

APPLICATION ON PAPERS

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Wen Jiang

Heard on: Thursday, 08 October 2020

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

Committee: Mr Michael Cann (Chairman)
Mr George Wood (Accountant)
Ms Helen Kitchen (Lay)

Legal Adviser: Mr Alastair McFarlane (Legal Adviser)

Persons present

and capacity: Ms Michelle Terry (ACCA Case Presenter)
Mr Jon Lionel (Hearings Officer)

1. ACCA was represented by Ms Terry. Miss Jiang did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1 – 41, a service bundle numbered pages 1-16 and an additional bundle numbered pages 1-4.

SERVICE/ PROCEEDING IN ABSENCE

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Miss Jiang in accordance with the

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



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

Complaints and Disciplinary Regulations 2014 (“CDR”).

3. The Committee next considered whether it was in the interests of justice to proceed in the absence of Miss Jiang. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Miss Jiang had a right to attend the hearing and to participate and that the discretion to proceed in her absence must be exercised with the utmost care and caution.

4. The Committee noted that ACCA’s notice dated 10 September 2020 to Miss Jiang’s registered email address in China, offered her the opportunity of attending via video or telephone link. Miss Jiang had not availed herself of this opportunity or made any communication with ACCA about attending the hearing. It noted a further chase up e-mail was sent to her registered email address on 05 October 2020 – again to which there was no reply. The Committee noted that there had been no engagement at all from Miss Jiang throughout the history of the case. The Committee was satisfied that reasonable attempts have been made to secure Miss Jiang’s attendance/participation at the hearing. The Committee was satisfied that Miss Jiang had voluntarily disengaged from the process and was not persuaded that any adjournment would increase the chance of Miss Jiang 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 Miss Jiang. The Committee reminded itself that her absence added nothing to ACCA’s case and was not indicative of guilt.

Allegations

Allegation 1

- 1.1 Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Miss Jiang has failed to co-operate fully with the investigation of a complaint in that:

1.2 She failed to respond at all to any to all of ACCA's correspondence dated:

1.2.1 06 November 2019; [REDACTED]

1.2.2 28 November 2019; and [REDACTED]

1.2.3 13 December 2019; [REDACTED]

1.3 By reason of her conduct in respect of any or all of the matters set out at 1.1 and 1.2 above, Miss Jiang is:

1.3.1 Guilty of misconduct, pursuant to byelaw 8(a)(i); or in the alternative [REDACTED]

1.3.2 In breach of byelaw 8(a)(iii) [REDACTED]

BACKGROUND

5. Miss Jiang registered as an ACCA student on 28 December 2018.
6. The case concerns an allegation that Miss Jiang has failed to co-operate fully with ACCA's investigation into her conduct.
7. ACCA CBE Delivery team received a referral from the British Council office in China. The British Council raised concerns about integrity of ACCA's CBE exams after they found CBE questions were offered for sale online. The British Council supplied ACCA with a copy of the screen capture of the advert and images. Through her student ID number Miss Jiang's screen was identified as being in the advert.
8. ACCA wrote to Miss Jiang at her then registered email address as required under Regulation 15 of The Membership Regulations 2014 to seek her comments in relation to the investigation on 06 November 2019, 28 November 2019 and 13 December 2019. Miss Jiang failed to respond to ACCA's investigation in this matter.

SUBMISSIONS

9. ACCA's submission was that Miss Jiang's failure to co-operate fully with ACCA's investigation into her conduct demonstrates a lack of professionalism and a disregard for ACCA's regulatory process. Miss Jiang's failure to respond to questions asked by ACCA did not assist ACCA's investigation. This is a serious issue for organisations such as ACCA that self-regulate their membership. ACCA requires members and registered students' co-operation in order to fully investigate complaints. [REDACTED]
10. ACCA submitted that such non-cooperation by a professional with her regulator amounted to misconduct or in the alternative was a breach of the bye law.

MISS JIANG'S SUBMISSIONS

11. There were no submissions from Miss Jiang.

DECISION ON ALLEGATION AND REASONS

12. 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 Miss Jiang's absence added nothing to ACCA's case.

DECISION ON FACTS

13. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Ms Terry on behalf of ACCA. It reminded itself to exercise caution as it was working from documents alone.
14. The Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Miss Jiang to cooperate fully with ACCA in the investigation of any complaint. It was satisfied that Miss Jiang made no response to ACCA's correspondence

requesting her cooperation on the 06 November 2019, 28 November 2019 and 13 December 2019. It was further satisfied that these non-responses amounted to failures as Miss Jiang had a duty to respond and that, therefore, she breached the obligation under the Regulations and that Allegation 1 was proved.

MISCONDUCT

15. The Committee was satisfied that her duty to cooperate with her regulator is an important one, both to enable the regulator to properly and fairly discharge its regulatory function and to uphold public confidence in the regulatory system. The Committee had regard to the definition of misconduct in byelaw 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Miss Jiang's actions brought discredit on her, the Association and the accountancy profession. For these reasons the Committee was satisfied that Miss Jiang's failure to cooperate was sufficiently serious to amount to misconduct. Given the failure amounted to misconduct the Committee did not need to consider the alternative of liability to disciplinary action.

SANCTIONS AND REASONS

16. The Committee noted its powers on sanction were those set out in Regulation 12(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.
17. The Committee considered that the conduct here was serious. Sir Brian Levenson said in Adeogba v General Medical Council [2016] EWCA Civ 162 : *"there is a burden on...all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession."* The Committee had regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Not engaging with your

professional body can frustrate the regulator's central duty to regulate the profession and so undermines its reputation and public confidence in it.

18. The mitigating factor the Committee identified was:

- Miss Jiang had no previous disciplinary record

19. The aggravating factors the Committee identified were:

- The failures were repeated
- There was no evidence that Miss Jiang had any insight into the significance of her failings or its impact on public confidence in the regulator and the profession

20. Given the Committee's view of the seriousness of her conduct and its detrimental effect upon the reputation of the profession and the absence of insight, apology, rehabilitative steps and co-operation, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven misconduct.

21. The Committee determined that Miss Jiang's behaviour was fundamentally incompatible with her remaining on the student register of ACCA. The conduct was a serious departure from professional standards and it was repeated. The Committee was satisfied that the only appropriate and proportionate sanction was that she be removed from the student register. The Committee did not consider that it was necessary to combine this with an order that Miss Jiang may not apply for readmission for a further period beyond the minimum period.

COSTS AND REASONS

22. ACCA claimed costs of £5,858.50 and supplied a detailed and simple breakdown of its costs. Miss Jiang has not provided any statement of her

means. 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. The Committee had no evidence of Miss Jiang's means. It discounted a proportion of the sum claimed as the Case Presenter was not engaged for the full time claimed in the schedule as the case concluded earlier than anticipated. It was satisfied in these circumstances that the sum of £5,000 was appropriate and proportionate. Accordingly, it ordered that Miss Jiang pay ACCA's costs in the amount of £5,000.

EFFECTIVE DATE OF ORDER

23. 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 determined it was not necessary to impose an immediate order.

Mr Michael Cann
Chair
08 October 2020