

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Ms Amy Chen Hu

Heard on: Wednesday, 25 and Thursday, 26 November 2020

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

Committee: Mr Maurice Cohen (Chair)
Mr Jonathan Beckerlegge (Accountant)
Mr Nigel Pilkington (Lay)

Legal Adviser: Mrs Fiona Barnett (Legal Adviser)

Persons present

and capacity: Mr Phillip Law (ACCA Case Presenter)
Ms Nkechi Onwuachi (Hearings Officer)
Ms Amy Chen Hu (Member)
Mr Yali Quan (Interpreter)

Observers: None

Summary Removed from the student register

Costs: Ms Amy Chen Hu to pay cost to the ACCA in the sum of
£2,000.00.

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PRELIMINARY APPLICATIONS

1. Ms Hu attended the hearing via telephone. She was not represented.
2. Ms Hu was assisted by an interpreter, Mr Yali Quan.
3. The Committee convened to consider the following allegations:

ALLEGATION(S)

(a) During a Financial Reporting examination on 05 September 2019, Miss Chen Hu was in possession of:

(i) Unauthorised materials in the form of notes whilst at her exam desk, contrary to Examination Regulations 4 and/or 5.

(b) Miss Chen Hu intended to use any or all of the items set out at 1(a) above to gain an unfair advantage.

(c) Miss Chen Hu's conduct in respect of 1(b) above was:

(i) Dishonest, in that Miss Chen Hu intended to use any or all of the unauthorised materials 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 Chen Hu is:

- (i) Guilty of misconduct pursuant to byelaw 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 byelaw 8(a)(iii), in respect of 1(a) above.

BRIEF BACKGROUND

4. It is alleged that on 05 September 2019, Ms Hu attended the C736 Suzhou City exam centre to sit the Financial Reporting examination. The examination commenced at 1.30pm and was due to last for 3 hours.
5. It is alleged that after completion of the examination, unauthorised materials were found at Ms Hu's desk; further, that she had intended to use these materials to gain an unfair advantage in the exam.
6. In its consideration of this matter, the Committee had before it a bundle of papers numbering pages 1 to 132, and additional bundles numbering pages 1 to 3 and 1 to 4. The Committee was also provided with a Service Bundle numbering pages 1 to 15. During the hearing, Mr Law referred to a PowerPoint presentation which outlined details of the allegations, facts, evidence and ACCA's submissions.

DECISION ON ALLEGATIONS AND REASONS

7. The Committee accepted the advice of the Legal Adviser. In reaching its decisions, it reminded itself that the burden of proof rests with ACCA, and that the standard of proof is the civil standard, which is the balance of probabilities.
8. However, the Committee also reminded itself, as advised, of Exam Regulation 7 which introduces a reverse burden of proof. This applies if ACCA proves a breach of Exam Regulation 4 and/or 5 and if the unauthorised materials are relevant to the syllabus being examined. In these circumstances, it will be assumed that the student intended to use the unauthorised materials to gain an unfair advantage in the exam unless she can prove in any disciplinary proceedings, on the balance of probabilities, that she did not intend to do so.

Allegation 1(a)(i) – found proved

9. The Committee was provided with a copy of ACCA's register entry for Ms Hu. It was satisfied that Ms Hu became a student member of ACCA on 28 December 2017, and consequently, she is bound by ACCA's regulations.
10. Ms Hu accepted that during a Financial Reporting examination on 05 September 2019, she was in possession of unauthorised materials in the form of two small handwritten notes whilst at her exam desk. The Committee was satisfied that this contravened Exam Regulations 4 and 5, and it therefore found this allegation proved.

Allegation 1(b) – found proved

11. The Committee first considered, in accordance with Exam Regulation 7, whether the unauthorised material was relevant to the syllabus being examined. It received an irregular script report dated 03 October 2019, in which the author confirmed that the unauthorised material was relevant to the syllabus being examined. The Committee accepted this evidence which was not challenged by Ms Hu.
12. Having found that Ms Hu's notes were relevant to the syllabus being examined, the Committee was therefore entitled to assume, by virtue of Exam Regulation 7, that Ms Hu intended to use the notes to gain an unfair advantage in the exam, unless she can prove that she did not intend to do so. The burden, therefore, shifted to Ms Hu.
13. In reaching its decision in Allegation 2(b), the Committee considered the documentary evidence from ACCA, as well as the oral evidence provided by Ms Hu today.
14. Invigilator 1 completed an SCRS1B form. In this form, the Invigilator stated that she found the unused material after the exam when collecting scrap paper and notes. Invigilator 1 said when checking the keyboard, Ms Hu pressed it hard and refused to let her check it. Invigilator 1 insisted on moving the keyboard,

and said she found the notes underneath it. Invigilator 1 said Ms Hu initially told her that her friend told her it was okay, then later said these were notes from a previous exam.

15. The Committee also received a report, (SCRS1B), from Supervisor A who reported that Ms Hu “*begged*” her not to report the case and said a friend from Shanghai told her (Ms Hu), that it was okay. Supervisor A stated that when Ms Hu was told she would be reported to ACCA, Ms Hu allegedly said that the notes were not hers.
16. Ms Hu completed the SCRS2B form after the examination. In this form, she stated that the exam had little relationship to the notes, and the notes were just what she had studied before; she said she had not looked at them during the exam.
17. Ms Hu responded to ACCA on several occasions during the investigation. She told ACCA, in essence, in her written responses, that she prepared the notes to improve her memory of some details, with the intention of reading these on the train beforehand. She said that she put the notes in her pocket and forgot to take them out until the exam was finished; she then removed the notes and put them on the desk to see how much of that information was relevant to the exam and whether she had written the formulas correctly.
18. Ms Hu gave evidence to the Committee and was questioned by Mr Law. She accepted during questioning that she knew she had the notes with her when she went into the exam, and knew this was wrong, but thought that if she left them in her pocket and did not look at them, then it would not be a problem. She also told the Committee that the notes were covered in Sellotape, to ensure that they would not become damaged.
19. The Committee considered the evidence as a whole and concluded that the evidence of Ms Hu was not reliable. It came to this conclusion for the following reasons:

- Ms Hu has provided a series of inconsistent explanations for her actions, which have evolved and/or varied from the time of the exam, up until her evidence to the Committee today. Her explanations included; a friend telling her it was okay to use the notes; the notes were not hers; the notes were what she had studied previously; she forgot that the notes were in her pocket; she remembered that the notes were in her pocket. Ms Hu's acceptance today that she knew she had the notes with her during the exam, and that she knew it was wrong to have them was the first time she had provided such a response. She has also never previously said that the notes were covered in Sellotape, a factor which was not mentioned by the Invigilator or the Supervisor.
- The explanation given by Ms Hu in her oral evidence, was that she knew she had the notes with her and that this was wrong. She said she took them out after the exam to look at them. In the Committee's view, this explanation lacked credibility. If she knew it was wrong to have the notes in her possession during the exam, and that it was a risk to have them with her, she would be unlikely to then take them out after the exam when they might be seen by the Invigilator and/or the Supervisor.
- The notes were small in size, which was consistent with them being secreted for use during an exam.

20. Given the factors set out above, the Committee concluded that Ms Hu was not a credible witness. It rejected her explanation that she did not intend to use the notes to gain an unfair advantage and found that she had not discharged the reverse burden of proof set out in Exam Regulation 7. The Committee found that Ms Hu had intended to use the unauthorised materials to gain an unfair advantage during the exam, (even if she had not in fact used them), and it found Allegation 1(b) proved.

Allegation 1(c)(i) – found proved

21. The Committee then decided whether Ms Hu's actions were dishonest. In deciding this, the Committee reminded itself, as advised, of the test set out by Lord Hughes at paragraph 74 of *Ivey v Genting Casinos 2017 UKSC 67*. The Committee must first ascertain, subjectively, the actual state of the individual's knowledge or belief as to the facts. Then, once her actual state of mind as to knowledge or belief as to facts is established, the question whether her conduct was honest or dishonest is to be determined by the fact finder by applying the (objective) standards of ordinary decent people.
22. The Committee considered the actual state of Ms Hu's knowledge or belief as to the facts. It had regard to its findings in relation to Allegation 1(b). Ms Hu knew that she had taken unauthorised materials into the exam and her intention was to use them to cheat and gain an unfair advantage if the opportunity presented itself.
23. The Committee was satisfied that taking notes into a professional exam with the intention of using them to gain an unfair advantage was behaviour which would be regarded as dishonest by the standards of ordinary decent people. The Committee, therefore, found Allegation 1(c)(i) proved.

Allegation 1(c)(ii)

24. In the light of its finding that Ms Hu acted dishonestly, the Committee did not consider this allegation, which was alleged as an alternative to the dishonesty allegation.

Allegation 1(d)(i) – guilty of misconduct

25. The Committee was satisfied that Ms Hu's actions were sufficiently serious to amount to misconduct. She had acted dishonestly by deliberately taking unauthorised materials into a professional examination with the intention of using them to gain an unfair advantage.

26. The Committee was in no doubt that this was conduct which fell seriously short of the standards expected of an ACCA student, and that such conduct would bring discredit to Ms Hu, to ACCA and to the accountancy profession.

Allegation 1(d)(ii)

27. Given the Committee's decision that Ms Hu is guilty of misconduct, the Committee was not required to consider this allegation which was laid in the alternative to Allegation 1(d)(i).

MITIGATION

28. Ms Hu said she would accept a sanction imposed by the Committee but hoped that the Committee would impose the minimum sanction.

SANCTIONS AND REASONS

29. The Committee accepted the advice of the Legal Adviser who referred the Committee to ACCA's current Guidance on Disciplinary Sanctions, ("The Guidance"). It bore in mind that it must act proportionately at this stage, balancing the member's interests against the public interest, and that any sanction imposed must be no more than necessary to meet the purpose of a disciplinary sanction.
30. The Committee identified the following aggravating factors: Ms Hu had carried out a planned act of dishonesty in that she had prepared the notes in advance and knowingly taken them to her exam desk with the intention of using them if the opportunity presented itself; she stood to derive personal benefit from her dishonesty if the notes had assisted her during the exam. Ms Hu's misconduct also had the potential to seriously undermine public trust in the ACCA qualification system and in the profession generally. Further, Ms Hu denied that she intended to use the notes, and consequently has not shown any insight into her misconduct.

31. By way of mitigation, the only mitigating factor the Committee could identify was the fact that Ms Hu had no previous ACCA findings against her.
32. Overall, the Committee was satisfied that Ms Hu's conduct, which involved dishonesty in a professional exam, could be categorised as very serious.
33. The Committee first considered whether to conclude this case without taking further action. It decided that this would not be sufficient to uphold the public interest given the serious nature of the facts found proved against Ms Hu.
34. The Committee next considered whether an Admonishment would be an appropriate and proportionate sanction. It had regard to paragraph C2 of the Guidance. The incident was an isolated one, however, none of the other factors which would support an Admonishment applied. It, therefore, decided that an Admonishment was insufficient to reflect the serious nature of Ms Hu's dishonest behaviour.
35. The Committee next considered whether a Reprimand would be an appropriate and proportionate sanction. The Guidance states that this sanction is usually applied, "*...where the conduct is of a minor nature..*". Given that Ms Hu had been found guilty of misconduct which included dishonesty, and that the Committee had found her misconduct to be very serious, a Reprimand would not be an appropriate and proportionate sanction.
36. The Committee next considered a Severe Reprimand and considered paragraph C4 of the Guidance. The factors set out in the Guidance which might support a Severe Reprimand were the fact that Ms Hu has a previous good record with ACCA; she co-operated with ACCA during the investigations stage and the incident was an isolated one. However, the misconduct was intentional, could have caused harm if Ms Hu had succeeded in using the notes to her advantage, and she has not shown full insight into her misconduct. The Committee's view was that overall, a Severe Reprimand was not a sufficient sanction in the circumstances.

37. The Committee next considered Removal of Ms Hu's name from the student register. It considered paragraph C5 of the Guidance and also had regard to paragraph E2 which addresses cases involving dishonesty. Paragraph E2.2 states,

“The public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. The reputation of ACCA and the accountancy profession is built upon the public being able to rely on a member to do the right thing in difficult circumstances. It is a cornerstone of the public value which an accountant brings.”

38. The Committee found that Ms Hu's actions amounted to a serious departure from expected standards. She had knowingly taken unauthorised materials into a professional exam and intended to use these to improve her prospects of succeeding, potentially gaining an unfair advantage for herself. She had acted dishonestly and shown no insight into her misconduct. The Committee found that there was no evidence before it to mitigate the seriousness of Ms Hu's behaviour. Her conduct had the potential to seriously undermine the trust placed by the public in ACCA's professional qualification regime and its trust in the accountancy profession generally. It concluded that her conduct was fundamentally incompatible with continued membership as a registered student.
39. Taking into account the seriousness of the case and balancing the interests of Ms Hu, the interests of ACCA and the public interest, the Committee concluded that Removal from the student register would be the proportionate sanction in the circumstances of this case, and that any sanction less than Removal would not be sufficient to uphold the public interest.

40. The Committee ordered as follows:

- Ms Hu's name be removed from the student register.

COSTS AND REASONS

41. Mr Law applied for costs in the sum of £5,584.50. The Committee was provided with a costs bundle numbering pages 1 to 5.
42. Ms Hu told the Committee that she is currently in the first year of a Master's degree and is not working. She said that whilst she did have some money in her bank account, the costs requested are too much for her to pay. She told the Committee that she had not been doing any part time work as a result of the pandemic, and so did not have any extra income. Ms Hu said that about £1000 sterling would be an appropriate sum for her to pay in costs, and the maximum she could afford.
43. The Committee decided that £2000 would be an appropriate sum for Ms Hu to pay in costs. In reaching this decision it bore in mind two factors:
 - Ms Hu is a student, and currently has no income.
 - Additional costs have been incurred as a result of the fact that Ms Hu is in China where there is a substantial time difference; this meant that the hearing has been staggered over a two day period, whereas a case of this nature might be held over one day if there was no such time difference. The Committee's view was that Ms Hu should not be penalised financially for this.
44. The Committee, therefore, ordered that Ms Hu pay £2000 to ACCA in costs.

EFFECTIVE DATE OF ORDER

45. This Order shall take effect on the date of expiry of the appeal period referred to in the Appeal Regulations.

Mr Maurice Cohen
Chair
26 November 2020

