

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Abdul Khabir
Heard on:	Tuesday, 24 September 2019
Location:	ACCA's Offices, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
Committee:	Mr John Wilson (Chairman & Accountant), Mrs Kathryn Douglas (Lay) and Mr Steve Griffiths (Lay)
Legal Adviser:	Mr Alastair McFarlane
Persons present and capacity:	Mr Mohammed Ismail (ACCA Case Presenter) Miss Rachael Davies (Hearings Officer)
Observers:	None
Summary:	Student removed from student register. Costs payable to ACCA in the sum of £5,100.

1. ACCA was represented by Mr Ismail. Mr Khabir did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1 – 58, and a service bundle, numbered pages 1-14.

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SERVICE/ PROCEEDING IN ABSENCE

2. Having considered the service bundle, the Committee was satisfied that the Notice of Hearing, dated 22 August 2019, was served on Mr Khabir by email in accordance with the Complaints and Disciplinary Regulations 2014 (Amended 1 January 2018) (“CDR”).
3. The Committee next considered whether it was in the interests of justice to proceed in Mr Khabir’s absence. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Mr Khabir 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 of Hearing dated 22 August 2019, sent to Mr Khabir’s to his registered email address, offered him the opportunity of attending via video or telephone link, with the costs being met by ACCA. Mr Khabir had not availed himself of this opportunity or made any contact with ACCA about attending this hearing. He had not engaged substantively with ACCA about the case at all. The Committee was therefore satisfied that Mr Khabir was aware of the proceedings and had voluntarily absented himself. ACCA had also sent him subsequent emails on a number of occasions, and had attempted to contact him by telephone but he had not responded.
5. The Committee was satisfied that all reasonable attempts had been made to secure Mr Khabir’s attendance at the hearing. He had not engaged with the substantive proceedings, and the Committee was not persuaded that any adjournment would increase the chance of Mr Khabir attending or participating in the case on a future date. These were serious allegations. 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 Khabir. The Committee reminded itself that his absence added nothing to ACCA’s case and was not indicative of guilt.

ALLEGATIONS

Allegation 1

(a) On or around 24 October 2018, Mr Abdul Khabir, an ACCA student, caused or permitted one or more of the documents set out in Schedule A to be submitted to The Association of Chartered Certified Accountants (“ACCA”), which purported to have been issued by the University of Greenwich when, in fact, they had not.

(b) Mr Abdul Khabir’s conduct in respect of 1(a) was:

- (i) Dishonest in that Mr Khabir knew or did not care that one or more of the document/documents set out in Schedule A were false; or in the alternative
- (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2018) in that such conduct demonstrates a failure to be straightforward and honest.

(c) By reason of his conduct in respect of any or all of the matters set out at 1(a) and/or 1(b) above, Mr Khabir is guilty of misconduct pursuant to bye-law 8(a)(i).

BACKGROUND

6. Mr Khabir became a student of ACCA on 24 October 2018, and was admitted to ACCA’s student register on 30 October 2018. ACCA Investigations Department received a referral from ACCA’s Exemptions Team, stating that the documents purported to have been issued by the University of Greenwich, and submitted by Mr Khabir to ACCA, had not been issued by that University.
7. ACCA relied upon a False Certificate Referral Form completed by Mr A, ACCA’s Exemptions Team Manager, which confirms that on 24 October

2018, the documents referred to in Schedule A purportedly issued by the University of Greenwich, were submitted to ACCA with Mr Khabir's ACCA Initial Registration Application for the purpose of gaining exemptions. Mr A also supplied a copy of an exchange he had with the Faculty of Business Director of Partnership and International at The University of Greenwich, where the certificate and transcript referred to in Schedule A are "fraudulent".

8. On 15 January 2019, ACCA wrote to Mr Khabir to seek his comments in relation to the complaint, by email to Mr Khabir's registered email address. He was also advised to update his registered postal address and contact telephone number. ACCA received no response, and chaser correspondence was sent by email on 30 January 2019, 13 February 2019 and 15 February 2019. No response was received.

ACCA SUBMISSIONS

Allegation 1

9. ACCA relied on the evidence set out in the False Document Referral Form to demonstrate that the documents set out in Schedule A were submitted as part of an application for student membership by an individual named Mr Abdul Khabir.

Dishonesty:

10. ACCA submitted that the conduct set out at Allegation 1(a) clearly amounted to dishonesty on the basis that:
 - a. Mr Khabir knew that the documents submitted as part of his registration with ACCA were false; and
 - b. They were submitted with a view to gaining exemptions from ACCA's required exams, to which Mr Khabir knew he was not entitled.

11. ACCA further submitted that such conduct would be regarded as dishonest, according to the standards of ordinary decent people.

Integrity:

12. ACCA submitted that if the Committee did not make a finding of dishonesty against Mr Khabir, then it must go on to consider whether the Fundamental Principle of Integrity had been breached.
13. In relation to misconduct, ACCA submitted that this was a matter of judgment for the panel and not a matter of evidence. ACCA reminded the Committee that in *Roylance v General Medical Council [2001] 1 AC 311* at p330, it was stated that:

“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety in any given case may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances.”

14. It was ACCA’s submission that if any or all of the facts set out at Allegations 1(a) to 1(c) were found proved, Mr Khabir had acted in a manner which brought discredit to him and to the accountancy profession and his conduct amounted to misconduct pursuant to Bye-law 8(a)(i).

MR KHABIR’S RESPONSE

15. Mr Khabir had made no response to the allegations.

DECISION ON ALLEGATIONS AND REASONS

16. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the allegations was on ACCA alone, and that Mr Khabir’s absence added nothing to ACCA’s case, and

was not indicative of guilt. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the 'balance of probabilities'.

17. The Committee heard that there had been no previous findings against Mr Khabir, and accepted that it was relevant to put his good character into the balance in his favour, as there was an allegation of dishonesty against him.

DECISION ON FACTS

18. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Mr Ismail on behalf of ACCA.

Allegation 1(a)

19. The Committee was satisfied that the documents in Schedule A purported to confirm that Mr Khabir had been awarded a Bachelor of Arts in Accounting and Finance from University of Greenwich, on 7 March 2013, and gave details of his grades and credits. These had been submitted to ACCA in support of Mr Khabir's application to become an ACCA student. The Committee accepted the evidence of Mr A, ACCA's Exemptions Team Manager as credible and reliable. This confirmed that Mr Khabir had submitted the documents as part of his registration process. On the basis of those documents, ACCA had admitted Mr Khabir as a student, and awarded him exemptions from ACCA's F1-F9 exams. The Committee was satisfied, on the written confirmation from the Faculty of Business Director of Partnerships and International, which it also found to be credible and reliable, that the documents were fraudulent.
20. The Committee was satisfied that it was a reasonable inference to draw that those documents which came from Mr Khabir's email address, which he had provided to ACCA, were submitted by Mr Khabir himself, or someone acting on his behalf. It further noted that Mr Khabir's online ACCA account could only be used with the relevant log in information

which he had, or which he could have provided to someone else. Accordingly, Allegation 1(a) was proved.

Allegation 1(b)

21. Having found Allegation 1(a) proved, the Committee next considered Allegation 1(b)(i) and whether Mr Khabir's conduct in respect of 1(a) was dishonest.

Dishonesty

22. 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 Khabir's belief was as to the facts. The Committee was satisfied that the documents sent to ACCA were false. It was satisfied that, as Mr Khabir had not attended the University of Greenwich and had not passed these exams, he knew the documents were false. It was satisfied that the most likely intention on his part was to secure exemptions to which he knew he was not entitled. The Committee rejected other possible bases for these documents to have been submitted (for example by mistake, by carelessness or otherwise in error) to be implausible. The Committee bore in mind the nature of these documents; that they related to Mr Khabir, and they resulted in an exemption from exams to which he was not entitled. It was therefore satisfied that Mr Khabir's conduct was dishonest. It was satisfied, on the balance of probabilities, that he had intended to use the documents to gain exemptions to exams to which he was not entitled. It had no hesitation in concluding that Mr Khabir's conduct was dishonest according to the standards of ordinary decent people. Allegation 1(b)(i) was found proved.

Fundamental Principle of Integrity

23. Having found Allegations 1(a) and 1(b)(i) proved, the Committee did not need to consider Allegation 1(b)(ii), which was an alternative.

Allegation 1(c)

24. The Committee next asked itself whether Mr Khabir was guilty of misconduct, on the basis of Allegations 1(a) and (b) having been proved.
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 Khabir's actions brought discredit on him, the Association and the accountancy profession. It was satisfied that submitting false documents, with a view to gaining exemptions from exams to which Mr Khabir was not entitled, was deplorable conduct, and reached the threshold for misconduct.
26. Accordingly the Committee was satisfied that Allegation 1(d) was made out.

SANCTIONS AND REASONS

27. The Committee noted its powers on sanction were those set out in Regulation 13(4). 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 submission of false documents in an attempt to gain exemptions from ACCA's exams was very serious. The Committee had specific regard to the public interest, and the necessity to protect the public, maintain confidence in the professions, and declare and uphold proper standards of conduct and behaviour. Trust and honesty were fundamental requirements of any professional. Dishonesty by a member of the accountancy profession undermined its reputation and public confidence in it.

29. The Committee had seen no evidence from Mr Khabir of insight or understanding into the seriousness of his misconduct. The only mitigating factor before the Committee was his previous good character.
30. The aggravating factors the Committee identified were:
- That Mr Khabir's actions were wilful, pre-planned and deliberate;
 - He had sought to gain an advantage over other students who were required to pass examinations, by dishonestly holding himself out as having a qualification that he did not possess;
 - The conduct involved dishonesty;
 - There was no evidence of any insight into the seriousness of the conduct, and the impact on the reputation of the profession;
 - He has not co-operated with his regulator.
31. The Committee was satisfied, in view of the seriousness of Mr Khabir'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 Khabir's behaviour was fundamentally incompatible with him remaining on the student register of ACCA, and considered that the appropriate and proportionate sanction was that he be removed from the student register.

COSTS AND REASONS

33. ACCA claimed costs of £7,420.05, 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, and was persuaded that the costs claimed by ACCA were justified, save for a reduction, as there were two cases listed today and some costs were duplicated. It concluded in these circumstances that the sum of £5,100 was appropriate and proportionate. Accordingly, it ordered that Mr Khabir pay ACCA's costs in the amount of £5,100.

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 as described in the Appeal Regulations. The Committee was not persuaded that the ground for imposing an immediate order was made out.

Mr John Wilson
Chairman
24 September 2019