

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Gulmira Ashimova

Heard on: Wednesday, 20 March 2024

Location: Remotely via MS Teams

Committee: Ms Wendy Yeadon (Chair)
Mr George Wood (Accountant)
Mr Geoffrey Baines (Lay)

Legal adviser: Mr Alastair McFarlane

Persons present

and capacity: Ms Elaine Skittrell (Case Presenter)
Ms Anna Packowska (Hearings Officer)

Outcome: Student removed from register and costs awarded to
ACCA in the sum of £6,500

1. ACCA was represented by Ms Skittrell. Miss Ashimova did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1 – 48, and a service bundle numbered pages 1 –16.

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

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Miss Ashimova in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).

PROCEEDING IN ABSENCE

3. The Committee accepted the advice of the Legal Adviser.
4. The Committee reminded itself that the discretion to proceed in absence must be exercised with the utmost care and caution. It was mindful that despite attempts by the ACCA to contact Miss Ashimova in relation to the substantive concerns and her attendance at this hearing, no reply has ever been received. There had been no engagement from Miss Ashimova at all. The Committee noted that following the service of the Notice of Hearing on 20 February 2024, the Hearings Officer had made an attempt to telephone Miss Ashimova on 19 March 2024 to see if she would be attending the hearing. The phone was not answered. The Hearings Officer also sent chaser emails on 18 and 19 March 2024. There has been no response.
5. The Committee was mindful of the observations of Sir Brian Levenson in *Adeogba v. General Medical Council [2016] EWCA Civ 162* as to the burden on all professionals subject to a regulatory regime to engage with the regulator both in relation to the investigation and the ultimate resolution of allegations made against them. The Committee specifically considered the issue of fairness to Miss Ashimova of proceeding in her absence, but also fairness to the ACCA and the wider public interest in the expeditious discharge of the Committee’s function. The Committee was satisfied that Miss Ashimova has voluntarily disengaged from the process. The Committee was not persuaded when balancing Miss Ashimova’s interests and the public interest, that any adjournment was

likely to secure her attendance and would not outweigh the public interest in proceeding with this hearing today. The allegations were serious, involving dishonesty and a risk to the public and the Committee considered that Miss Ashimova had had plenty of opportunity to respond to the investigation process. The Committee was satisfied that it was in the public interest and in the interests of justice overall to proceed in the absence of Miss Ashimova.

ALLEGATIONS

Miss Gulmira Ashimova, an ACCA student:

1. On 17 November 2022, caused or permitted to be sent to ACCA's Kazakhstan Office an ACCA Diploma in International Financial Reporting ("the Diploma") with accompanying letter confirming completion of the Diploma.
2. The conduct referred to in allegation 1 was;
 - a) Dishonest in that the Diploma and accompanying letter referred to in allegation 1 above were false because Miss Ashimova had not completed the Diploma or in the alternative;
 - b) Such conduct demonstrates a failure to act with integrity.
3. Contrary to Paragraph 3(1) of the Complaints and Regulations 2014, Miss Gulmira Ashimova failed to co-operate fully with the investigation of a complaint in that she failed to respond to any or all of ACCA's correspondence dated:
 - a) 11 January 2023
 - b) 25 January 2023;

- c) 07 February 2023; and
- d) 29 June 2023.

4. By reason of any or all of the above, Miss Gulmira Ashimova:

- a) guilty of misconduct pursuant to Bye-law 8(a)(i), or in the alternative;
- b) liable to disciplinary action, pursuant to Bye-law 8(a)(iii) in relation to allegation 3 only.

BACKGROUND

- 6. On 30 March 2022, Miss Ashimova registered as an ACCA student, which she remains to date.
- 7. On 17 November 2022 ACCA's Kazakhstan office received an email from Miss Ashimova's registered email address and which accordingly appeared to come from Miss Ashimova with a copy of what purported to be an ACCA Diploma in International Financial Reporting certificate and an accompanying letter that confirmed achievement of that Diploma. The email is headed 'Diploma confirmation' by which ACCA contends that it can be inferred, Miss Ashimova was asking ACCA to verify the authenticity of the letter and diploma. ACCA's Kazakhstan office has confirmed that the certificate and therefore the accompanying letter are both false.
- 8. On 11 January 2023 the Investigation Department asked for the student's comments regarding the documents in question. No response was received.

9. On 25 January 2023, ACCA sent an email to Miss Ashimova's registered email address reminding her of her obligation to co-operate with the investigation and seeking her response by 31 January 2023. Again, no response was received.
10. On 27 February 2023, the investigations manager called Miss Ashimova, who answered the call and confirmed her name but did not respond further when the manager stated she was calling from ACCA. On the same day ACCA sent a further email to Miss Ashimova's registered email address reminding her again of her obligation to co-operate with the investigation and again seeking her response by 13 February 2023. No response was provided.
11. A final email was then sent on 29 June 2023 attaching a copy of a ACCA's initial enquiries letter to her registered email address.
12. Miss Ashimova has not responded to any of ACCA's communications.

ACCA's SUBMISSIONS

Allegation 1

13. ACCA relied on its records to confirm that Miss Ashimova has not taken or passed ACCA's Diploma in International Financial Reporting. ACCA's records indicate that Miss Ashimova was "absent" from the sitting of the exam on 10 June 2022. She neither sat nor passed this exam. Therefore, ACCA submitted that the certificate and accompanying letter purporting to confirm otherwise are clearly false.

Allegation 2 a)

14. ACCA submitted that the conduct set out at Allegations 1 amounts to dishonesty on the basis that Miss Ashimova must have known, that the certificate was false as was the accompanying letter, which referred to completion of the Diploma. It is further submitted such conduct would be regarded as dishonest by the standards of ordinary decent people.

Allegation 2 b)

15. ACCA submitted in the alternative that Miss Ashimova's conduct demonstrated a failure to act with integrity.

Allegation 3

16. ACCA submitted that in failing to respond to the requests of the investigating officer, the student has breached Complaints & Disciplinary Regulation 3(1). Miss Ashimova was under a duty to co-operate and therefore respond to the investigating officer's correspondence in which she was asked for an explanation of the allegations raised against her.
17. ACCA contended that a failure to co-operate fully with one's professional body is a serious matter, demonstrating a lack of professional responsibility and a disregard for ACCA's regulatory process. A failure to adequately respond to questions asked by ACCA during an investigation into one's conduct prevents ACCA from fully investigating and, if necessary, taking action upon, what might be a serious matter.

Allegation 4 a) Misconduct

18. ACCA submitted that if any or all of the facts set out at Allegations 1 to 3 are found proved, Miss Ashimova has acted in a manner which brings

discredit to herself, ACCA and to the accountancy profession and her conduct amounts to misconduct pursuant to bye-law 8(a)(i).

19. There was an alternative alleged of liability to disciplinary action in relation to allegation 3.

The Student's Response

20. There has been no response from Miss Ashimova.

DECISION ON ALLEGATIONS AND REASONS

21. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the allegations is on ACCA alone and that Miss Ashimova's absence adds nothing to ACCA's case. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the 'balance of probabilities'. It reminded itself of Collins J's observations in Lawrance v. GMC [2015] EWHC 581(Admin) to the effect that in cases of dishonesty, cogent evidence was required to reach the civil standard of proof.
22. The Committee heard that there had been no previous findings against Miss Ashimova and accepted that it was relevant to put her good character into the balance in her favour.

DECISION ON FACTS

23. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Ms Skittrell on behalf of ACCA. It reminded itself to exercise caution as it was working from documents alone and carefully considered the weight to attach to the evidence and submissions it had received.

Allegation 1

On 17 November 2022, caused or permitted to be sent to ACCA's Kazakhstan Office an ACCA Diploma in International Financial Reporting ("the Diploma") with accompanying letter confirming completion of the Diploma.

24. The Committee had sight of a copy of the ACCA Diploma in International Financial Reporting in Miss Ashimova's name and dated July 2022. It noted the ACCA official Student Data base print out that has been produced that records that Miss Ashimova had not taken or passed ACCA's Diploma in International Financial Reporting. ACCA's records state that Miss Ashimova was "absent" from the sitting of the exam on 10 June 2022. The Committee was satisfied that it could rely on this record as accurate and reliable. The Committee was therefore satisfied that Miss Ashimova neither sat nor passed this exam. Therefore, the Committee was satisfied that the certificate and accompanying letter purporting to confirm otherwise are clearly false
25. The Committee also had regard to Miss Ashimova's email of 17 November 2022, headed "Diploma confirmation!" and a translation from Russian was also provided to the Committee. It read as follows:

"Hello! On request from the company. You asked to send a request from the candidates themselves. Therefore, I am writing to you! The following letters I send the correspondence received from ACCA!

Sincerely, Gulmira"

Attached to this e-mail were a purported letter dated 20 July 2022 from [PRIVATE] in which she enclosed the Diploma and a copy of the purported Diploma dated July 2022.

26. The Committee was satisfied that it was reasonable to infer that the heading “Diploma confirmation!” was asking ACCA to confirm that the letter and diploma were genuine.
27. The Committee also noted the email chain dated 21 November 2022 from ACCA Kazakhstan between two ladies called [PRIVATE] both of ACCA. At 09.45, [PRIVATE] wrote:

“Dear [PRIVATE]

May I kindly ask you to verify attached. In our records students was absent but she forwarded below message an attached

Thank you for your help,

[PRIVATE]

[PRIVATE] responded at 09.50:

“Those attachments don’t seem genuine, we haven’t issued those documents. I can confirm the student was absent from her exam.

This email address does not belong to ACCA – “Om козо: ACCA Do Not Reply @accaglobal.com <accadonotreply@mail.ru>”

Hope it helps,

[PRIVATE]

28. The Committee was satisfied from the documents provided by ACCA that Miss Ashimova caused or permitted to be sent to ACCA, an ACCA Diploma in International Financial Reporting with accompanying letter confirming completion of the Diploma. It was satisfied that Miss Ashimova had not sat this exam. She was therefore not entitled to the certificate. Accordingly, Allegation 1 is proved.

Allegation 2 a)

2. The conduct referred to in allegation 1 was;

- a) Dishonest in that either or both the ACCA diploma and or accompanying email referred to in allegation 1 above were false or in the alternative**

29. On the basis of its acceptance of ACCA's records and its interpretation of Miss Ashimova's e-mail of 17 November 2022, the Committee was satisfied that the Diploma in International Financial Reporting document and the accompanying letter were not issued by ACCA and were false documents.
30. The Committee next asked itself whether submitting a false diploma and accompanying letter was dishonest.
31. The Committee considered as far as it was able what Miss Ashimova's belief was as to the facts. It was satisfied that Miss Ashimova submitted a false diploma for verification to her professional body. It was satisfied on the documents that she knew she had not passed this diploma as she had not sat the exam and therefore she knew that the diploma was false. It was an objectively dishonest act to create a forged education document. The Committee had no hesitation in determining that Miss Ashimova's belief at the time was dishonest according to the standards of ordinary decent people. Accordingly, it was satisfied that Allegation 2(a) was proved and did not consider the alternative of Allegation 2(b).

Allegation 3

Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Miss Ashimova failed to co-operate fully with the

investigation of a complaint in that she failed to respond to any or all of ACCA's correspondence dated:

- a) 11 January 2023**
- b) 25 January 2023;**
- c) 07 February 2023; and**
- d) 29 June 2023.**

32. In relation to Allegation 3, the Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Miss Ashimova to co-operate fully with ACCA in the investigation of any complaint. It was satisfied that Miss Ashimova made no response to ACCA's correspondence requesting her co-operation on the 11 January 2023, 25 January 2023, 07 February 2023, and 29 June 2023. There was no evidence before the Committee in this case to amount to a defence to the obligation on professionals to co-operate with their regulator as expressed in Regulation 3(1). It was therefore satisfied that these non-responses amounted to failures as Miss Ashimova had a duty to respond. Therefore, she breached the obligation under the Regulations and Allegation 3 was proved.

Allegation 4 – Misconduct

33. The Committee next asked itself whether the proven dishonest conduct in submitting a false diploma for verification with her professional body amounted to misconduct.
34. The Committee had regard to the definition of misconduct in Bye-law 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Miss Ashimova's actions brought discredit on her, the Association, and the accountancy profession. Trust and honesty are

fundamental tenets of the profession required from all members. It was satisfied that this conduct was serious and would be considered deplorable conduct by fellow professionals. The Committee had no hesitation therefore in determining that the conduct reached the threshold for misconduct.

35. The Committee was also satisfied that failing to co-operate with their regulator was serious as it undermined public confidence in the profession and the ability of the regulator to undertake its duties so as to maintain the public confidence. It was a fundamental obligation on all professionals to cooperate with a regulator. Therefore, the Committee was satisfied that it also amounted to misconduct. In the light of this judgment, the Committee did not need to consider the alternative of liability to disciplinary action under Allegation 4(b).

SANCTIONS AND REASONS

36. The Committee noted its powers on sanction were those set out in Regulation 13(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.
37. The Committee considered that the conduct in this case was very serious. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Trust and honesty are fundamental requirements of any professional. Dishonesty by a member of the accountancy profession undermines its reputation and public confidence in it. In addition, the failure to co-operate with her regulator is serious and undermines the opportunity for the regulator to discharge its regulatory function.

38. The Committee had no evidence of any insight or understanding into the seriousness of Miss Ashimova's behaviour. There were no mitigating factors before the Committee, other than her previous good character and it considered the dishonest conduct, which was for unjustified personal gain, that had the potential to undermine the reputation of ACCA's exams, a lack of insight and remorse, and the prolonged period of the non-co-operation to be aggravating factors.
39. Given the Committee's view of the seriousness of her conduct – both in relation to the dishonesty and the non-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.
40. The Committee determined that her behaviour was fundamentally incompatible with Miss Ashimova remaining on the student register of ACCA and considered that the only appropriate and proportionate sanction was that she be removed from the student register.

COSTS AND REASONS

41. ACCA claimed costs of £7,199.00 and provided a detailed schedule of costs. It noted Miss Ashimova was a student, but she has not provided a statement of means. The Committee decided that it was appropriate to award costs in this case and that the costs claimed were reasonable but made some reduction as the case did not last the full day. It concluded that the sum of £6,500 was appropriate and proportionate. Accordingly, it ordered that Miss Ashimova pay ACCA's costs in the amount of £6,500.00.

EFFECTIVE DATE OF ORDER

42. The Committee was not satisfied that that it was in the interests of the public to impose an immediate order, so this order will take effect following the relevant appeal period.

Ms Wendy Yeadon
Chair
20 March 2024