

CASE SUMMARY #13

FAILURE TO SUPERVISE, DIRECT AND CONTROL THE PROVISION OF ARCHITECTURAL SERVICES; FAILURE TO ENTER INTO WRITTEN AGREEMENTS ON PROJECTS; PERMITTING A NON-REGULATED ENTITY TO ENGAGE IN THE PRACTICE OF ARCHITECTURE; FAILURE TO PROVIDE THE MINIMUM LEVEL OF SUPERVISION, DIRECTION OR CONTROL WHEN ACTING AS ARCHITECT OF RECORD DURING CONSTRUCTION

COMPLAINT REVIEW COMMITTEE

A panel of the Alberta Association of Architects (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 when they sealed and stamped architectural drawings;
- Failure to enter into a written agreement on projects;
- Failure to uphold the responsibility of the architect of record by entering into an arrangement with an entity that is not permitted or represent it can engage in the practice of architecture; and
- Failure to provide the minimum level of personal supervision, direction or control when acting as architect of record during construction.

BACKGROUND AND FACTS

The AAA received an initial complaint against the Member's authorized entity. After an initial review, the Chair of the Committee appointed an investigator to examine collateral issues not included in the original complaint.

During the investigation, the Member admitted that:

- he had a verbal agreement with an entity ("Entity A") to provide architectural services;
- he worked with Entity A on Project 1 and similar projects in the past;
- he did not speak to the client for Project 1; and
- he did not conduct any site reviews for Project 1.

The AAA received a second complaint against the Member. After a preliminary investigation, the Chair found that:

- the Member had worked with Entity A since at least 2007;
- the Member was the architect of record and would review architectural drawings that Entity A prepared;
- the Member and his authorized entity (their firm) acted as architect of record for approximately 50 projects with Entity A without establishing a written agreement;
- Entity A represented themselves to be the architect of record for Project 2 when the Member was the architect of record;
- the Member's firm sealed building permit drawings and the member signed those drawings even though Entity A produced them without the Member's personal supervision, direction or control; and
- the Member did not communicate with the client for Project 2 and the member attended only 6 of 17 site reviews for Project 2.

The Chair referred the conduct identified in the two investigations to a hearing. The hearing proceeded by way of consent.¹ The AAA and the Member jointly submitted an Agreed Statement of Facts, which the Committee accepted.

FINDINGS OF THE COMMITTEE

The Committee found most of the allegations in the Notice of Hearing were proven by the Association and amounted to unprofessional conduct.² The allegations are summarized as follows:

- Allegation 1: The Member and his authorized entity failed to provide a minimum level of oversight, management or control when he affixed his stamp or seal to a plan, drawing, detail drawing, specification or other document or a reproduction of any of them when the relevant documents for Projects 1 and 2 were not prepared under his direct supervision.
- Allegation 2: The Member provided professional services to Entity A on approximately 50 projects without establishing a written agreement to outline fees and services as required by section 41 of the *Architects Act General Regulation*.
- Allegation 3: The Member failed to uphold his responsibility as architect of record for projects completed by Entity A, because he entered an arrangement with Entity A where Entity A directly or indirectly engaged in the practice of architecture or represented that it was entitled to practise architecture when it was not entitled to do so.
- Allegation 4: The Member acted as architect of record for the work produced by Entity A without providing the minimum level of personal supervision, direction and control expected of an architect of record when he attended only 6 of 17 site reviews for Project 2 and no site reviews for Project 1.

SANCTIONS & COSTS

As a result of the proven unprofessional conduct, the Committee reviewed and accepted a Joint Submission on Sanctions brought forward by the parties and ordered that:

1. The Member shall be subject to a reprimand;
2. The Member shall pay fines totalling \$10,500;
3. The Member shall complete the *Architects Act* course at his own cost;
4. The Member shall provide his partners with a copy of the Committee's written decision;
5. The AAA shall publish a case summary on a non-identifying basis;
6. The Member will be subject to three verification audits over a five-year period and if those audits produce evidence of unprofessional conduct or unskilled practice then that evidence may be used in any new complaint against the Member; and
7. The Member shall pay half of the costs of the hearing to a maximum of \$7,000.

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 formally admits to the allegations in writing.

² A fifth allegation was withdrawn by agreement at the outset of the hearing.

The Committee noted that the proven unprofessional conduct was serious and that sanctions were appropriate. The orders requiring the Member to complete the Architects Act course, to provide the written decision to his partners and to be subject to verification audits will deter the Member from engaging in similar unprofessional conduct in the future. Further, the orders for a reprimand, fines and the publication of a decision summary will deter other members of the profession from engaging in similar conduct.

COMMENTARY

This case shows that it is harmful to the public interest for a registered architect to stamp drawings not prepared under their personal supervision, direction and control. Properly qualified professionals must supervise, direct and control architectural drawings. This requirement protects the public, ensuring that architectural drawings meet the high standards of practice required of Registered Architects in Alberta. An architect's brief review is not enough to ensure proper and safe architectural design.

This case also highlights the requirement for written agreements between Registered Architects and their clients. The absence of written agreements may create uncertainty about the architects' responsibilities.

Further, this case shows that architects cannot allow unauthorized entities to engage in the practice of architecture or to represent that they can engage in the practice of architecture. An architect of record should work directly with clients under a written agreement and should not provide services through an unauthorized entity.

Finally, this case demonstrates that being an architect of record requires personal supervision, direction and control, particularly during the construction phase. The Member's failure to attend site visits for Project 1 and their limited attendance at Project 2 site visits harms public interest. More supervision is necessary for the architect to discharge their professional obligations.

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