

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Yuxi Lu

Heard on: Thursday, 06 August 2020

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

Committee: Ms Wendy Yeadon (Chair),
Mr George Wood (Accountant), and
Mrs Diane Meikle (Lay)

Legal adviser: Mr David Marshall

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case presenter),
Ms Nkechi Onwuachi (Hearing Officer)

Summary: Removal from student register, costs payable to ACCA
of £4000

1. The Committee heard an allegation of misconduct against Miss Lu, a student of ACCA, in relation to an examination. Mr Jowett appeared for ACCA. Ms Lu was not present and not represented.

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

2. The Committee was satisfied that Miss Lu had been served with the documents required by Regulation 10(7) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 in accordance with Regulation 22. The required documents were contained in the papers before the Committee. There was evidence that they were sent by email on 02 July 2020 to an email address notified by Miss Lu to ACCA as an address for all correspondence.

PROCEEDING IN ABSENCE

3. The Committee saw correspondence from Miss Lu up to 29 May 2020 which showed that she was aware of the proceedings and had engaged with the investigation up to that time. However, her emails on that date indicated that she no longer wished to be involved. Nothing further had been heard from her despite messages from ACCA. The Committee concluded that Miss Lu did not wish to exercise her right to be present and that she would be unlikely to attend on a future occasion if the hearing were adjourned. The Committee considered that the public interest required the hearing to take place and that it would be fair to proceed in Miss Lu's absence. The Committee would take into account Miss Lu's written responses.
4. The Committee determined to proceed in Miss Lu's absence.

ALLEGATION(S)/BRIEF BACKGROUND

5. ACCA's case is that after Miss Lu had completed an ACCA examination the invigilator found revision notes in her possession at the examination desk. She faces the following allegation:

Allegation 1

- a. During a Taxation (TX-UK) examination on 03 September 2019, Miss Yuxi Lu was in possession of:
 - i. Unauthorised materials in the form of a handwritten note whilst at her exam desk, contrary to Examination Regulations 4 and/or
- b. Miss Yuxi Lu intended to use any or all of the items set out at 1(a) above to gain an unfair advantage;
- c. Miss Yuxi Lu's conduct in respect of 1(b) above was:
 - i. Dishonest, in that Miss Yuxi Lu intended to use any or all of the unauthorised material which she had at her exam desk to gain an unfair advantage, in the alternative;
 - ii. Contrary to the Fundamental Principle of Integrity (as applicable in 2019), in that such conduct is not straightforward and honest.
- d. By reason of her conduct, Miss Yuxi Lu 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.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

6. The Committee heard no oral evidence but studied a bundle of documents including statements from the exam invigilator, from Miss Lu and others. It considered the submissions of Mr Jowett and the emails sent by Miss Lu in relation to the allegations.
7. It was quite clear from the documentary evidence that Miss Lu attended and completed the examination in question and that during that time she had with her at the exam desk some handwritten notes. For this exam she was not permitted to take such notes to the desk. They were therefore “unauthorised materials”. She accepted all this without reservation at the time and in a number of later documents. The Committee found Allegation 1(a) proved.
8. The main factual issue in this case concerns Allegations 1(b) and (c). Miss Lu’s case was that it was a pure mistake that she took the notes with her to the desk, that she did not intend to use them and did not in fact use them.
9. The notes in question were described by the Invigilator as being on a piece of paper 5cm x 5cm. The Committee was provided with a copy. The square contained closely written Chinese characters, numbers and (probably) formulae. ACCA obtained a report on their content which stated that the material was relevant to the syllabus although it could not be demonstrated that they had actually been used in answering the exam questions.
10. The Invigilator completed an SCRS1B form immediately after the examination. She said that when she found the note, Miss Lu’s explanation was *‘it was a note she used in a maths test previously’*.

11. Miss Lu completed an SCRS2B form at the same time. She said, *'It's a tiny draft note I made a few days ago and put it with my calculator but forgot the existence of'*. She made a similar statement later in the form and added that she didn't know she had it and didn't use it or take it out during the exam. *'I didn't intend to use it as I really didn't know it was with me'*.

12. ACCA commenced an investigation and Miss Lu gave her first response in an email dated 10 October 2019. In this email she accepted that the note was prepared for the taxation exam:

On Sept 03 I took the F6 exam. When I prepared for it few days ago, I wrote some note about the exam to help me review and put it into my calculator (it has a lid so I can put it in). When I entered the classroom, I knew that note was still there, but I didn't take it out in time. At that moment, I admit there was a fluke mind.

13. She said that the invigilator *'checked my things on the desk and the note was found'*. She could have meant that it was found inside the calculator but when asked about this she said in an email on 13 January 2020 *'It's on the desk I think'*.

14. The invigilators stated that they checked all calculators before the candidates entered the examination room and found nothing. However, If Miss Lu did bring the note into the examination inside her calculator, it is clear that it was taken out at some point because it was found on the desk.

15. Under the Exam Regulations, Regulation 7(a), where a candidate is in possession of unauthorised materials and the unauthorised materials are relevant to the syllabus being examined, it will be assumed that the candidate intended to use them to gain an unfair advantage in the exam unless he or she

proves the contrary.

16. The Committee found Miss Lu's explanations to be vague, inconsistent and implausible. In the Committee's view the notes were designed for concealment. There was no obvious reason why they should have been so small or so closely written if they were simply revision notes. They may well have been designed to be concealed in the calculator that was authorised to be brought into the exam. The Committee rejected Miss Lu's case that she did not intend to use the notes to gain an unfair advantage. Even without the presumption, the Committee would have concluded on the balance of probabilities that Miss Lu intended to use the notes to cheat. Whether or not she actually used the notes is irrelevant. The Committee found Allegation 1(b) proved.

17. Having found that Miss Lu brought notes into an examination with the intention to use them to gain an unfair advantage, the Committee had no hesitation in finding that her conduct was dishonest. Cheating, or preparing to cheat, in an examination is clearly dishonest. The Committee found Allegation 1(c)(i) proved. Allegation 1(c)(ii) was in the alternative and did not require a finding, although clearly her conduct was not straightforward or honest.

18. The Committee considered that Miss Lu's conduct clearly amounted to misconduct. Cheating (or intending to cheat) in professional examinations is one of the most obvious examples of misconduct that a student can commit. The Committee found Allegation 1(d)(i) proved. Allegation 1(d)(ii) was in the alternative and did not require a finding.

SANCTION(S) AND REASONS

19. Having found that Miss Lu took revision notes into an examination with the

intention to gain an unfair advantage, the Committee considered what sanction, if any, to impose.

20. The Committee first sought to identify any mitigating or aggravating factors.
21. As to mitigation, Miss Lu made an immediate admission that she was in possession of unauthorised materials and she cooperated fully with the investigation, even though she disengaged at the stage where she was asked to complete a Case Management Form. She had no previous findings against her, but she has only been on the student register since December 2019
22. There were no aggravating factors. Exam cheating is clearly a very serious matter, but the Committee did not consider that there were any factors that made this case significantly worse than other cases of its kind.
23. The Committee considered the relevant sanctions in ascending order, having regard to ACCA's sanctions guidance.
24. The Guidance states that admonishment and reprimand are appropriate where *'the conduct is of a minor nature'*. The dishonesty in this case was far too serious to be dealt with by these sanctions.
25. The Guidance states that the sanction of severe reprimand *'would usually be applied in situations where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved'*. The key factors set out in the Guidance were not present in this case. The

misconduct was deliberate. Exam cheating causes harm by subverting the examination system. It is unfair to other students. Miss Lu provided no references and no information about her past, current or future circumstances. By continuing to deny any wrongful intention she was unable to demonstrate any insight or remorse. The Committee concluded that her cheating was so serious that the sanction of severe reprimand would not be adequate.

26. The Committee next considered the sanction of removal from the student register. It concluded that Miss Lu's behaviour was fundamentally incompatible with being a student of ACCA. The purpose of registering as a student is to learn the skills of an accountant and demonstrate such knowledge and skills in fair examinations. Deliberate cheating undermines the system of student education. It is one of the most serious types of misconduct that it is open to a student accountant to commit. The Committee was satisfied that removal from the student register was the minimum sanction it could impose.
27. The Committee considered whether it was necessary to make an order extending the period before Miss Lu could apply to be readmitted. Given that she is at a very early stage in her career, it decided that it was not necessary to do so.

COSTS AND REASONS

28. Mr Jowett applied for costs totalling £5,214.
29. The Committee was satisfied that these proceedings were properly brought and that ACCA was entitled in principle to a contribution to its costs. With regard to the amount, Mr Jowett explained that the estimate was based on 5 hours of hearing time whereas this hearing would be completed in significantly less time.

The Committee considered that the costs should be reduced accordingly. In other respects, they were reasonable.

30. Miss Lu had made clear in general terms that she was worried about having to pay costs and that she would not be able to pay, but she had provided no figures or other details. In these circumstances it was difficult for the Committee to make any calculated reduction on the basis of her means.
31. Taking a broad-brush approach, the Committee assessed the contribution at £4,000.

ORDER

32. The Committee ordered as follows:
 - (a) Miss Lu shall be removed from the student register
 - (b) Miss Lu shall make a contribution to ACCA's costs of £4,000

EFFECTIVE DATE OF ORDER

33. This order shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations.

Mrs Wendy Yeadon
Chair
06 August 2020