



Wanton Disregard of the Rights of Others; Failure to Maintain Valid Architectural License

Summary

The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rule 2.104 of the Institute’s 2004 Code of Ethics and Professional Conduct (“Code of Ethics”) by performing architectural services without a valid architectural license. The Council found no violation of Rule 3.102. The NEC imposed the penalty of a three-year suspension of membership on the Member.

All initials, names, dates, places, and gender references in this decision have been changed.

References*

2004 Code of Ethics and Professional Conduct, Canon II, Obligations to the Public

Rule 2.104 Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

Commentary: This rule addresses serious misconduct whether or not related to a Member’s professional practice. When an alleged violation of this rule is based on a violation of a law, or of fraud, then its proof must be based on an independent finding of a violation of the law or a finding of fraud by a court of competent jurisdiction or an administrative or regulatory body.

2004 Code of Ethics and Professional Conduct, Canon III, Obligations to the Client

Rule 3.102 Members shall undertake to perform professional services only when

they, together with those whom they may engage as consultants, are qualified by education, training, or experience in the specific technical areas involved.

Commentary: This rule is meant to ensure that Members not undertake projects that are beyond their professional capacity. Members venturing into areas that require expertise they do not possess may obtain that expertise by additional education, training, or through the retention of consultants with the necessary expertise.

Introduction

The Respondent received the Complaint but failed to file a Response. The National Ethics Council notified the Respondent that because he did not file a Response the matter would proceed under Section 4.3 of the NEC’s Rules of Procedure, wherein the matter may be resolved as if the Complainant’s allegations were proven true.

The pre-hearing conference was held by telephone. The participants were the Hearing Officer, the Complainant, the Respondent, and the associate general counsel of the Institute. The Complainant and Respondent were both present and participated in the hearing in this case. Neither party presented any other witnesses.

Findings of Fact

The Parties

The Complainant, along with his wife, hired the Respondent to design and prepare construction



documents for an addition to their house. The Respondent is an architect who was providing architectural services during the time period described in the Complaint through his own firm.

Architectural Services Provided by Respondent

The Complainant signed an agreement with the Respondent under which the Respondent was to provide architectural services for an addition to a 100-year-old house that was occupied by the Complainant's family and located in a historic district of their town. At the initial client-architect meeting, the Respondent encouraged the Complainant to act as his own general contractor, so as to save construction expense. While preparation of signed and sealed drawings for the building permit required five months, the Respondent suggested that demolition of the existing kitchen take place at the mid-point of this period. Ultimately, this resulted in the loss of kitchen use for two years.

The Respondent signed and sealed drawings for the project on two separate dates.

Plumbing Construction Provided by Respondent

The Respondent proposed that he provide plumbing construction services for the project through a construction business the Respondent owned that was co-located with his architectural practice. The Complainant agreed, and the Respondent did plumbing work on the project.

Billing for Construction Materials by Respondent

The Respondent used the Complainant's personal credit card, with permission, to purchase roofing materials for the project. Upon reviewing his credit card statements, however, the Complainant discovered that the Respondent had charged \$1500 to the credit card for plumbing materials required by the construction being performed by the Respondent's construction

business. These charges were later credited against the Respondent's billings.

Architectural and Construction Services Provided by Respondent Without a License

The Respondent did not have a valid architectural license for more than six months during the project because he had failed to renew it. The Respondent signed a Consent Order with the state architectural licensing board agreeing to: (1) accept a reprimand, (2) complete the National Council of Architectural Registration Boards Continuing Education Monograph on "Professional Conduct," and (3) pay a \$250 civil penalty.

The Respondent did not have a state license to provide plumbing construction services and performed plumbing work for the Complainant without the necessary state license. The Respondent signed a Consent Agreement with the state board of plumbing contractors, agreeing not to provide such services without a license.

Conclusions

Burden of Proof

Ordinarily, the Complainant has the burden of proving the facts upon which a violation may be found under Section 5.13 of the Council's Rules of Procedure. In the event the Complainant's evidence regarding a Referenced Rule does not establish a violation, the Complaint would be dismissed with respect to that Rule. (*See NEC Rules of Procedure, Section 5.13.*)

In this case, however, the Respondent failed to file a Response. The matter may therefore be resolved as if the Complainant's allegations were proven true. (*See NEC Rules of Procedure, Section 4.3.*) In addition, the Respondent signed consent orders or agreements with two state licensing agencies, in which the Respondent admitted to various conduct. As a result, the essential facts in this case are not in dispute.



Rule 2.104

Rule 2.104 of the Code of Ethics states:

Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

The commentary to this Rule states:

This rule addresses serious misconduct whether or not related to a Member's professional practice. When an alleged violation of this rule is based on a violation of a law, or of fraud, then its proof must be based on an independent finding of a violation of the law or a finding of fraud by a court of competent jurisdiction or an administrative or regulatory body.

The Complainant alleges that the Respondent violated Rule 2.104 because of the Respondent's lack of a current architectural license during a portion of the period that architectural services were provided. As described in the commentary, a violation of this Rule based on fraud must be supported by an independent finding of fraud by a court or administrative or regulatory body. While the NEC has been provided with a copy of the Consent Order from the state architectural licensing board, that document does not state that the Respondent committed fraud. As a result, the Complainant has not shown that the Respondent committed fraud.

A violation of Rule 2.104 may, alternatively, be based on the Respondent's wanton disregard of the Complainant's rights. The NEC has previously described "wanton disregard" under this Rule to be an "action taken in disregard of a high degree of danger that is apparent or would be apparent to a reasonable person." (*See NEC Decision 90-4.*) The Respondent performed various architectural services for the project while he did not have a valid architectural license, including signing and sealing drawings for the project. The Complainant had a right to

expect that the architect he retained was licensed and would maintain a current license throughout the duration of the project. The lapse in the Respondent's architectural license created a high degree of risk that the Complainant would be adversely affected. For example, approval of submittals to a building department that required an architect's seal might be denied or substantially delayed. Therefore the Respondent's failure to renew his license was in wanton disregard of the Complainant's rights.

The National Ethics Council concludes that the Respondent violated Rule 2.104 by performing architectural services for the Complainant, including signing and sealing architectural drawings, without a valid architectural license.

Rule 3.102

Rule 3.102 states:

Members shall undertake to perform professional services only when they, together with those whom they may engage as consultants, are qualified by education, training, or experience in the specific technical areas involved.

The commentary to this Rule states:

This rule is meant to ensure that Members not undertake projects that are beyond their professional capacity. Members venturing into areas that require expertise they do not possess may obtain that expertise by additional education, training, or through the retention of consultants with the necessary expertise.

When he submitted signed and sealed documents for the Complainant's project, the Respondent did not have a valid license to practice architecture in the state. His execution of a Consent Order with the state architectural licensing board is an admission of fault to that state's relevant governing body.



Similarly, the Respondent's plumbing construction was carried out without the required state license. His execution of a Consent Agreement with the state board of plumbing contractors is admission of fault with that body.

The Complainant alleges that the Respondent violated Rule 3.102 due to his lack of valid licenses. Rule 3.102 requires that Members be "qualified by education, training, or experience" to perform the services they provide. The evidence in this case does not show that the Respondent lacked either education, training, or experience as an architect or plumber. What the Respondent lacked was valid licenses, which is not covered under Rule 3.102.

The National Ethics Council concludes that the Complainant has not shown that the Respondent violated Rule 3.102. The Council also concludes that, even if all of the factual allegations in the Complaint were found to be true, the Complaint would not establish a violation of Rule 3.102. Therefore, even though the Respondent failed to file a Response, the Council declines to find a violation of Rule 3.102 under Section 4.3 of the Rules of Procedure.

Penalty

Having found a violation of Rule 2.104 of the Code of Ethics by the Respondent, the National Ethics Council must impose an appropriate penalty.

The violation by the Respondent in this case is sufficiently serious to warrant a penalty of suspension of membership. After careful consideration of the violation, based on the Rules presented, the Council imposes the penalty of a three-year suspension of membership.

Members of the National Ethics Council

Janet Donelson, FAIA, NEC Chair
Victoria Beach, AIA

National Ethics Council

A.J. Gersich, AIA
Phillip T. Markwood, FAIA
Melinda Pearson, AIA
Kathryn T. Prigmore, FAIA
Bill D. Smith, FAIA

The Hearing Officer, Michael L. Prifti, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure.

July 18, 2008

*The Complaint contains allegations and information about licensing violations committed by the Respondent. The Complaint does not, however, allege a violation of Rule 2.101 or Rule 3.101. The Decision therefore does not address how those Rules might apply in this case.