



Making False Statement of Material Fact

Summary

The Chair of the National Ethics Council (“Council” or “NEC”) dismissed a Complaint that alleged that an AIA Member violated Rule 4.103 of the Institute’s 2007 Code of Ethics and Professional Conduct in connection with her firm’s employment of the Complainant. The Chair determined that the allegations, if found to be true, would not sustain a finding of violation of Rule 4.103.

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

References

2007 Code of Ethics and Professional Conduct, Canon IV, Obligations to the Profession

Rule 4.103 Members speaking in their professional capacity shall not knowingly make false statements of material fact.

Commentary: This rule applies to statements in all professional contexts, including applications for licensure and AIA membership.

Allegations

The Complaint alleges that the Respondent’s architectural firm hired the Complainant, a Canadian citizen, in March 2007 to work in the firm’s New York office. As alleged by the Complaint, the firm subsequently agreed to assist the Complainant in his efforts to obtain permanent resident status in the United States and then, in March 2008, terminated the Complainant’s employment prior to the date he

would have received his “green card.” The Complaint alleges that the Complainant would not have pursued permanent resident status, which requires considerable time and expense, if he had known that he would be laid off.

The Complaint also alleges that the Respondent responded to the Complainant’s request to be rehired by stating in a May 2008 letter:

Unfortunately, nothing has changed with regard to the workload here or the skill set alignment that would allow us to bring you back.

The Complaint alleges that this statement is false because the firm was “looking for architects” at the time the Complainant was laid off and was still looking as of October 2008, as described in the firm’s Web site advertisement for a Senior Project Architect.

Applicable Rules of Procedure

Section 3.2 of the NEC’s Rules of Procedure states, in part:

A Complaint must allege violation of one or more Rules of Conduct stated in the Code.

Section 3.3 of the Rules of Procedure states, in part:

The Chair of the NEC reviews all Complaints preliminarily to determine if . . . the allegations, if found to be true, could sustain a finding of violation of a Rule of Conduct . . .

Section 3.4 of the Rules of Procedure states, in part:



THE AMERICAN INSTITUTE OF ARCHITECTS

**Code of Ethics and
Professional Conduct
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The Chair may dismiss a Complaint that fails to meet any of the requirements of these Rules.

Analysis

The Complaint alleges that the Respondent, an AIA Member, violated Rule 4.103, which provides:

Members speaking in their professional capacity shall not knowingly make false statements of material fact.

Rule 4.103 applies to “false statements of material fact.” The truth or falsity of the Respondent’s May 2008 statement regarding her firm’s workload or whether there were staff openings is relevant only if that information is “material.” As defined in Black’s Law Dictionary, a “material fact” is a fact that is necessary to determine the outcome of an issue or goes to the merits of an issue.

Assuming that the Respondent’s firm did have a staff opening in May 2008 that the Complainant was nominally qualified to fill, the Respondent’s statement about the reason for not offering the Complainant the job was not relevant to the decision of the firm not to hire him. To put it another way, according to the allegations in the Complaint, the firm decided not to rehire the Complainant for some other reason but did not tell him the real reason. In any event, even assuming for the sake of this discussion that those allegations are true, the truth of the Respondent’s statement was not material to the firm’s decision not to rehire the Complainant.

Because the Respondent’s statement, even if false, was not material to whether the firm decided to employ the Complainant, it would not constitute a violation of Rule 4.103.

The Complaint also suggests that the Respondent’s firm violated Rule 4.103 by initially agreeing to employ the Complainant and to as-

sist him in obtaining a green card and then terminating his employment. Even if the Respondent is considered responsible for her firm’s actions, as the Complainant asserts, any such conduct by the firm is not a statement of material fact that could be found to be false. A promise is not a statement of fact but is a statement of intent.

The firm’s breach of any promise to employ the Complainant or to assist him in connection with obtaining a green card, therefore, does not constitute a false statement of fact and cannot constitute a violation of Rule 4.103. A claim that the firm knowingly made such promises under false pretenses might support a fraud claim under Rule 2.104. The Code of Ethics, however, would require an independent finding of fraud by a court or administrative or regulatory body before finding a violation of this rule. (*See Rule 2.104, Commentary.*)

Conclusion

The Chair has dismissed the Complaint because it does not allege conduct that could sustain a finding of violation of Rule 4.103. (*See NEC Rules of Procedure, Sections 3.3 and 3.4.*)

Members of the National Ethics Council

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