

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Abhinav Agarwal

Heard on: Wednesday, 15 March 2023

Location: Remotely via Microsoft Teams

Committee: Mr Martin Winter (Chair)
Ms Jo Royden-Turner (Accountant)
Dr Jackie Alexander (Lay)

Legal Adviser: Miss Juliet Gibbon

**Persons present
and capacity:** Mr Ben Jowett (ACCA Case Presenter)
Ms Humera Arif (Hearings Officer)

Summary: Allegations 1, 2 (a) and 3 found proved
Exclusion from student register

Costs: Mr Agarwal ordered to pay £4,879.25 towards ACCA's costs.

PRELIMINARY

1. The Disciplinary Committee ("the Committee") convened to hear allegations of misconduct against Mr Abhinav Agarwal. The hearing was conducted remotely through Microsoft

Teams. The Committee had a bundle of papers numbered pages 1 to 77 and a service bundle, numbered pages, 1 to 22, together with two schedules of costs.

2. Mr Ben Jowett represented ACCA. Mr Agarwal did not attend the hearing and was not represented.

SERVICE

3. Written notice of the hearing was sent by electronic mail (“email”) only to Mr Agarwal’s registered email address on 15 February 2023. The password to open the notice of hearing was sent by a separate email. The Committee has had sight of two delivery notifications stating that both emails had been delivered to the email address. By virtue of Regulation 22(8)(b) of the Chartered Certified Accountants’ Complaints and Disciplinary Regulations 2014, as amended (“the Regulations”) the notice would have been deemed served on the same day. ACCA has, therefore, given the requisite 28 days’ notice to Mr Agarwal as required under Regulation 10(1)(a) of the Regulations.
4. The Committee was satisfied that the email attaching the notice of hearing had been sent to Mr Agarwal’s registered email address and had been delivered successfully. The notice of hearing, to which Mr Agarwal had access, contained all the requisite information about the hearing in accordance with Regulation 10 of the Regulations.
5. The Committee accepted the advice of the Legal Adviser. It was satisfied that service had been effected in accordance with Regulations 10 and 22 of the Regulations.

APPLICATION TO PROCEED IN ABSENCE

6. Mr Jowett made an application to proceed in the absence of Mr Agarwal.
7. The Committee, having satisfied itself that the requirements of Regulations 10 and 22 of the Regulations had been complied with, went on to consider whether to proceed in the absence of Mr Agarwal. The Committee bore in mind that the discretion to proceed in the absence of a member must be exercised with the utmost care and caution.

8. The Committee noted that the email address to which the hearing notice had been sent was Mr Agarwal's registered email address and was the same address that Mr Agarwal had previously used in correspondence with ACCA. The Committee noted that Mr Agarwal had spoken to the Hearings Officer when she telephoned him on 22 February 2023 and 13 March 2023 and that he had informed the Hearings Officer on 13 March 2023 that he would be attending the hearing. He did not confirm this by email, however, as he was requested to do by the Hearings Officer. The Committee noted that Mr Agarwal had not responded to ACCA's email attaching the notice of hearing or to any subsequent emails sent to him by the Hearings Officer. It also noted that the Hearings Officer had attempted to telephone Mr Agarwal on the morning of the hearing, but he had not answered the call.
9. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously. It noted that Mr Agarwal had not requested an adjournment. The Committee was of the view that there was no evidence before it to suggest that an adjournment of today's hearing would result in Mr Agarwal's attendance on a future date.
10. Having balanced the public interest with Mr Agarwal's own interests, the Committee determined that it was fair, reasonable and in the public interest to proceed in his absence.

ALLEGATIONS

Mr Abhinav Agarwal ('Mr Agarwal'), a student member of the Association of Chartered Certified Accountants ('ACCA'):

1. On 06 January 2021, in respect of an investigation arising from Mr Agarwal's conduct in a remotely invigilated exam held on 2 January 2021 provided to ACCA an inaccurate and/or misleading explanation in an email, when he explained in the context of why he was leaning off camera during the exam, "... SOMETIMES MY PEN HAD FALLEN SO I HAVE BOW DOWN TO PICK UP MY PEN BESIDE MY TABLE AND IF THEY THINK THAT I HAVE SOMETHING WITH ME ...'
2. The conduct referred to in paragraph 1 above:

- a) was dishonest in that he knew the explanation to be untrue and/or sought to mislead ACCA in that in an email he sent on 22 April 2021 he admitted his previous explanation (as referred to in Allegation 1 above) was untrue; or in the alternative,
 - b) such conduct demonstrates a lack of integrity.
3. Mr Agarwal is guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out at Allegations 1 to 2 above.

BACKGROUND

11. Mr Agarwal registered as a student with ACCA on 10 December 2019. As such, he is bound by ACCA's byelaws and Regulations.
12. On 02 January 2021, Mr Agarwal took an on-demand Management Accounting (MA) examination ('the Exam') remotely. The Proctor (the remote exam invigilator) filed an Incident Report in respect of conduct observed by Mr Agarwal during the Exam when he was leaning off the screen.
13. An investigation was commenced, which involved obtaining documents and video footage relating to the Exam. As a result of the investigation ACCA was satisfied that Mr Agarwal had not breached any of the Examination Regulations and was not guilty of misconduct as a result of his conduct during the Exam.
14. ACCA emailed Mr Agarwal on 06 January 2021 advising him that they had received a report from the Proctor regarding his conduct during the Exam and advising him that the case would be referred to the Professional Conduct Department for investigation.
15. Mr Agarwal responded to ACCA's email on 06 January 2021 when he gave the following explanation for why he could be seen leaning to one side so that he was off camera during the Exam: '*... Sometimes my pen had fallen so I have bow down to pick up my pen beside my table and if they think that I have something with me but I have nothing with me ...* (sic).

16. On 22 April 2021, however, after being challenged by ACCA that he could not be seen to drop a pen on the video footage, Mr Agarwal sent an email to ACCA in which he stated: *'I'm very afraid after my account suspension incident because of that I've said lie to you. But the truth is that no pen had fallen to the ground in my whole examination time. There were mosquitoes and cockroaches beneath my table which are continuously distracting me during my examination. I've sat for more than 4 times for this MA examination, but due to some reason or another I've to reschedule it again and again. On 2nd January 2021 the examination started but due to some misunderstanding between me and the honourable proctor the things gone wrong and my exam was terminated after 40 minutes. Due to that incident I've got very much afraid and I don't be able to take the correct decision during that time. I think that if I said truth of cockroaches then you don't believe it that's why I've gave the reason of pen. I'm heartedly sorry for my mistake please forgive me (sic).'*
17. In his email to ACCA of 22 April 2021, Mr Agarwal went on to state: *'I've know my obligation under Complaints and Disciplinary Regulations 3(1), to cooperate with this investigation and I also remember the circumstances when I fail to comply with it. Every institution gives its students a second chance to rectify their mistake, but if they make a similar mistake again, then they should be punishable. You can't stake a student's whole career for a single incident. I'm sorry for my activities which had happened on 2nd January 2021. Your proctor didn't give any warning before terminating the exam and that's not the right attitude. I've promised you that I'll give my further exams at registered ACCA centres only so there is no scope of misconduct of your rules and regulations at any cost. I promise you that I'll do not give any complaint again in my whole Acca journey. Pls, end this investigation as early as possible so I can start my Acca studies with full enthusiasm again ...'* (sic).

SUBMISSIONS

18. Mr Jowett submitted that Mr Agarwal had told a deliberate lie to ACCA during the course of the investigation into his conduct during the Exam. He informed the Committee that ACCA had challenged the explanation given by Mr Agarwal for his behaviour in the Exam in an email, dated 25 March 2021. Mr Agarwal had replied to ACCA in an email dated 22 April 2021 admitting that he had lied to ACCA in his email dated 06 January 2021 when he stated that he had bent down to retrieve his pen. Mr Jowett submitted that Mr Agarwal's conduct, in telling a deliberate lie to his regulator during the course of a disciplinary investigation,

was clearly dishonest in accordance with the guidance provided by the *Supreme Court in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*.

19. Mr Jowett submitted that Mr Agarwal's actions in telling a deliberate lie to his regulator undermined the investigatory process and ACCA's reputation as a regulator. He further submitted that Mr Agarwal's dishonest conduct fell far short of the conduct expected of professional accountants and those training to become accountants. He invited the Committee to find that misconduct, as defined by byelaw 8(c), was made out.

DECISION AND REASONS

20. The Committee carefully considered the documentary evidence before it together with the oral submissions made by Mr Jowett. The Committee accepted the advice of the Legal Adviser.
21. The Committee bore in mind that the burden of proving the allegations rests on ACCA and the standard of proof is the balance of probabilities.

Allegation 1 - Proved

22. The Committee was satisfied, on the balance of probabilities, that Mr Agarwal had sent an email to ACCA on 06 January 2021 in which he stated that the reason for him leaning off camera during the Exam had been because '*... sometimes my pen had fallen so I have bow down to pick up my pen beside my table and if they think that I have something with me ...*'. In an email dated 22 April 2021 Mr Agarwal had admitted that this explanation was not true and that he had bent over because there were cockroaches and mosquitoes under the desk. The Committee was satisfied that Mr Agarwal had told a lie to ACCA during the course of the disciplinary investigation and his original explanation that he had given for his behaviour during the Exam had been inaccurate and misleading. The Committee, therefore, found Allegation 1 proved.

Allegation 2 (a) - Proved

23. The Committee was satisfied, on the balance of probabilities, that Mr Agarwal had sought to mislead ACCA when he stated in his email of 06 January 2021 that he had bent down to pick his pen up, as he knew that was not true. The Committee was satisfied that telling a deliberate lie to your regulator would, by the standards of ordinary decent people, be considered dishonest. The Committee was therefore satisfied, on the balance of probabilities, that Mr Agarwal's conduct was dishonest, in accordance with the test for dishonesty set out in *Ivey v Genting Casinos (UK) t/a Crockfords [2017] UKSC 67*.

Allegation 2 (b) - Not Considered

24. The Committee, having found Allegation 2 (a) proved, did not go on to consider the alternative charge set out in Allegation 2 (b).

Allegation 3 - Misconduct Proved

25. The Committee was satisfied that Mr Agarwal's conduct in telling a deliberate lie to his regulator during the course of a disciplinary investigation into his conduct during the Exam fell far below the standards expected of an ACCA student. In the Committee's determination, Mr Agarwal's conduct undermined the integrity of ACCA's investigatory process and had brought discredit to him, the Association and the accountancy profession.
26. The Committee was satisfied that Mr Agarwal's dishonest conduct during ACCA's disciplinary investigation was very serious and amounted to misconduct.

SANCTION AND REASONS

27. Mr Jowett informed the Committee that there were no previous disciplinary findings against Mr Agarwal.
28. The Committee accepted the advice of the Legal Adviser. It was referred to Regulation 13(4) of the Regulations and to ACCA's Guidance for Disciplinary Sanctions. In considering what sanction, if any, to impose the Committee bore in mind the principle of proportionality and the need to balance the public interest against Mr Agarwal's own interests. The purpose of any sanction was not meant to be punitive but was to protect members of the public,

maintain public confidence in the profession and ACCA and to declare and uphold proper standards of conduct and behaviour.

29. When considering the appropriate sanction, the Committee considered the aggravating and mitigating features of the case. The Committee considered the following to be mitigating features:
- a. Mr Agarwal had no previous disciplinary findings against him although the Committee noted that he had only been a registered student since 10 December 2019.
 - b. Mr Agarwal had admitted that he lied to ACCA, although the Committee noted that this happened after he had been challenged by ACCA in relation to the first explanation that he had given.
 - c. Mr Agarwal, in admitting that he had lied to ACCA, had shown some insight into his dishonest conduct.
 - d. Mr Agarwal was only 19 years of age at the time he lied to ACCA and his immaturity may have contributed to his dishonest conduct.
30. The Committee considered the following to be aggravating features:
- a. This was dishonest conduct on the part of Mr Agarwal in a deliberate attempt to mislead his regulator.
 - b. Mr Agarwal's admission that he was dishonest had only occurred after he was challenged by ACCA over the previous explanation that he had given for his conduct during the Exam.
 - c. Mr Agarwal's dishonest misconduct had the potential to damage the reputation of the accountancy profession and ACCA as regulator.

- d. Mr Agarwal had not fully engaged with the ACCA investigation or these proceedings and, save for the fact that he admitted that he had lied to ACCA, there was limited evidence of insight or remorse on his part.
31. The Committee considered each available sanction in ascending order of seriousness, having concluded that taking no further action would not be appropriate due to the seriousness of the dishonest conduct. The Committee also considered that issuing an admonishment or a reprimand would not be sufficient or proportionate sanctions, given the gravity of the dishonest conduct found proved and would not protect the public interest.
 32. The Committee carefully considered whether a severe reprimand would be sufficient and proportionate, or whether removal from the student register was required. It paid careful regard to the factors applicable to each of these sanctions as set out in the Guidance for Disciplinary Sanctions. The Committee noted that most of the factors applicable to a severe reprimand were not present in this case. The Committee concluded that a severe reprimand would not be an appropriate or sufficient sanction to protect the public interest.
 33. The Committee noted the factors that it should take into account when considering a sanction of removal from the student register. It considered that Mr Agarwal's conduct, in lying to ACCA during the course of a disciplinary investigation into his conduct during a professional exam, had been deliberate and done with the intention to mislead his regulator. The Committee noted that save for the admission that he had lied, there was little evidence of insight or remorse on the part of Mr Agarwal.
 34. The Committee was mindful that a sanction of removal from the student register was the most serious sanction that could be imposed. The Committee took into account the guidance that this sanction was likely to be appropriate when the behaviour of the student was fundamentally incompatible with being a registered student of ACCA. The Committee was satisfied that Mr Agarwal's conduct, in attempting to mislead his regulator during an investigation into his conduct during a professional examination, had reached that high threshold. The Committee had heard no mitigation from Mr Agarwal to warrant anything other than removal from the student register.

35. For the above reasons, the Committee concluded that the appropriate and proportionate sanction was removal from the student register.
36. The Committee did not deem it necessary to impose a minimum period before which Mr Agarwal is able to reapply for admission as a student member.

DECISION ON COSTS AND REASONS

37. The Committee was provided with a cost schedule. ACCA applied for costs in the sum of £6,184.25.
38. Mr Jowett conceded that some of the costs claimed by ACCA had been in relation to the original investigation into whether Mr Agarwal had attempted to gain an unfair advantage in the Exam, which had not been pursued by ACCA. He further conceded that the costs of his preparation should be reduced to three hours and the costs of his and the Hearings Officer's attendance at the hearing should be reduced to reflect the fact that the hearing took less time than anticipated.
39. The Committee noted that Mr Agarwal had not provided any details of his current financial means or provided the Committee with any written representations in relation to the costs claimed by ACCA. The Committee was not, therefore, in a position to make any reductions based on Mr Agarwal's financial circumstances. The Committee did, however, consider that there should be a reduction of £300 in ACCA's costs of preparation as set out in Part B of the costs schedule; a reduction of £330 in the Case Presenter's preparation costs and, as the hearing had taken less time than anticipated, there should be a further reduction in the costs of the attendance of the Case Presenter and the Hearings Officer at the hearing in the sum of £675. The Committee, therefore, decided to reduce the amount of the costs claimed by £1,305 to reflect the fact that the hearing had concluded earlier than anticipated.
40. The Committee determined that it would be fair and proportionate to order Mr Agarwal to pay a contribution to ACCA's costs in the sum of £4,879.25.

ORDER

- i. Mr Abhinav Agarwal shall be removed from ACCA's student register.
- ii. Mr Abhinav Agarwal shall pay a contribution to ACCA's costs in the sum of £4,879.25.

EFFECTIVE DATE OF ORDER

41. The Committee determined that the order should take effect from the date of expiry of the appeal period referred to in the Appeal Regulations.

Mr Martin Winter
Chair
15 March 2023