of Mrs Healy-Howell on behalf of ACCA.
16. The Committee was satisfied on Person A's evidence, that it found to be credible, that Mr Johnny submitted a false certificate in his own name to Oxford Brookes University. It noted that he was registered with the university for the Applied Accounting degree course and had only completed the F1 and F4 papers with the University himself. Therefore the Committee was satisfied that he had not completed a BSc in Applied Accounting and had not been awarded a degree in Applied or Advanced Accounting.
17. On the evidence before it, the Committee was satisfied, on the balance of probabilities, that Mr Johnny submitted a certificate, which purported to confirm he had obtained a Bachelor of Science in Advanced Accounting when he had not. It was satisfied that he submitted this in an attempt to obtain a certified copy of the degree from the University. Accordingly Allegation 1(a) is proved.

Dishonesty

18. 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 Mr Johnny's belief was as to the facts. The Committee was satisfied that Mr Johnny knew he had not been awarded the Bachelor of Science in Advanced Accounting from Oxford Brookes University.
19. It considered it more likely than not that his motive for doing so was to obtain a certified copy of this degree certificate from the University that he could then have used for his advantage. It rejected Mr Johnny's explanation that his conduct was innocent and was undertaken to check the University's validation process because he had come across other false Oxford Brookes certificates, as inherently implausible. The Committee considered it significant that he had made an enquiry of the University on 1 June 2018 and received a response from Person A on 4 June 2018. However, rather than go back to Person A with his concerns as to some of his candidates' certificates or follow the advice given to him by Person A in the email of 4 June 2018, he then approached the online shop of the University with a false certificate in his own name. The Committee considered that his explanation that this was done to check the validation process, was incredible. The Committee considered that someone encountering certificates he suspected to be false could easily have contacted the University and put such certificates to them rather than submitting a certificate in their own name to check the process.
20. Further, while it reminded itself that the burden of proof was on ACCA, it noted that there was no independent evidence provided by Mr Johnny to support his assertions. There was no evidence to confirm that he worked as a recruiter or of the false certificates from his candidates.
21. The Committee was satisfied that his request for a certified copy of a degree, which he had not been awarded, did not have an innocent motive. It rejected his assertion that it was either done by mistake or was done to test the University's validation process. It was satisfied that his most likely intention in obtaining a certified certificate for a degree to which he was not entitled was to use it to his advantage. It had no hesitation in concluding that Mr Johnny'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 Mr Johny'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 obtain a certified certificate for a degree you were not entitled to, 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, having breached Examination Regulation 7 and the Fundamental Principle of Integrity, Mr Johny 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 Mr Johny's actions brought discredit on him, the Association and the accountancy profession. It was satisfied that this 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 dishonest attempt at obtaining a certified certificate for a degree to which he was not entitled, to be 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 limited to Mr Johnny's previous good character and that he had engaged with ACCA to some extent.

30. The aggravating factors the Committee identified were:

- That Mr Johnny's actions were deliberate;
- The conduct involved dishonesty;
- There was no expression of regret or remorse;
- He attempted to cover up his dishonest conduct;
- The Committee had seen no evidence from Mr Johnny of insight or understanding into the seriousness of his misconduct.

31. The Committee was satisfied in view of the seriousness of Mr Johnny's conduct, which included dishonesty, that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to protect the public and maintain public confidence in the profession. Nor would they uphold proper standards of conduct.

32. The Committee determined that Mr Johnny's behaviour was fundamentally incompatible with his remaining on the student register of ACCA. Further, it considered that there was a real risk of repetition of the conduct. It considered that the appropriate and proportionate sanction was that he be removed from the student register. It considered any lesser sanction would not preserve the reputation of, and the maintenance of public confidence in, the accountancy profession.

COSTS AND REASONS

33. ACCA claimed costs of £6,677.82, 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 had no indication of his means but noted that Mr Johnny asserted he was a student and in employment. It concluded in these circumstances that the sum of £4,000 was appropriate and proportionate. Accordingly, it ordered that Mr Johnny pay ACCA's costs in the amount of £4,000.00.

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