



Overbilling and Taking Money from Clients; Larceny Conviction; Knowingly Violating the Law; Fraud or Wanton Disregard of Rights of Others

Summary

The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rules 2.101 and 2.104 of the 1997 Code of Ethics and Professional Conduct by overbilling his clients and intentionally taking substantial sums of money from them in connection with a home renovation project. The basis for the NEC’s decision regarding Rule 2.101 was a finding by a state court that the Member had committed larceny in violation of a provision of the state’s Penal Code. The Complainant failed to prove that the Member had violated Rule 3.301.

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

References

1997 Code of Ethics and Professional Conduct, Canon II, Obligations to the Public

Rule 2.101 Members shall not, in the conduct of their professional practice, knowingly violate the law.

Commentary: The violation of any law, local, state or federal, occurring in the conduct of a Member’s professional practice, is made the basis for discipline by this rule. This includes the federal Copyright Act, which prohibits copying architectural works without the permission of the copyright owner. Allegations of violations of this rule

must be based on an independent finding of a violation of the law by a court of competent jurisdiction or an administrative or regulatory body.

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, then its proof must be based on an independent finding of a violation of the law by a court of competent jurisdiction or an administrative or regulatory body.

1997 Code of Ethics and Professional Conduct, Canon III, Obligations to the Client

Rule 3.301 Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the Members’ services, nor shall the Members state that they can achieve results by means that violate applicable law or this Code.

Commentary: This rule is meant to preclude dishonest, reckless, or illegal representations by a Member either in the course of soliciting a client or during performance.



Findings of Fact and Analysis

The Respondent was the proprietor of a firm bearing his own name and was retained to provide services in connection with a program of renovations and additions to the home of the Complainant and her husband.

Based on his conviction of grand larceny in the second degree by a state court, the NEC found that the Respondent had violated Rule 2.101. The applicable provision of the State Penal Code states that a “person steals property and commits larceny when, with intent to deprive another of property, or to appropriate the same to himself or to a third party, he wrongfully takes, obtains, or withholds such property from an owner thereof.” The Respondent committed the crime by overbilling his clients in connection with his professional services to them.

In addition, the NEC found that the Respondent had violated Rule 2.104. While the evidence did not conclusively establish the exact amounts of the monies involved, it was clear that the Respondent wrongfully and intentionally took substantial sums of money from the Complainant. Thus, viewing the evidence in the light most favorable to the Respondent, the Complainant was denied use of at least \$325,000 for approximately four years. It is reasonable to infer that the Complainant suffered financial harm and that the Respondent knew, or should have known, that she would suffer such harm.

The NEC also found that the Complainant failed to satisfy her burden of proving a third alleged violation, this one involving Rule 3.301.

Penalty

In determining an appropriate penalty, the NEC considered as key factors not only the seriousness of the Respondent’s conduct in and of itself, but the additional fact that his license to practice architecture was suspended and that his illegal and unethical actions were of an especially

egregious nature. The Respondent’s self-dealing did not reflect a single isolated act, but a continuing course of conduct.

Second, while admitting his criminal conviction and his suspension from the practice of architecture, he offered no reasonable excuse for his conduct. Worse, he did not appear to have acknowledged the full seriousness of his actions, nor their ethical implications.

Third, the Respondent’s actions violated the trust that his clients placed in him when retaining his services and reflects poorly on both the profession and the Institute. His criminal conviction, as well as the fact that he is an AIA Member, were reported in the press and become a matter of public knowledge. Therefore, his actions harmed both the AIA and the profession of architecture.

Given these factors, the NEC imposed the penalty of a four-year suspension from membership during which the Respondent is prohibited from exercising any of the rights and privileges associated with AIA membership, including use of the Institute’s name, initials, or symbols, until he is reinstated in good standing.

Members of the National Ethics Council

Ronald P. Bertone, FAIA
Brian P. Dougherty, FAIA
Duane A. Kell, FAIA
Phillip T. Markwood, FAIA
D. Susan J. O’Brien, AIA
Kathryn T. Prigmore, FAIA

The Hearing Officer, Peter Piven, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure.

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