

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Mingmin Lu

Heard on: Tuesday, 27 June 2023

Location: Virtual hearing using Microsoft Teams.

Committee: Ms Wendy Yeadon (Chair)
Mr Trevor Faulkner (Accountant)
Mr Nigel Pilkington (Lay)

Legal Adviser: Mr David Marshall

Persons present

and capacity: Ms Michelle Terry (ACCA Case Presenter)
Ms Anna Packowska (Hearings Officer)

Summary: Dishonesty and misconduct proved. Excluded
from membership. Immediate order.

Costs: £3,858.33

1. The Committee heard an allegation of misconduct against Miss Lu. Ms Terry appeared for ACCA. Miss Lu was not present and not represented.
2. The Committee had a main bundle of papers containing 246 pages, a 'mini bundle' containing 97 pages, an additional bundle containing 9 pages and a

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



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

service bundle containing 16 pages.

PROCEEDING IN ABSENCE

3. 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 30 May 2023 to an email address notified by Miss Lu to ACCA as an address for all correspondence. That was 28 days ago.
4. The Committee noted that ACCA had sent numerous emails to Miss Lu from the time when the complaint was first notified to her. Ms Terry informed the Committee that there had never been a response, although there was evidence that at least one email from ACCA to Miss Lu had been opened in August 2022. Three recent attempts to telephone Miss Lu had failed. The Committee was satisfied that Miss Lu knew or had the means of knowing that these proceedings were taking place, but she had chosen not to take part. The allegations in this matter were very serious and the Committee considered that the public interest required that a hearing take place without undue delay. The Committee considered that nothing would be gained by an adjournment. There was no reason to think that Miss Lu would attend an adjourned hearing.
5. The Committee determined to proceed in Miss Lu's absence.

ALLEGATION(S)/BRIEF BACKGROUND

6. Miss Lu was registered as an ACCA student on 18 July 2012. By 18 July 2016 she had passed her ACCA exams and became an ACCA Affiliate. On 25 September 2020 she became an ACCA Member.
7. The step from Affiliate to Member is a big one. An Affiliate has passed the necessary exams but has not demonstrated experience in practice. They are still a trainee. A Member has all the rights, responsibilities and respect that come with being a fully trained member of a prestigious profession.
8. Regulation 3(a) of ACCA's Membership Regulations 2014 provides that one of

the qualifications for membership is that the applicant has 'completed three years of approved experience in accordance with the Association's Practical Experience Requirement' ('PER'). The PER involved completing 36 months supervised practical experience in a relevant role and demonstrating that the trainee had achieved the required number of performance objectives ('POs'). These are benchmarks of effective performance describing the types of work activities they would have been involved in as a trainee accountant. A trainee has to achieve nine POs in total.

9. The POs have to be completed under the supervision of a qualified accountant. A person is recognised by ACCA as a qualified accountant if that person is a qualified accountant recognised by law in the trainee's country and/or is a member of an IFAC body. (IFAC is the International Federation of Accountants). The supervisor would typically be the trainee's line manager but ACCA recognises that a line manager may not meet the definition of 'qualified accountant' so another person can be acceptable.
10. ACCA alleged that in the course of obtaining membership Miss Lu had submitted training records to ACCA in September 2020 in which she claimed to have satisfied the relevant PERs. The supervisor named in the records was 'Person A', said to be a member of the Chinese Institute of Certified Public Accountants (CICPA), an IFAC registered body. ACCA says that there are up to 100 similar cases in which trainees have applied for membership of ACCA on the basis of supervision by Person A. ACCA's case is that although there is a Person A who is a member of CICPA, that person did not supervise any of the trainees. In particular ACCA alleges that Person A did not supervise Miss Lu and has no knowledge of her.
11. Miss Lu faced the following allegations:

Schedule of Allegations

Mingmin Lu ('Miss Lu'), at all material times an ACCA trainee,

1. *Applied for membership to ACCA on or about 15 September 2020 and in doing so purported to confirm in relation to her ACCA Practical Experience training record:*

(a) Her Practical Experience Supervisor in respect of her practical experience training in the period from 2 January 2018 to 15 September 2020 was Person 'A' when Person 'A' did not supervise that practical experience training in accordance with ACCA s requirements as published from time to time by ACCA or at all

(b) She had achieved the following Performance Objectives which was not true:

Performance Objective 1: Ethics and professionalism

Performance Objective 3: Strategy and innovation

Performance Objective 4: Governance, risk and control

Performance Objective 5: Leadership and management

Performance Objective 8: Analyse and interpret financial reports

Performance Objective 19: Collect and evaluate evidence for an audit or assurance engagement

Performance Objective 22: Data analysis and decision support

2. Miss Lu's conduct in respect of the matters described in Allegation 1 above was:

(a) In respect of Allegation 1(a), dishonest, in that Miss Lu sought to confirm her Practical Experience Supervisor did supervise her practical experience training in accordance with ACCA s requirements or otherwise which she knew to be untrue.

(b) In respect of allegation 1(b) dishonest, in that Miss Lu knew she had not achieved all or any of the performance objectives referred to in paragraph 1b above as described in the corresponding performance objective statements or at all.

(c) In the alternative, any or all of the conduct referred to in Allegation 1 above demonstrates a failure to act with Integrity.

3. *In the further alternative to Allegations 2(a), 2(b) and/or 2(c) above, such conduct was reckless in that Miss Lu paid no or insufficient regard to ACCA's requirements to ensure:*

(a) Her practical experience was supervised

(b) Her Practical Experience Supervisor was able to personally verify the achievement of the performance objectives she claimed and/or verify they had been achieved in the manner claimed

(c) That the performance objective statements referred to in paragraph 1(b) accurately set out how the corresponding objective had been met.

4. *Failed to co-operate with ACCA s Investigating Officer in breach of Complaints and Disciplinary Regulation 3(1) in that she failed to respond fully or at all to any or all of ACCA s correspondence dated:*

(a) 19 August 2022;

(b) 5 September 2022;

(c) 20 September 2022.

5. *By reason of her conduct, Miss Lu is*

(a) Guilty of misconduct pursuant to ACCA bye-law 8(a)(i) in respect of any or all the matters set out at 1 to 4 above; in the alternative in respect of allegation 4 only

(b) Liable to disciplinary action pursuant to bye-law 8(a)(iii)

DECISION ON FACTS/ALLEGATION(S) AND REASONS

12. Ms Terry took the Committee through the documentary evidence including a witness statement from Person A and two witness statements from members of ACCA staff producing documents and explanations in relation to Miss Lu's application. There was no oral evidence.

13. Miss Lu had taken no part in the investigation so there was no evidence or submission from her of any kind.

Allegation 1

14. It was clear from ACCA's records that Miss Lu applied for ACCA membership on 15 September 2020 and submitted documents in support. She claimed 36 months of practical experience divided between two employers. The first was for a period of four months and the second was for 32 months. The second employer was a firm of tax consultants and Miss Lu described her role as a tax consultant from 2 January 2018 to 31 August 2020.
15. For each of the POs Miss Lu claimed, she stated that her supervisor for the objectives (POs) was Person A. (She named a different person as supervisor to approve the time spent.)
16. The Committee accepted the evidence in Person A's witness statement that she had only once supervised an ACCA trainee. That was a different person and the supervision was limited to one PO only.
17. The Committee was satisfied on the balance of probabilities that Person A did not supervise Miss Lu for any of the claimed POs. **The Committee found Allegation 1(a) proved.**
18. Since the claimed Performance Objectives had not been supervised as required the Committee was satisfied that they had not been 'achieved'. **The Committee found Allegation 1(b) proved.**

Allegation 2

19. Of the nine POs required, five must be completed by all trainees. The other four can be chosen from a wide range of specialities so as to accommodate the different areas of practice which a trainee may experience. Most of Miss Lu's experience was said to be as a tax consultant. It was notable that none of the specialist experience she claimed related directly to tax. There are three specialist POs for taxation (number 15, 16 and 17) but Miss Lu did not claim to have completed any of these. This was a strong indication that the experience she claimed was not genuine.
20. A trainee's personal statement for each PO must be their own personal statement that is unique to them and their own experience. Ms Terry pointed

out a number of striking similarities between Miss Lu's statements and that of statements by other trainees which were earlier in time. In particular these words appear in Miss Lu's statement in support of PO4 (Governance, risk and control):

'Corporate Governance, risk and control is a very important task of the enterprise, in the work has a profound experience, if do not do this, the company is very bad impact, even make the company's operations difficult.'

21. Exactly the same words appeared in earlier statements submitted by other trainees. The Committee was satisfied that they had been copied. That was a strong indication that Miss Lu was intending to deceive.
22. The Committee was satisfied, on the balance of probabilities, that Miss Lu knew the statements she was making about the POs she had achieved were untrue. It is not a matter about which she could have been mistaken or confused. The Committee was satisfied that she was acting dishonestly by the standards of ordinary decent people. **The Committee found Allegation 2(a) and (b) proved.** Allegation 2(c) was in the alternative and did not have to be considered.

Allegation 3

23. Allegation 3 was also in the alternative and did not have to be considered.

Allegation 4

24. ACCA's Complaints and Disciplinary Regulations, Regulation 3, imposes a duty on relevant persons to co-operate with any investigating officer and any assessor in relation to the consideration and investigation of any complaint. ACCA sent an email dated 19 August 2022 to Miss Lu at her registered email address. This attached a letter setting out the basis for the investigation and asking a number of specific questions. The Committee was satisfied that these were relevant to the investigation. An electronic receipt shows that the email was first opened on 26 August 2022 at 07:53 (the time zone is not stated). Two reminders were sent, on 5 and 20 September 2022. Miss Lu did not reply to any of these. The Committee was satisfied that she had failed to cooperate with the investigation. **The Committee found Allegation 4 proved.**

Allegation 5

25. The Committee had no doubt that deceiving one's professional body into granting membership by submitting false evidence of experience amounted to misconduct. **The Committee found Allegation 5(a) proved.** Allegation 5(b) was in the alternative and did not have to be considered.

SANCTION(S) AND REASONS

26. The Committee considered what sanction, if any, to impose in the light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions. It first sought to identify mitigating and aggravating factors.
27. Ms Terry informed the Committee that there were no previous findings against Miss Lu. That was a mitigating factor, but the misconduct in this case was committed at an early stage in her career so the mitigation carries less weight. The Committee had no information from which it could identify any other mitigating factors. A number of typical mitigating factors were absent in this case. There was no evidence of remorse. There was no cooperation with the investigation.
28. There were several aggravating factors in Miss Lu's conduct. The misconduct found proved was of a kind that was extremely serious. It involved deliberate dishonesty in relation to the system of qualification for ACCA membership. This would tend to undermine public trust in ACCA. It was carried out entirely for Miss Lu's own benefit. She appeared to have no insight or understanding of the seriousness of what she had done.
29. The Committee was quite satisfied that a sanction was required in this case. It considered the available sanctions in order of seriousness having regard to ACCA's sanctions guidance.
30. The Committee first considered the sanctions of admonishment and then reprimand but the guidance made it clear that these were not sufficient. For reprimand, the guidance states 'This sanction would usually be applied in situations where the conduct is of a minor nature and there appears to be no continuing risk to the public'. Falsifying a practical experience record to obtain membership cannot be described as a minor matter.

31. The Committee next considered the sanction of severe reprimand. The guidance states that this sanction 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. Those elements were not present in this case. The Committee went through the list of suggested factors in the guidance. Apart from previous good character, and the fact that this was an isolated incident, none of the factors supporting a severe reprimand was present. Even if combined with a fine a severe reprimand would not be sufficient to mark the seriousness of the misconduct in this case.
32. The Committee considered that Miss Lu's conduct was fundamentally incompatible with remaining as an ACCA Member and that the minimum sanction it could impose was exclusion from membership.
33. A member who has been excluded can normally apply to be re-admitted after one year. The Committee considered whether to extend this period but decided that it was not necessary. If Miss Lu does apply for readmission her application will be scrutinised by the Admissions and Licensing Committee.
34. The Committee did not consider it necessary to impose a separate sanction in relation to the failure to cooperate, although it regarded it as a serious matter in itself.

COSTS AND REASONS

35. Ms Terry applied for costs totalling £3,858.33. She pointed out the costs schedule had erroneously omitted some of the usual time-based costs. So although the hearing would conclude in less than the time expected, that was already allowed for.
36. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in principle to its costs. The Committee considered that the time spent, and the sums claimed were reasonable, in fact lower than would normally be claimed. The Committee had no information from Miss Lu about her means, so it was not able to make any reduction to reflect her ability

to pay. The Committee decided to award £3,858.33.

EFFECTIVE DATE OF ORDER

37. The Committee considered that there was a significant risk to the public in allowing Miss Lu to hold herself out as a member of ACCA during the appeal period when she had not demonstrated her eligibility for membership. It decided that its order should have immediate effect.

ORDER

38. The Committee **ordered** as follows:
- (a) Miss Mingmin Lu shall be excluded from membership of ACCA.
 - (b) Miss Mingmin Lu shall pay a contribution to ACCA's costs assessed at £3,858.33.
 - (c) This order shall take immediate effect.

Wendy Yeadon
Chair
27 June 2023