



Alleged False Statement and Partiality Toward a Party to a Contract

Summary

The Council dismisses a complaint against a Member who issued an addendum to a bid package that disapproved a particular subcontractor from working on the project or providing materials. Contrary to the subcontractor's allegations, the addendum was not false, fraudulent, or in violation of law, and did not represent improper partiality toward the general contractor. The complaint is dismissed.

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

Reference

*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.

Rule 2.104 Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

*Code of Ethics and Professional Conduct,
Canon III, Obligations to the Profession*

Rule 3.104 When acting by agreement of the parties as an independent interpreter of building Contract Documents and the judge of contract performance, members shall render decisions impartially, favoring neither party to the contract.

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

Rule 4.106 Members speaking in their capacity as architects shall not knowingly make false statements of material fact.

Facts

A member of the AIA was the architect on a series of projects for the one owner. On two successive projects for this owner there were disputes between the general contractor and the landscape subcontractor that resulted in delays and the filing of liens by the subcontractor. When a third project was put out for bid, the owner directed the member to issue an addendum to the bid documents that would exclude the subcontractor from working on the project. The addendum stated, "[subcontractor] is not approved to perform work on this project, or to provide any materials."

The subcontractor commenced this action against the architect alleging that the exclusionary addendum was false and malicious in failing to explain that the problems on the previous projects had been the fault of the general contractor. The addendum is also claimed to be an unlawful restraint of the subcontractors "right to contract" and in breach of the architect's duty of impartiality as between the general contractor and the subcontractor.

Discussion

Several of the claimed violations in this case can



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*Code of Ethics and
Professional Conduct
DECISION 88-8*

be disposed of with little discussion. Taking Rule 2.101 first, the complainant has cited no applicable statute or common law principle that the architect violated. We agree with the hearing report that there is no proof of any illegal conduct here, let alone a knowing violation of the law.

There is also no evidence of fraud or a wanton disregard of the subcontractor's rights as prohibited by Rule 2.104. The architect would have no reason to want to punish the subcontractor for filing liens on two projects. The member acknowledges that, in hindsight, the addendum could have been handled differently, but there simply is no basis to find that there was fraud or a conscious indifference to some potential for injury to anyone. The complainant has not met his burden of proof on this charge.

The claim under Rule 3.104 arises from a misunderstanding of the contractual relationships of the parties on the job. The subcontractor apparently believed that the architect was the referee for disputes with the general contractor. This is not normally the case, and none of the contracts involved here made the architect the arbiter of such disputes. The member was the judge of the general contractor's performance and made decisions in that capacity, but he never agreed to intervene in disputes between the general contractor and his subcontractors. Since the required agreement never existed, there is no basis to allege that the member failed to live up to it.

Finally, there is the complainant's charge that the addendum statement falsely implied that the subcontractor was incompetent and damaged its reputation in the industry. We agree with the hearing report that the addendum statement was not false and does not violate Rule 4.106. The statement is a straightforward expression of the owner's decision not to permit the subcontractor to work on the project. It is not written in a manner that implies criticism of the quality of work previously done. We don't think that the architect was required to include the subcontractor's explanation of the situation in the

addendum. The omission of such an explanation does not make the statement any less true.

Conclusion

None of the charges made against the member are supported by the evidence presented by the complainant. The complaint is therefore dismissed.

Samuel A. Anderson, III, FAIA, Chair
Harry Harmon, FAIA
Glenn A. Buff, FAIA
Robert V. M. Harrison, FAIA
Kirk Miller, AIA

The hearing officer, A. Notley Alford, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure. James A. Clutts, FAIA, a member of the Council, also did not participate.

May 22, 1989