

CASE SUMMARY CASE SUMMARY #11

FAILURE TO PROVIDE A MINIMUM LEVEL OF OVERSIGHT, MANAGEMENT, OR CONTROL OF ARCHITECTURAL SERVICES OVER THE AUTHORIZED ENTITY/FAILURE TO ENTER INTO A WRITTEN AGREEMENT FOR PROFESSIONAL SERVICES

COMPLAINT REVIEW COMMITTEE

A panel of the AAA Complaint Review Committee (the “Committee”) heard a case that considered the Investigated Member’s:

- ▶ Failure to provide a minimum level of oversight, management, or control of architectural services as required by the *Architects Act*;
- ▶ Breach of Section 41 of the *Architects Act General Regulation* by failing to enter into a written agreement on projects; and
- ▶ Operation of an authorized entity under the *Architect Act* without professional liability insurance for the practice of architecture.

BACKGROUND AND FACTS

The Committee considered the following specific allegations with respect to the Investigated Member and his authorized entity:

- ▶ The authorized entity did not always enter into written agreements for professional services, as required by Section 41 of the *General Regulation*.
- ▶ The Investigated Member failed to keep sufficient records to demonstrate their personal direction, control and supervision of the practice of architecture at the authorized entity.
- ▶ The Investigated Member did not have clear knowledge or control over the architectural records, contract records or any other records of the authorized entity.
- ▶ The Investigated Member did not have clear knowledge or control of the finances of the authorized entity.
- ▶ Up to and including the time of the investigation, the authorized entity did not have professional liability insurance which the AAA considers to be a minimum standard for authorized entities undertaking significant projects such as those in this case.

Although the investigated member had liability insurance for the provision of professional services, that insurance was with respect to a separate and distinct authorized entity. On receiving the Notice of Hearing, the Investigated Member promptly obtained professional liability insurance for the authorized entity under investigation.

The Hearing proceeded by way of consent.¹ The Committee accepted an Agreed Statement of Facts jointly submitted by the AAA and the Investigated Member.

FINDINGS OF THE PANEL

The Committee accepted the Agreed Statement of Facts and the Investigated Member’s admissions of unprofessional conduct and found the following allegations to be proven:

Allegation 1: The Investigated Member failed to provide a minimum level of oversight, management, or control over the authorized entity.

Allegation 2: The Investigated Member and the authorized entity breached section 41 of the *Architects Act General Regulation* by failing to enter into a written fee agreement on projects.

Allegation 3: The Investigated Member provided proof of professional liability insurance for the authorized entity, and so this allegation was withdrawn.

SANCTION & COSTS

The Committee received from the Investigated Member and the AAA a joint submission² on the issue of sanction. The Complaint Review Committee accepted the joint submission and made the following orders:

1. The Investigated Member is subject to a reprimand in the form of the Committee's written decision and reasons, to remain on their AAA file for a period of two years.
2. A fine of \$2,000.
3. A professional undertaking to remediate all of the practice deficiencies identified.
4. As a condition on the Investigated Member's certificate of registration and the authorized entity's practice permit:
 - (a) That both are subjected to a satisfactory verification audit, within six months (or other period as reasonably required and agreed to by the CRC Chair), to verify initial compliance with the undertakings; and
 - (b) The person undertaking the verification audit will be appointed by the CRC Chair for this purpose.

A successful verification audit remains a condition on the Investigated Member's certificate of registration and the authorized entity's practice permit until the auditor and the AAA are satisfied that the practice deficiencies have been resolved.

If one or both of the Investigated Member or the authorized entity failed to remediate the practice deficiencies, it would be open to the AAA to initiate a fresh discipline investigation for breach of a professional undertaking and a failure to comply with the orders of the Committee.

In considering the appropriate sanction, the Committee found that the Investigated Member's conduct during and after the investigation was a significant mitigating factor. The Investigated Member apologized, acknowledged that their conduct was wrong, was forthcoming in the investigative process and undertook remediation immediately and in advance of being sanctioned.

Further, at the hearing stage, the Investigated Member cooperated with the AAA to produce an Agreed Statement of Facts, an Admission of Unprofessional Conduct and a Joint Submission on Sanction. These factors avoided a lengthy hearing and calling a number of witnesses, significantly reducing costs for all involved.

COMMENTARY

This case emphasizes that it is detrimental to the best interests of the public if an authorized entity stamps drawing that were not prepared under the personal supervision, direction, and control of a Registered Architect. The profession of architecture has clear guidelines about the requirement for supervision in order to maintain the high standard of practice required of architects, and to protect the public.

Further, this case makes clear that a Registered Architect, particularly as the sole registered architect of an authorized entity, has ethical and professional obligations to not only supervise architectural drawings but also to have knowledge and control of the basic operations, records and finances of the authorized entity. The professional obligations of an architect extend beyond the sealing and stamping of documents.

Finally, the *General Regulation* requires authorized entities to enter into written agreements with clients to set out the method for determining fees and describing the services to be provided for projects before the services are provided. The authorized entities must also maintain appropriate records of those agreements. In all phases of projects, the public interest must be protected.

NOTES

¹ A consent hearing occurs when an investigated member is prepared to make admissions of unprofessional conduct or unskilled practice. Typically, the investigated member and the AAA will lay out the key facts of the case that would otherwise have to be proven by the AAA by calling witnesses. This is usually done in a written document called an Agreed Statement of Facts. In addition, the investigated member will also formally admit to allegations in writing.

² A joint submission on sanction is a proposal for sanction that has been agreed to by both the AAA and the investigated member. Both parties then submit the proposal to the Committee for consideration. Joint submissions have the advantage of reducing the risk for both parties and tend to provide the best opportunity to craft a set of orders that is both effective and responsive to the conduct. HelveticaNeueLT Com 45, 9 pt. Same formatting as regular headers and text. Appears at the end of the Practice Bulletin text

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