



Theft; Wanton Disregard of the Rights of Others

Summary

The National Ethics Council (“Council” or “NEC”) ruled that an Honorary Member violated Rule 2.104 of the Institute’s 1997 and 2004 Code of Ethics and Professional Conduct (“Code”) by stealing money from organizations that the Honorary Member served as executive director.

The NEC imposed the penalty of termination of membership on the Honorary 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 of fraud] by a court of competent jurisdiction or an administrative or regulatory body.

Note: The period of the Complaint is from January 1997 through July 2005; therefore, both the 1997 and 2004 versions of the Code apply. The wording of Rule 2.104 is the same in both versions. The commentary to that rule, however,

was revised in the 2004 version to add the two references to “fraud” shown here in brackets.

Introduction

The Complainant was the president of the Midwest City chapter (“Chapter”) of the American Institute of Architects (“AIA” or “Institute”) in 2005, which is part of the period of time covered by the Complaint.

The Respondent is the former executive director of the Chapter and of the Midwest City Architectural Foundation (“Foundation”). He was admitted to Honorary Membership in the Institute in 1993. After receiving the Complaint, he responded with a letter to the National Ethics Council. Neither the Complainant nor Respondent was represented by an advisor or counsel in this ethics case.

A prehearing conference call was held in July 2007. Participating in the call were the Complainant, the Hearing Officer, and counsel for the Institute. The Respondent did not participate in the call, although he had received advance notice of the call by certified mail.

The hearing was conducted in November 2007 in Midwest City. The Respondent did not participate in the hearing, although he had received advance notice of the hearing by certified mail.

The following witnesses testified at the hearing for the Complainant:

- Mary Baker, AIA, 2005 vice president and 2006 president of the Chapter;
- Robert Smith, AIA, president of the Chapter in 2003 and 2004; and



- George Herbert, AIA, 2002 president of the Chapter.

In preparing the ethics case, the Complainant had contacted various individuals seeking their participation. The Complainant sent letters to Ms. Baker; to Cynthia Johns, president of the Foundation; and to Timothy Burton, AIA, vice president of the Foundation. In his letters, the Complainant stated that he had not asked the Chapter to join him in the complaint, but asked the individuals listed to write to the NEC about the matter. Subsequently, Mr. Burton, as vice president of the Foundation, and Ms. Johns, as president of the Foundation, both sent letters to the NEC, which are part of the record in this case.

Following the hearing, the Hearing Officer issued her Report and Recommendation, which was provided to the parties in August 2009. Neither party submitted written comments on the Report and Recommendation or requested to appear before the NEC. (*See NEC Rules of Procedure, Sections 6.2 and 6.3.*) The NEC considered the Report and Recommendation and the case record at its meeting on October 5, 2009.

Findings of Fact

The Complaint alleges that the Respondent violated Rule 2.104 of the Code of Ethics from 1997 through July 2005. At the hearing, the Complainant provided a written timeline that he had prepared listing relevant events from February 2005 to June 2006.

The Foundation is a 501(c)(3) non-profit corporation established in the 1980s. The Foundation and the Chapter have separate boards of directors, except that the Chapter president serves on the Foundation board.

The Respondent's employment with the Chapter as executive director began in 1979. After the Foundation was formed in the 1980s, he was an

employee and executive director of both organizations until 1995. At that time, he became an employee solely of the Foundation but continued to serve as executive director of the Chapter under a contract between the two organizations. He submitted his resignation as executive director of both organizations—citing health reasons—on July 2, 2005.

In February 2005, shortly after the Complainant began serving as Chapter president, he began making inquiries about the Chapter's finances. He was attempting to reconcile the Chapter's financial statements with the amounts the Chapter should have received from the Institute. In March 2005, he sent an e-mail to the Respondent asking why the Institute reported that \$7,000 more was sent to the Chapter as 2004 member dues than was shown in the Chapter's own records.

By May 2005, the Complainant had discovered that a check made out to the Chapter had been deposited in the Foundation's bank account instead of the Chapter's account. After consulting with the Chapter's board that month, he arranged for a forensic audit of the five years for which bank records were still available. Prior to the audit, the Chapter's board members had apparently relied on the Respondent himself to answer their questions about the Chapter's finances. At the time the Respondent resigned on July 2, 2005, he was aware that an audit had been initiated.

The audit determined that the Respondent had repeatedly and over several years misdirected Chapter funds into the Foundation's accounts, from which he overpaid himself at least \$75,000. Because records prior to 1997 were not available, the audit could not determine when this conduct began or what amounts the Chapter may have lost in earlier years. The record in this ethics case includes copies of cancelled checks payable to the Chapter that were wrongly deposited in the Foundation's account.



By misdirecting Chapter funds to the Foundation, the Respondent could extract funds from the Foundation for himself while maintaining the Foundation's balances and avoiding suspicion within that organization. The record shows that the Respondent issued himself duplicate paychecks for the same pay periods, evading detection by obtaining signatures on the checks from different Foundation officers.

On September 12, 2005, two months after he resigned, the Respondent sent a letter to the boards of the Foundation and the Chapter characterizing his actions as "careless and unintentional financial errors" and, while stating that he took "full responsibility," he also implied that his staff was to blame.

Cynthia Johns, the Foundation's 2006 president, described what the Foundation did after the Complainant uncovered these financial problems in 2005:

When our exhaustive and costly accounting investigation indicated the scope of the loss to both the Foundation and AIA Midwest City resulting from the Respondent's accounting practices, I and our Board of Directors agreed to take whatever steps necessary to recover the misappropriated funds. Our initial effort involved presenting our well-documented claim to the Respondent, with the intention of avoiding unnecessary legal/court proceedings. When he failed to respond in any significant way to this claim, I was then authorized by the Board to report the situation to the District Attorney as a criminal matter.

The District Attorney filed criminal charges against the Respondent in early 2006. Timothy Burton, AIA, the Foundation's 2006 vice president, stated that the Foundation was

firm in our resolve to recover the funds that he misappropriated. The Respondent continued to maintain his inno-

cence until it became clear that unless he made full restitution, more severe penalties would ensue. At the last possible moment he delivered full restitution (\$125,000) of the Foundation's claim.

On August 15, 2006, the Respondent pleaded guilty to misdemeanor grand theft in state district court. Based on that criminal conviction, he was sentenced to three years of probation, 30 days of house arrest, electronic monitoring, and a \$250 fine. After he paid the Foundation approximately \$125,000, which covered its known loss plus interest, the Foundation repaid a portion of this amount to the Chapter.

Conclusions

The Complainant asserts that the Respondent's theft of Foundation and Chapter funds violated Rule 2.104, which provides: "Members shall not engage in conduct involving fraud or wanton disregard of the rights of others."

The commentary to Rule 2.104 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 of fraud by a court of competent jurisdiction or an administrative or regulatory body.

The NEC has previously described "wanton disregard of the rights of others" under this rule as action taken in disregard of a "high degree of risk" that others "would be adversely affected." (*See NEC Decision 2005-15.*) In another case, the NEC found a violation of Rule 2.104 based on a respondent's criminal conviction for grand larceny. (*See NEC Decision 2000-04.*) In that case, the NEC found that the conviction showed that the respondent "wrongfully and intention-



ally took substantial sums of money” in wanton disregard of the rights of the complainant. (Unlike that case, the complaint in this case does not allege a violation of Rule 2.101. As a result, the NEC has not considered how Rule 2.101 might apply here.)

Charges were filed by the District Attorney’s office in early 2006, and the Respondent pleaded guilty to misdemeanor grand theft on August 15, 2006. The NEC concludes that the Respondent’s criminal conviction establishes that he not only disregarded but actively violated the legal rights of his victims. The record in this ethics case establishes that the victims of his theft were the Foundation and the Chapter and that the harm to the two organizations amounted to at least \$125,000.

The National Ethics Council concludes that the Complainant has met his burden to prove that the Respondent violated Rule 2.104 based on his criminal conviction for theft from the Chapter and Foundation.

Penalty

Having found that the Respondent violated Rule 2.104 of the Code of Ethics, the NEC must determine the appropriate penalty.

Not only did the Respondent commit a serious crime, but he refused to admit to it or to apologize for it, even up to and throughout these NEC proceedings. In his September 12, 2005 letter to the boards of the Chapter and Foundation, the Respondent denied any wrongdoing and characterized his theft as “careless and unintentional errors.” According to the officers of the Foundation, he refused to respond to their demand that he repay what he had taken until he was charged with a crime and faced serious criminal penalties. In his letter to the NEC in response to the complaint, even after having pleaded guilty in court, he failed to take responsibility for his conduct, instead stating: “Mistakes were made” and insinuating that they were a result of “impos-

sible” job requirements, the lack of organizational checks and balances, as well as declining health. He accused the Complainant of a “one-man campaign to discredit me,” a charge that is refuted by the testimony of three other Chapter presidents as well as the letters submitted by the Foundation officers.

Moreover, the Respondent committed his crime against the very organizations that trusted him with their welfare and recognized him through Honorary Membership in the Institute. Timothy Burton, AIA, 2006 vice president of the Foundation, supports “depriving him of his Honorary AIA designation” and has stated that his “actions demonstrate that he is not worthy of the title.” The NEC agrees with his assessment. It is appropriate that his Honorary Membership now be withdrawn.

The National Ethics Council imposes the penalty of termination of membership.

[The NEC’s decision was considered as an appeal by the Institute’s Executive Committee and Board, as provided in Chapter 7 of the Rules of Procedure. The Executive Committee and Board approved the NEC’s decision and the penalty imposed.]

Members of the National Ethics Council

Bill D. Smith, FAIA, Chair
Victoria Beach, AIA
Janet Donelson, FAIA
A.J. Gersich, AIA
Michael L. Prifti, FAIA

The Hearing Officer, Kathryn T. Prigmore, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure. Melinda Pearson, FAIA a member of the Council, also did not participate in the decision.

October 5, 2009