

CASE SUMMARY #10

FAILURE TO SUPERVISE, DIRECT AND CONTROL THE PROVISION OF ARCHITECTURAL SERVICES/ PERMITTING A NON-REGULATED ENTITY TO ENGAGE IN THE PRACTICE OF ARCHITECTURE/ FAILURE TO COOPERATE WITH THE AAA

COMPLAINT REVIEW COMMITTEE

The AAA Complaint Review Committee heard a case that illustrated the Investigated Member's:

- Failure to personally supervise, direct and control the provision of architectural services as required by the *Architects Act*.
- Entry into an arrangement or agreement, whereby a non-regulated entity engaged in the practice of architecture directly or indirectly and held out they were entitled to do so when that was not the case; and
- Failure to cooperate with an investigation conducted by the AAA.

BACKGROUND AND FACTS

In this case, the Investigated Member contracted with a company to deliver architectural services for two projects located in Alberta. The Investigated Member was the Architect of record and coordinating professional of record for the projects.

The President of the company noted above ("Mr. A") was the Project Manager on both projects. The Investigated Member claimed that although he was not located in Alberta, during the time he worked on both projects, he had weekly meetings and onsite video walkthroughs. He also claimed that he had visited both sites several times during construction and had retained a local Building Envelope Specialist and an independent Registered Architect (the "Independent Architect") to provide onsite field services for the projects.

The AAA Investigator confirmed that the Building Envelope Specialist was engaged by the Owner of the projects, not the Investigated Member nor Mr. A. The Independent Architect advised he met with Mr. A and attended the site one time, but after providing a fee proposal, was not contacted again. Neither the Building Envelope Specialist nor the Independent Architect recalled speaking with the Investigated Member.

The AAA Investigator determined that the Investigated Member was present on each of the project sites at least once. The AAA Investigator also found evidence that the Investigated Member took part in a Skype walkthrough.

Throughout the investigation, the Investigated Member repeatedly failed to provide the AAA Investigator with requested information.

FINDINGS OF THE PANEL

The Discipline Panel found the allegations set out in the Notice of Hearing were proven and amounted to unprofessional conduct. A summary of the proven allegations are as follows:

Allegations 1 and 2: The Investigated Member failed to personally supervise, direct and control the provision of architectural services on the projects by:

- a. Failing to attend the project site, in person or otherwise such that he failed to provide the minimum level of personal supervision, direction and control expected of the Architect on record for a project of its size and scope.
- b. Affixing, or allowing his seal or stamp (or both) to be affixed, to architectural drawings that he did not prepare nor prepared under his personal supervision and control.

Allegation 3: Failing to cooperate with the Association's investigation by failing to provide complete records when requested, including, but not limited to, failing to provide documentation of every site visit made to each of project site and misrepresenting the involvement of the Independent Architect and other professionals with respect to the projects.

Allegation 4: Entering into an arrangement or agreement with Mr. A whereby Mr. A engaged in the practice of architecture, directly or indirectly, or represented and held out that he and his company were entitled to engage in the practice of architecture in Alberta (or both) when they were not entitled to engage in the practice of architecture in Alberta.

SANCTION & COSTS

As a result of the proven unprofessional conduct, the Discipline Panel ordered:

- a. A total fine of \$17,500;
- b. Costs of \$10,000 (approximately half of the hearing costs);
- c. Cancellation of the Investigated Member's registration;
- d. Notice of the Discipline Panel's decision, including the written decision and reasons to be sent to every architect regulator in Canada;
- e. Notice of the Discipline Panel's decision, including the written decision and reasons to be sent to the Investigated Member's home jurisdiction, as indicated on his AAA registration application; and
- f. The written decision – with all names and identifying information redacted – be sent to all AAA registered architects via email.

The Discipline Panel noted the circumstances of this case created the potential for substantial public harm. Therefore, a sufficiently high penalty was warranted to maintain the integrity of the profession in the eyes of the public.

FINDINGS ON APPEAL TO COUNCIL

The Council appeal panel conducted a review of the Discipline Panel's decision on a standard of review of reasonableness and upheld the decision of the Discipline Panel. Council ordered the Investigated Member to pay additional costs of the appeal hearing in the amount of \$10,000 (approximately half of the appeal costs).

COMMENTARY

This case emphasizes the ethical and professional obligations of a Registered Architect to supervise a project as the designated, authorized entity. Failure to do so has the potential for serious harm to the public.

Furthermore, a failure to cooperate with an investigation is indicative of a measure of disregard for the Association as a regulator, which is conduct that cannot be condoned. Cooperation is such a fundamental aspect of self-regulation that section 44 of the *Architects Act General Regulation* explicitly requires authorized entities to cooperate with reviews of their practice and conduct.

The failure to cooperate was a major determinant in the findings of the committee. Had the Investigated Member been able to produce records that were able to demonstrate a suitable level of involvement and direct supervision of the work, it is possible that the services provided could have been deemed consistent with the professional involvement obligations of the Investigated Member. It should be noted that it is acceptable to either have employees or to enter into legitimate agreements with consultants as long as the responsibilities for direct supervision and control by the authorized entity are clearly documented and there is no confusion created about who is serving in the position of the designated authorized entity.

Date: February 2020

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