



Material Alteration of Project Scope and Objectives Without Client's Consent

Summary

The Council found no violation of R. 3.103 of the Code of Ethics and Professional Conduct by a Member who did not advise a client of a change by the contractor in the method of installation of a roof.

All initials, names, dates, places, and gender references used in this Decision are fictitious.

Reference

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

R. 3.103 Members shall not materially alter the scope or objectives of a project without the client's consent.

Facts

A client's building committee designated Mr. M as its representative and authorized him to obtain bids for the replacement of a roof. Acme Roofing Company (Acme) was one of several contractors who submitted a bid for the project. Acme's fixed price bid for the installation of the replacement roof was prepared from information provided by Mr. M and without close inspection of the property. After reviewing a number of bids, the building committee selected Acme as the contractor for the project. Mr. M asked an architect acquaintance, Mr. A, for advice on how to proceed. There were no plans or specifications, but simply an understanding of the bid by the building committee and an understanding of the project by Acme. Mr. A prepared AIA Document

A107, on which he listed himself as architect of record. He attached copies of pages from a detail manual showing standard details for installation of the type of roof proposed by Acme. Mr. A was not asked to, and in fact, prepared no plans. Mr. A rendered all services without compensation. He agreed, at the request of Mr. M, to observe the work of the contractor and to approve requested payments, if appropriate. The committee and Acme both signed the AIA document A107. Shortly after work began and after Acme had removed part of the old roof, Acme proposed a method of installation different from the method it had anticipated. Acme consulted with Mr. A, and they agreed on an alternative method of installation. Mr. A kept Mr. M informed of these developments. Although Acme made statements that the alternate installation method would take more time and material, it did not request an amendment to its contract or any change order. Mr. A prepared no change order. Work proceeded and was finally finished after many months. Acme had submitted one change order about half way through the project. Mr. A did not approve its payment. Acme continued work and did not raise the issue of change orders again until the project was completed. It then submitted eight more change orders which increased the project price by \$20,000. Mr. A approved payment of only \$800. When Acme complained to the client's building committee, it refused to pay more than the amount approved by Mr. A. The building committee told Acme that it had been unaware of and had not authorized any additional work. Acme filed a Complaint against Mr. A alleging that he was obligated as architect of record to advise the client of the change in the method of installation. Acme alleged that such a change was a material change in the scope of the project about which the client should have been



notified.

Discussion

Mr. A denied that he had any obligation to obtain the client's consent to the change in the method of installation for several reasons:

- He had no contractual relationship with the client that would require him to seek their consent to the change;
- Even if he had such an obligation, he discharged it by keeping the client's agent, Mr. M, fully advised about all changes;
- He had no authority to and, in fact, did not agree to any increase in compensation under the contract between the client and Acme; and
- Means and methods of construction are the responsibility of the contractor, changes in which are not a material alteration of the scope or objectives of the project.

It is not necessary for the Council to sort out the contractual relationships and obligations among the parties to decide this case. Suffice to say that any Member who inserts his or her name as architect of record in any contract, whether he or she is compensated or not, may be assuming the professional obligations included in the terms of that contract.

The facts in this case represent a classic example of the kind of conflicts and problems that can arise when parties to a contract perceive the same event from differing viewpoints. They believe they are talking about the same thing. But because no one puts anything in writing, they do not understand until too late that they were not in agreement at all. What the contractor viewed as a major change in the scope of the project was viewed by the architect and the client as simply a change in methods and means of construction, which are the sole responsibility of the contractor. The client felt it had contracted for the

installation of a replacement roof of a certain type. At the conclusion of the project that is precisely what it had. Therefore, it perceived no change in the scope or objectives of its project.

Conclusion

The architect did not violate R. 3.103. Even if we accept as true the contractor's claim that the change in installation method was a major change in the scope of the work, the architect communicated that information to the client's designated agent. The contractor did not request any amendment to the contract or the issuance of any change order prior to the end of the job to reflect its increased labor and material costs. Even after it submitted its first change order, which the architect refused to approve for payment, it continued work on the project with no further request for payment of the change order. In the absence of any of those actions by the contractor, we conclude that the architect had no duty to communicate anything more than he did.

A. Notley Alford, FAIA, Chairman
Samuel A. Anderson III, FAIA
Glenn Allen Buff, FAIA
Harry Harmon, FAIA
L. Kirk Miller, AIA

As provided in the Rules of Procedure of the National Judicial Council, the Hearing Officer, James A. Clutts, FAIA, did not participate in the decision of this case. Robert V.M. Harrison, FAIA, did not participate in the decision of this case.

June 22, 1992