

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Hui Ding

Heard on: Tuesday, 12 October 2021

Location: Remotely via Microsoft Teams

Committee: Mr Michael Cann (Chair)
Ms Joanne Royden-Turner (Accountant)
Mr Andrew Skelton (Lay)

Legal Adviser: Mr Robin Havard (Legal Adviser)

**Persons present
and capacity:** Mr Ben Jowett (ACCA Case Presenter)
Mr Jonathan Lionel (Hearings Officer)

Observers:

Summary Removed from the student register

Costs: £3,500.00

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PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

1. The Committee had considered the following documents: a hearing bundle (pages 1 to 115) and a service bundle (pages 1 to 13). The Committee had also considered legal advice, which it had accepted.
2. The Committee had read the letter dated 14 September 2021 sent by ACCA by email to Miss Ding, and had noted the subsequent emails sent to Miss Ding with the necessary link and password to enable Miss Ding to gain access to the letter and the documents relating to this hearing. The Committee was satisfied that such emails had been sent to her registered email address in accordance with Regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had noted that the emails had been delivered successfully.
3. The emails and the documents to which Miss Ding had access also contained the necessary information in accordance with CDR10. Consequently, the Committee decided that Miss Ding had been properly served with proceedings.

PROCEEDING IN ABSENCE

4. On 11 October 2021, in the absence of any response from Miss Ding to the email of 14 September 2021, ACCA sent another email to her at the same email address asking her to respond, and reminding her of the date of hearing. The email had been delivered successfully. However, Miss Ding did not reply.
5. The Committee was satisfied that ACCA had done everything possible to engage Miss Ding in the hearing, but she clearly had no intention of doing so. Indeed, the Committee noted that the emails had been sent to the same email address used by Miss Ding when she wrote to ACCA on 09 and 15 October 2020, 23 February 2021 and 26 April 2021. Furthermore, Miss Ding had attached to her email of 26 April 2021 the Case Management Form in which she confirmed that she did not intend to attend the hearing, nor would she be

represented. Miss Ding also confirmed that she consented to the hearing proceeding in her absence.

6. The Committee found, on the balance of probabilities, that Miss Ding had received the emails from ACCA informing her of the hearing and giving her access to the documents containing the evidence on which ACCA relied in support of the allegations. The Committee concluded that Miss Ding had voluntarily absented herself from the hearing which she could have joined by telephone or video link if it was not possible for her to attend in person. She had therefore waived her right to attend.
7. The Committee was also satisfied that, taking account of the seriousness of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made. Finally, the Committee considered that it was in a position to reach proper findings of fact on the written evidence presented to it by ACCA, to include the written responses provided by Miss Ding following the examination and in the Case Management form in which she confirmed that she admitted the allegations.
8. The Committee ordered that the hearing should proceed in the absence of Miss Ding.

ALLEGATIONS

Allegation 1

- (a) During an Advanced Financial Management (AFM) examination held on 10 July 2020, Miss Hui Ding was in possession of:
 - (i) unauthorised materials in the form of 26 pages of typed/handwritten notes, contrary to Examination Regulation 4.
- (b) Miss Hui Ding intended to use those notes or any of them as set out at 1(a) above to gain an unfair advantage.

- (c) Miss Hui Ding's conduct in respect of 1(b) above was:
 - (i) Dishonest, in that Miss Hui Ding intended to use the notes or any of them to gain an unfair advantage; in the alternative
 - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2020) in that such conduct is not straightforward and honest.

- (d) By reason of her conduct, Miss Hui Ding 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.

DECISION ON FACTS, ALLEGATIONS AND REASONS

Allegation 1(a)(i)

9. In correspondence from Miss Ding and in the Case Management form completed and submitted by her to ACCA, this allegation was admitted, and the Committee found it proved.

10. In reaching its findings in respect of this allegation, the Committee relied upon the written evidence provided by: the Chief Invigilator who found unauthorised materials in Miss Ding's possession when sitting the examination; the Invigilator; the Supervisor; the Script Examiner, and finally, the written accounts of Miss Ding herself. The Committee also listened to legal advice, which it accepted.

11. On 12 March 2017, Miss Ding became registered as an ACCA student.

12. On 10 July 2020, Miss Ding attended the I768/1 Yantai exam centre in order to sit the Advanced Financial Management ("AFM") examination. The exam commenced at 3 p.m. and was due to last for 3 hours 20 minutes.
13. All candidates for ACCA examinations had access to the Examination Regulations. Prior to an examination, all candidates received an attendance docket which contained the ACCA guidelines and Regulations. Whilst Miss Ding accepted that she had received the docket, she denied that she had read the Examination Regulations on the reverse of the document.
14. In a SCRS1A form completed on the day of the exam, the Chief Invigilator, Person A, stated that inappropriate behaviour was displayed by the student at "5.20pm" and that the unauthorised material "*was found under the paper by the chief invigilator. There's not any verbal communication, and only eye contact.*" The Chief Invigilator confirmed that "Person B and Person C" also witnessed the incident.
15. A further SCRS1B form was completed by the Supervisor, Person C. The Supervisor stated that "*the materials were found under the paper by our Chief invigilator, Person A.*" Person C further confirmed that "Person A and Person B" witnessed the incident.
16. A further SCRS1A form was completed by the Invigilator, Person B, in which he stated that the "*cheating materials were found under the candidate's paper by chief invigilator Person A.*" Person B further confirmed that "Person A and Person C" witnessed the incident.
17. The Chief invigilator, Person A, also completed a SCRS1B form on the day of the examination confirming that the student was found to be in possession of "26 pages, A4" of unauthorised materials at "5.20pm."
18. In response to whether the unauthorised materials had been used, the form stated, "*Yes. The unauthorised materials being found under the candidate's paper during the examination.*"

19. A full and detailed account was provided which stated, "*Person A, the chief invigilator witness the unauthorised materials under the paper of the candidate Hui Ding during the examination time.*" (sic).
20. On the day of the examination, Miss Ding completed an SCRS2A form in relation to the incident and the unauthorised material stating "*take a note with me.*" Miss Ding confirmed that she had been told of the incident and agreed with what she had been told.
21. Miss Ding had signed the form confirming that the facts as specified were a true reflection of the incident.
22. In her email to ACCA of 09 October 2020, Miss Ding confirmed that she had "*...brought a note in the AFM exam in July 10. I actually brought the note with me, so I have to be honest and admit that. I regret very much afterwards.*"
23. The Committee had been provided with, and had considered, copies of the documents Miss Ding took with her into the examination.
24. On the evidence, on Miss Ding's own account, and on the basis of her admission, the Committee found the allegation proved.

Allegation 1(b)

25. In correspondence from Miss Ding and in the Case Management form completed and submitted by her to ACCA, this allegation was admitted, and the Committee found it proved.
26. In the Examiner's irregular script report signed and dated 20 July 2020, the examiner confirmed that the material Miss Ding had taken into the exam was relevant to the syllabus and relevant to the examination. In response to whether the notes had been used, the Examiner stated "Yes," providing further comments asserting, "*Materials clearly related to a number of topic areas in the AFM syllabus AFM and questions asked in the exam were linked to the exam. It is also probable that the materials were used to answer questions 2 and 3. It*

is less clear whether the materials could have been used to answer question 1.”

27. The Committee had considered the photocopies of the unauthorised material, the original unauthorised material having been retained by ACCA. The unauthorised material consisted of a substantial number of A4 pages of typed and handwritten notes.
28. On 24 July 2020, ACCA’s Exam’s Conduct Department wrote to Miss Ding in relation to the irregularity that had occurred at the exam centre and requested a response from her. There was no reply.
29. On 21 September 2020, ACCA’s Investigations Department wrote to Miss Ding to advise her of the complaint which had been received and requested her comments.
30. On 09 October 2020, Miss Ding provided a response to ACCA’s Investigation Department. In her response, she stated, *“I have read all the attachments in the email related to the event that I brought a note in the AFM exam in July 10. I actually brought the note with me, so I have to be honest to admit that. I regret very much afterwards. I wasn’t a qualified ACCAer. I have learned from the mistake I have made. Felt suitably chastened and apologized (sic).”*
31. On 26 February 2021, ACCA sent to Miss Ding a copy of the report of disciplinary allegations. Miss Ding responded to that email stating, *“I read all the attachments, and I admit to the complaints provided in the attachments.”*
32. On this basis, and the admission of Miss Ding, the Committee found the facts of Allegation 1(b) proved.

Allegation 1(c)(i)

33. The Committee relied upon its findings of fact under Allegations 1(a)(i) and (b) above.

34. The Committee was satisfied that Miss Ding knew that she was not entitled to take unauthorised materials into an exam and to use such materials to gain an unfair advantage. Indeed, she acknowledged in her explanation that she regretted her actions, that she had learned from her mistake and that she, *"Felt suitably chastened and apologized."*
35. The Committee was satisfied that, by the standards of reasonable and honest people, such conduct would be considered to be dishonest.
36. Consequently, the Committee found Allegation 1(c)(i) proved.

Allegation 1(c)(ii)

37. On the basis that this allegation was pleaded in the alternative to Allegation 1(c)(i), the Committee made no finding in respect of it.

Allegation 1(d)(i)

38. Taking account of its findings that Miss Ding had acted dishonestly, the Committee was satisfied that Miss Ding was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Miss Ding, the Association and the accountancy profession.
39. The Committee found Allegation 1(d)(i) proved.

Allegation 1(d)(ii)

40. On the basis that this allegation was pleaded in the alternative to Allegation 1(d)(i), the Committee made no finding in respect of it.

SANCTION AND REASONS

41. The Committee considered what sanction, if any, to impose taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary

Sanctions, and the principle of proportionality. It had also listened to legal advice from the Legal Adviser which it accepted.

42. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
43. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
44. The Committee considered whether any mitigating or aggravating factors featured in this case.
45. The Committee accepted that there were no previous findings against Miss Ding.
46. The Committee had no information regarding the personal circumstances of Miss Ding nor had it been provided with any testimonials or references as to Miss Ding's character.
47. However, the Committee noted that Miss Ding had engaged with the process to the extent that she had corresponded with ACCA and completed and returned the Case Management form. She had also admitted the allegations and had apologised, illustrating a level of insight.
48. As for aggravating features, on the basis of the findings, it had been established that Miss Ding's behaviour had been dishonest. The steps Miss Ding had taken involved a level of determination and premeditation. The Committee was entirely satisfied that her behaviour would undermine the reputation of ACCA and the profession.
49. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.

50. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, the Committee did not consider that a severe reprimand would be sufficient or proportionate.
51. Miss Ding had been found to have acted dishonestly in her conduct. The Committee was also concerned that, based on its findings, the objective of her dishonest conduct was to gain an unfair advantage over students who had approached their exams in an honest way. She may have passed the examination when she was not competent to do so. Therefore, this was conduct on Miss Ding's part which could have led to her achieving a level of success to which she was not entitled, and which was not merited. In this way, she could present a risk to the public. It was also conduct which was fundamentally incompatible with being a student member of ACCA.
52. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Miss Ding from the student register but could find none.
53. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Miss Ding shall be removed from the student register.

COSTS AND REASONS

54. The Committee had been provided with a detailed costs schedule (pages 1 and 2) and a simple costs schedule (page 1) relating to ACCA's claim for costs.
55. The Committee concluded that ACCA was entitled to be awarded costs against Miss Ding, all allegations, including dishonesty, having been found proved. The amount of costs for which ACCA applied was £5,260.50. The Committee did not consider that the claim was unreasonable, but the hearing had taken less time than estimated.

56. Ms Ding had not provided ACCA with any documentary evidence of her means. In the correspondence sent to her, Miss Ding was warned at the outset of the importance of providing details of her financial circumstances. Furthermore, she was clearly aware of ACCA's intention to apply for costs. Miss Ding had made reference in her email of 26 April 2021 to ACCA's document entitled, "Guidance for Costs Orders".
57. However, the Committee took into consideration that Miss Ding had indicated she was still a student and was not in paid employment. She had also cooperated with the proceedings and made early admissions.
58. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £3,500.00.

EFFECTIVE DATE OF ORDER

59. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mr Michael Cann
Chair
12 October 2021