

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Fan Yang

Heard on: Wednesday, 27 March 2019

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

Committee: Mr Graham White (Chairman)
Mr Edward Weiss (Accountant)
Mr Barry Picken (Lay)

Legal Adviser: Ms Judith Chrystie (Legal Adviser)

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case Presenter)
Mr Richard Lorkin (Hearings Officer)

Observers: Mrs Wendy Harris (ACCA Appointments Board)

Interpreter: Ms Min Xu (Mandarin)

Outcome: **Severe reprimand.**
Disqualification from F5 examination.
Ineligible to sit ACCA's exams for 12 months.
No order for costs.

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PRELIMINARY APPLICATION

1. ACCA applied to the Committee to amend Allegations 1(a), 1(b) and 1(c). Miss Yang had been informed of ACCA's intention to amend the allegation, in a letter emailed to her on 25 March 2019.
2. The original allegation included particulars of the allegation that Miss Yang used unauthorised material in an examination. ACCA described the evidence that Miss Yang actually used unauthorised material in an exam as not strong and that it appeared to fall short of establishing that the material was used - an allegation that had been consistently denied by Miss Yang. As a consequence, ACCA applied to amend the allegation to remove the references to Miss Yang using unauthorised material, but to retain the allegations that she possessed the material with an intention to use it to gain an unfair advantage. The Case Presenter submitted that the deletion did not alter the substance, or the seriousness of the allegation against Miss Yang.
3. Having been asked by the Chair whether she objected to the amendment, Miss Yang confirmed that she did not object.
4. In determining whether to grant the application, by exercising its discretionary power under Regulation 10(5) of the Complaints and Disciplinary Regulations, the Committee considered whether or not Miss Yang would be prejudiced in the conduct of her defence. It was satisfied that the deletion of an aspect of the allegation, which she had consistently denied, would not adversely impact on Miss Yang; the amendment would not prejudice the conduct of her defence.
5. The Committee considered its overarching public interest role. It was content that the main substance of the allegation was not impacted by the proposed amendments, and the seriousness of the alleged conduct was not reduced. The Committee recognised that the evidence in support of an allegation that the unauthorised material had been used was not strong, and was contradictory. The Committee was satisfied that the public interest would not be impacted by the proposed amendments, and determined to grant the application.

ALLEGATION(S)/BRIEF BACKGROUND

6. Miss Yang attended the hearing by telephone. She was not represented. An interpreter was available to translate.
7. The Committee had the following papers before it:
 - (a) Bundle with pages lettered A-R and numbered 1-224
 - (b) Tabled Additional (1), with pages numbered p225-257
 - (c) Tabled Additional (2), with pages numbered p258-261
 - (d) Tabled Additional (3), with pages numbered p262-267
8. The Committee considered the following allegation:

Allegation 1 (as amended)

- a) During an F5 examination on 6 December 2017 Miss Fan Yang was in *possession of*:
 - (i) unauthorised material which she had at her desk, contrary to Examination Regulations 4 and 5.
- b) Miss Yang intended to use the unauthorised material set out at 1(a) above to gain an unfair advantage, contrary to Examination Regulation 5;
- c) Miss Yang's conduct in respect of 1(b) above was:
 - (i) Dishonest, in that Miss Yang intended to use any or all of the unauthorised material which she had at her desk to gain an unfair advantage;
- d) By reason of her conduct, Miss Yang is:
 - (i) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(c) above; or

- (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) above.

9. On 18 September 2017, Miss Yang first registered as an ACCA student.
10. On 6 December 2017, Miss Yang attended the I740/01 Haikou Exam Centre exam centre to sit the F5 examination, which started at 15.00 hours.
11. The Chief Invigilator completed an SCRS1B report form on the day of the examination, which stated that:
 - a. Miss Yang was nervous and removing the answer booklet in a strange way;
 - b. She approached Miss Yang and asked to see the first page of her answer booklet;
 - c. Unauthorised material was under the answer booklet and found at approximately 17.20 hours;
 - d. The unauthorised material consisted of three pieces of paper with a lot of notes written on them;
 - e. On challenge, Miss Yang's face turned red and she said nothing in response.
12. On the day of the examination, Miss Yang completed an SCRS2 form which stated that:
 - a. She accepted that unauthorised material were found in her possession, which were relevant to the examination syllabus;
 - b. She intended to gain an unfair advantage from the unauthorised material;
 - c. She was terribly sorry;
 - d. She did not use the unauthorised material, as the invigilator found it before she could use it;
 - e. Her '*stupid action*' was a result of lack of confidence from failures in past exams.

13. The Examiner's irregular script report dated 23 December 2017, confirmed that the unauthorised material was relevant to syllabus and the F5 examination.

14. In an initial email to ACCA dated 15 January 2018, Miss Yang:

- a. Apologised – advising that she was '*terribly sorry for misbehaviour*';
- b. Explained that she made a '*big mistake*';
- c. Said she regretted and repented her '*foolish behaviour*';
- d. Stated that she did not use the material in the exam (having been stopped by the Chief Invigilator);
- e. Hoped to have a second chance to be able to continue to study, and would be honest in the future;
- f. Explained that her personal circumstances were that:
 - i. She was born in a remote town;
 - ii. ACCA study would aid her wider career horizons;
 - iii. She had spent nearly two year's income on '*cram school*' to study for ACCA qualifications.

15. In a second email to ACCA dated 15 January 2018, Miss Yang also stated that:

- a. She accidentally brought the exam review material into the examination room,
- b. She did not use the material,
- c. She did not read the student exam instructions before the exam carefully.

16. She repeated similar comments in an email dated 2 June 2018, in which she repeatedly apologised for her '*carelessness and stupidity*' and stated she was '*clearly aware of her dishonesty*', and in repeated communications with ACCA including in an apology letter received on 22 March 2019.

DECISION ON FACTS/ALLEGATION AND REASONS

17. Miss Yang had consistently admitted in correspondence, and repeated orally during the hearing, that she possessed the revision notes at her desk during the examination and that she intended to use them to gain an unfair advantage. Following Miss Yang's admissions, the Committee was satisfied that factual Allegations 1(a)(i) and (b) were established, and the Chair announced they were proved in accordance with Regulation 12(3)(c) of the Complaints and Disciplinary Regulations.
18. In relation to Allegation 1(c), the Committee applied the two stage subjective and objective test to determine whether Miss Yang had been dishonest (*Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67). Within her communications with ACCA and during the hearing, Miss Yang admitted that her conduct was dishonest, and that she had intended to gain an unfair advantage. She had brought the papers knowingly into the exam, because she had failed previous tests, and was feeling under pressure to pass.
19. Having identified Miss Yang's state of mind as dishonest, the Committee went on to consider whether her conduct was honest or dishonest by the standards of ordinary people. The Committee considered that it was plain that the ordinary person would regard, in effect, intending to cheat in a professional exam as dishonest. Accordingly, the Committee found Allegation 1(c) proved.
20. The Committee considered whether the factual allegations that had been found proved amounted to misconduct. It regarded Miss Yang's dishonest conduct fell far short of the standards expected of students of the accountancy profession. Cheating in an examination was entirely unacceptable conduct, which brought the profession into disrepute. The Committee judged that Miss Yang's conduct amounted to misconduct, and therefore found Allegation 1(d)(i) proved.
21. Having found Allegation 1(d)(i), the Committee did not go on to consider Allegation 1(d)(ii), which was charged in the alternative.

SANCTIONS AND REASONS

22. The Committee had regard to the Guidance for Disciplinary Sanctions ('the Guidance').
23. The Committee considered that there was mitigation in the case: Miss Yang had no previous disciplinary or complaint history (although the Committee noted the limited time over which she had been a student member), had made immediate, frank and full admissions; had profusely apologised for her behaviour; had expressed her remorse; demonstrated insight and generally cooperated fully with ACCA, and at the hearing. The Committee also recognised that Miss Yang's previous failures in ACCA's examinations had led her to being placed under pressure [Private], who were disappointed in her performance. She ascribed this pressure as the reason that she had sought to cheat in the F5 examination.
24. The Committee did not consider that there were any aggravating circumstances in the case other than the serious nature of the dishonesty, which had been accepted by Miss Yang.
25. The Committee regarded Miss Yang's misconduct and related dishonesty as serious. This was a planned and deliberate attempt to cheat in a professional exam. Such cheating could detrimentally impact on the public's confidence in the integrity and credibility of ACCA's exams and qualifications. The Committee acknowledged the mitigation in the case, and the information provided by Miss Yang about her personal circumstances. However, it considered that it was not sufficient mitigation, in a case involving dishonesty, for it to be in the public interest to impose no order.
26. Further, the Committee determined that it would be insufficient to conclude this matter with an admonishment or a reprimand. The Committee took account of paragraph E2 of the Guidance, which stated that the public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. Miss Yang intentionally took an unauthorised item into the examination with the intention to cheat. The Committee considered that an

admonishment or a reprimand would not reflect the seriousness of the deliberate and planned conduct, and dishonest intention behind it.

27. Although ACCA's Examination Regulations expressly provide that if a student attempts to gain an unfair advantage in the exam, he or she is likely to be removed from the student register following disciplinary proceedings, the Committee considered that this was an exceptional case in which removal would not be appropriate. The Committee decided that in all the particular circumstances of this case, given the extensive mitigating circumstances recognised by the Committee, it would be proportionate and sufficient in the public interest to impose a severe reprimand, coupled with orders that:

- a. Miss Yang is disqualified from the F5 examination sat on 6 December 2017 – in this regard the Committee understood that Miss Yang had not been provided with her result;
- b. Miss Yang is not eligible to sit any ACCA examination, or part of an examination, for a period of 12 months from the date the order takes effect – the Committee considered such a timeframe was appropriate in recognition of the fact that Miss Yang has been unable to sit any examinations whilst these proceedings have been on-going.

28. The Committee considered that a severe reprimand, combined with an order disqualifying her from the F5 examination, in which she had dishonestly attempted to gain an unfair advantage, and an order deeming her ineligible to sit ACCA examinations for a period of 12 months, was a reasonable and appropriate order to conclude in the public interest, and which proportionally balanced all interests in the case.

COSTS AND REASONS

29. ACCA claimed costs in the sum of £11,809. The Committee noted the analysis of costs provided by ACCA.

30. The Committee recognised that under Regulation 15(1) of the Complaints and Disciplinary Regulations, it could direct that Miss Yang pay such sum by way of costs to ACCA as it considered appropriate. In determining whether an order for costs was appropriate, the Committee was satisfied that Miss Yang's conduct had not had any adverse impact on the costs incurred, but that her financial circumstances were such that no cost order would be affordable.
31. Miss Yang had not disputed the principle that, as a consequence of her misconduct, ACCA had incurred costs for which she could be liable. However, she had repeatedly sought a reduction in the amount owing to her limited financial means. She had submitted a Statement of Financial Position which indicated that she would be unable to meet the ACCA's claimed costs. Further there was repeated reference to Miss Yang's limited financial means in her communications with ACCA, and it was clear to the Committee that the potential for a significant cost order has caused her considerable distress about her ability to meet it.
32. Miss Yang had referenced her financial circumstances in a number of emails to ACCA, including as follows:
 - a. In an initial email dated 11 December 2018, when she stated she was a student '*without working ability and financial resources,*' and that she '*may not be able to pay large bills*';
 - b. In a second dated 11 December 2018, in which she stated she had no financial resources;
 - c. In a third email dated 11 December 2018, in which she said that all her savings would '*barely be enough to pay a tenth of the bill*', she was in debt having paid for '*cram school*', and that she could not afford to pay her bills;
 - d. In an email dated 12 December 2018, in which she repeated she could not afford such an '*expensive expense,*' described herself as really poor, that she had only [Private] for living expenses each month, and savings of [Private] and asked for the bill to be reduced;

33. In all these circumstances, the Committee determined that the imposition of a cost order would cause severe financial hardship, and there was no reasonable way in which Miss Yang could pay an order. As a consequence, in this particular case, the Committee considered that it was not appropriate to make any order for costs.

Mr Graham White
Chairman
27 March 2019