

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS REASONS FOR DECISION

In the matter of: Mr Tianhao Chen

Heard on: Friday, 27 October 2023

Location: ACCA, The Adelphi, 1-11 John Adam Street,
London, WC2N 6AU. Virtual hearing using Microsoft
Teams.

Committee: Ms Ilana Tessler (Chair)
Mr Peter Brown (Accountant)
Mr Nigel Pilkington (Lay)

Legal Adviser: Mr David Marshall

**Persons present
and capacity:** Mr Adam Slack (ACCA Case Presenter)
Miss Geraldine Murray (Hearings Officer)

Summary: Dishonesty and misconduct proved. Sanction:
removal from student register.

Costs: £4,000

1. The Committee heard an allegation of misconduct against Mr Chen. Mr Slack appeared for ACCA. Mr Chen was not present and not represented.
2. The Committee had a main bundle of papers containing 126 pages and a

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service bundle containing 25 pages.

PROCEEDING IN ABSENCE

3. The Committee was satisfied that Mr Chen had been served with the documents required by Regulation 10(7) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('the Regulations') 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 29 September 2023 to an email address notified by Mr Chen to ACCA as an address for all correspondence. That was 28 days ago.
4. This matter first came to ACCA's attention in about September 2020 but has proceeded very slowly. In the initial stages of the investigation Mr Chen responded promptly to communications from ACCA but this had ceased by about the end of 2020. For this hearing, ACCA sent several emails to Mr Chen trying to establish if he would be attending but there were no replies. This month, the Hearings Officer made at least three attempts to contact him by telephone. Two of the calls were answered by a female voice. On the first occasion the Hearings Officer was unable to get a response in English. On the second occasion the woman said only 'Not here, not here', and hung up.
5. The Committee was satisfied that Mr Chen knew that there were proceedings against him because of his cooperation in the initial stages. He could and should have remained in contact with ACCA but did not do so. His email account had not rejected ACCA's messages. The Committee was satisfied that he knew, or had the means of knowing, that a hearing would take place. The evidence indicated that Mr Chen had decided not to engage further with ACCA.
6. The allegations in this matter were serious and the Committee considered that the public interest required that a hearing take place without further delay. The Committee considered that nothing would be gained by an adjournment because there was no reason to think that Mr Chen would attend an adjourned hearing.

7. The Committee determined to proceed in Mr Chen's absence.

ALLEGATION(S)/BRIEF BACKGROUND

8. Mr Chen was registered as an ACCA student on or about 14 September 2017. He arranged to take the ACCA Strategic Business Reporting exam in September 2020. In August he applied to withdraw from that exam. On 27 August 2020 Mr Chen provided a document in support of his application. This appeared to be an official certificate from his university which, in translation, certified that the university would be locked down at the time of the ACCA exam making it impossible for Mr Chen to take the exam. After checking with the university, ACCA formed the view that the certificate was not genuine.
9. In the formal Allegation, the word 'student' had been omitted from the first line. The Committee considered that this was an obvious slip that should be corrected. Mr Slack supported this. The Committee was satisfied that this minor amendment would not cause any prejudice to Mr Chen.
10. Mr Chen faced the following allegations, as amended:

Schedule of Allegations

Mr Tianhao CHEN (Mr Chen), a registered ACCA student:

Allegation 1

- (a) *On 27 August 2020, for the purpose of withdrawing from the Strategic Business Reporting (SBR) exam ("the Exam"), scheduled to take place on 10 September 2020, submitted or caused to be submitted to ACCA, a falsified Certificate ("the Certificate") from University A*
- (b) *Mr Chen's conduct in respect of 1(a):*
 - (i) *Was dishonest, in that he knew the Letter he submitted or caused to be submitted to ACCA described in Allegation 1(a) was false and*

was submitted for the purpose of withdrawing from the Exam; or in the alternative;

- (ii) *Demonstrated a failure to act with integrity.*

Allegation 2

By reason of his conduct in respect of any or all of the matters set out at 1(a) and/or 1(b) above, Mr Chen is guilty of misconduct pursuant to byelaw 8(a)(i).

DECISION ON FACTS/ALLEGATION(S) AND REASONS

11. Mr Slack invited the Committee to accept the contents of an email from Mr Chen as an admission, and find the facts proved on that basis. He submitted that the email admitted facts equivalent to those set out in the formal allegation before the Committee.
12. The exchange of emails was as follows. On 27 November 2020 ACCA wrote to Mr Chen:

It is alleged on 27 August 2020 you submitted false documents purportedly from the Zhejiang University of Finance & Economics (the University) in support of your request withdraw from your 10 September 2020 ACCA Strategic Business Reporting (SBR) Exam.

13. Mr Chen replied by email the same day. He said:

First of all, I feel very guilty that I did something wrong, and I deeply realize my mistake, and I promise I won't make such a mistake again so I beg your forgiveness. Second, I would like to explain that I have been in poor health since August, Therefore, I cannot prepare well for the exam, so I want to drop it.

Here are responses about the 5 questions:

1. *why I request for withdrawing the exam is mainly due to my poor health during Aug ...*
 2. *I accept the "Certificate of Close Management" sent on 27 Aug 2020 was not provided by the university.*
 3. *I accept that I acted dishonestly.*
 - ...
 5. *... I'm guilty that I did such an unethical thing, and I am acutely aware of my mistakes. I will study hard the ethic code taught by ACCA, and I swear I will never make such a stupid mistake again. I am now preparing hard for the SBL and SBR exam on March 2021, I beg you not to disqualify me from the exam and the ACCA Student, I love ACCA very much.*
14. The Committee accepted that this was a clear statement by Mr Chen but took into account that it was made at a very early stage in the process: the same day as the complaint was made to him. This was long before the matter had been referred to the Assessor or a formal Allegation had been drafted. It was also made three years ago. In order to avoid any possible unfairness to Mr Chen, the Committee decided not to accept this exchange of correspondence as an admission under Regulation 12(3) of the Regulations.
15. Mr Slack opened the case and took the Committee through the documentary evidence which ACCA relied on. There was no oral evidence. The Committee pointed out that the Allegation did not allege any motive for Mr Chen seeking to use a false document to withdraw from the exam. He was not required to sit for the exam he had booked and, as ACCA pointed out in an email on 20 August 2020:

If you don't attend the exam, you'll be marked as absent but this will have no effect on your future sittings, and as there is no upper limit to the number of attempts you can make, there is no penalty for being marked absent

16. Mr Slack accepted that no specific motivation was alleged by ACCA.

Allegation 1(a)

17. The evidence included an exchange of instant messages between ACCA (China) and the university on 01 September 2020. The representative of the university said that the certificate in question was not issued by them. In addition, Mr Chen had admitted it, as set out above. **The Committee found Allegation 1(a) proved.**

Allegation 1(b)

18. Since the certificate had not been provided by the university, Mr Chen must have known that it was not genuine. Nevertheless, he relied on it in support of his application to withdraw from the exam. In addition, he admitted dishonesty as set out above. **The Committee found Allegation 1(b)(i) proved.**
19. Allegation 1(b)(ii) was in the alternative and did not have to be considered.

Allegation 2

20. Mr Chen knowingly submitted a false document to his regulator in support of an application. The Committee had no doubt that this amounted to misconduct. It was deplorable for an aspiring professional accountant to act in such a way.

SANCTION(S) AND REASONS

21. The Committee considered what sanction, if any, to impose in the light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions (2023). It first sought to identify mitigating and aggravating factors.
22. Mr Chen's motivation for his actions could have been relevant as an aggravating or mitigating factor. However, since this was not put forward as an issue in the case the Committee decided that it would be wrong to speculate. It

had to proceed on the basis that the motive was unknown.

23. There were some mitigating features. Mr Chen made a full and detailed admission at the earliest possible opportunity. His response showed a degree of insight and remorse. He accepted full responsibility for his actions and indicated some steps he could take in the future to remedy his misconduct. As already stated, Mr Chen ceased cooperating with the investigation at some point, albeit that he had made full admissions at the outset.
24. Another factor was that ACCA had not demonstrated any actual or potential harm caused by his actions. Mr Chen was not obliged to take the exam. He could simply not have attended. Whether or not he took the exam would not have affected anyone else.
25. A further mitigating factor, although of less importance, was that there were no previous findings against Mr Chen.
26. As to aggravating factors, the proven misconduct was very serious. Mr Chen was aspiring to become a professional accountant. People put absolute trust in professional accountants to produce documents that are entirely reliable. The certainty that accountants can be trusted is crucial in many contexts. For an aspiring accountant to put forward a document that he knows to be false was a very serious matter. However, the Committee did not identify any aggravating factors making his misconduct still more serious. It was a deliberate act and may have been a more sophisticated form of deception than others, but these factors are inherent in a finding that Mr Chen knowingly put forward a false document.
27. 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.
28. 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'. Knowingly submitting a false document to his regulator could not be described as a minor matter.

29. 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. The Committee took into account that Mr Chen was a student at an early stage of a potential career in accountancy. He should not necessarily be treated in the same way as a Member would be. The Committee took into account the mitigating factors set out above. Nevertheless, after careful consideration the Committee decided that the sanction of severe reprimand would not be sufficient to mark the seriousness of the misconduct in this case.
30. No other sanction was available, except removal from the student register. The Committee concluded that this was the minimum sanction it could impose.
31. Mr Chen will be entitled to apply to be re-admitted as a student after one year. His application would be considered by the Admissions and Licensing Committee. If Mr Chen does apply, that Committee would be assisted by a statement from him setting out his views on his past misconduct and details of any training or other actions he has taken to ensure that there is no repetition. His application would also be assisted by supportive character references.

COSTS AND REASONS

32. Mr Slack applied for costs totalling £7,960.50. He accepted that the hearing would probably conclude earlier than had been estimated so the time-based costs for the Case Presenter and Hearings Officer could be reduced.
33. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in principle to its costs. The Committee was,

however, concerned about the amount of time and resources that had been spent on this case. This case was straightforward. It concerned a single act, which had been admitted in full at the outset. Indeed, ACCA's position was that no further evidence was required beyond that admission. The proceedings also seem to have taken an inordinate amount of time overall. The time from the date of the full admission to today's hearing was nearly three years. Although the Committee did not have the material to be able to identify particular items that were not justified (except for the estimated time today) it did consider that the costs claimed were disproportionate to the complexity of the case. In all the circumstances the Committee arrived at a figure of £4,000 for Mr Chen's contribution. This included an allowance for today's hearing taking less time than estimated.

34. The Committee had no submissions from Mr Chen and no information from him about his means. It was therefore not able to consider his ability to pay this sum.

EFFECTIVE DATE OF ORDER

35. The Committee's order will take effect at the usual time, namely the expiry of the appeal period.

ORDER

36. The Committee **ordered** as follows:
 - (a) Mr Tianhao Chen shall be removed from the student register.
 - (b) Mr Tianhao Chen shall pay a contribution to ACCA's costs assessed at £4,000

Ms Ilana Tessler
Chair
27 October 2023