



Failing to Develop a Design That Could be Constructed for the Client's Stated Budget

Summary

The Council found no violation of R. 2.104, R. 3.301, and R. 4.106 based on allegations that the architect failed to develop a design that could be constructed for the client's stated budget.

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.

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

Commentary: Conduct that brings into serious question a member's qualifications to assume the fiduciary duties of an architect is the basis for discipline even if that conduct did not occur in the course of practice. When an alleged violation of this rule is based on a violation of a law, 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.

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

R. 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. For example, it would cover the conduct of an architect who provides conceptual drawings, based on an inadequate site examination or without regard for zoning laws, that lead a prospective client to believe that a design could be achieved when, in fact, it could not.

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

R. 4.106

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

Facts

A client consulted an architect about building a custom home in a new golf community development. The client had been told by a sales representative of the developer that houses could



be constructed in the community for \$50 per square foot. After the architect and client conferred about the client's program, the architect advised that a \$60-\$70 per square foot price would be more realistic. The client retained the services of the architect. AIA standard document B151 was signed. It covered basic architect's services from design through construction documents on a 3000 square foot house. No fixed limit of construction cost was agreed on as described in Article 5.2.2 of the contract. The client believed that she had clearly communicated the expectation of a design that could be built for a maximum cost of \$210,000 (3000 square feet x \$70 per square foot), with no allowances. The architect believed the client's budget to be around \$200,000. He denied that the client had ever stated that \$210,000 was the absolute upper limit of the construction budget.

The architect was enthusiastic about getting in on the early construction in the developing community with a project that potential buyers could see. The client and the development's sales staff loved the initial design presented by the architect. The client made some modifications to the design. The architect advised that the design as modified might be more in the \$75-\$85 per square foot range. Before completing construction documents, the architect put the project out for estimate. He wanted to get an idea of what construction cost might be. Because construction documents had not been prepared, the architect expected high estimates that included numerous allowances. The architect then expected to modify the design and more clearly specify items that would not be included as allowances. In summary, he expected that the final construction bids would be lower than the preliminary estimates.

Several estimates were received. All were in the \$300,000 range, plus allowances. All estimates were within about 10% of each other. The client was horrified. If initial estimates were this far from the expected budget, final bids would be even higher. The architect began modifying the design everyone liked so much, but could not

reduce the estimated construction cost to \$210,000. He prepared several other designs that were more likely to meet the client's budgetary needs, but they did not meet the client's aesthetic expectations. After several months, and multiple designs, the client discharged the architect alleging that he had failed to deliver an approved set of construction documents for the expected budget of \$210,000. A demand was made for the refund of a portion of the fees paid to the architect.

The client filed an ethics Complaint alleging that the architect had fraudulently induced the signing a contract for design services that the architect could not perform. The client also alleged that the architect had recklessly misled him into thinking that the initial design could be built for \$210,000.

Discussion

Two occurrences led to this ethics Complaint being filed--miscommunication between the architect and client, and competing and incompatible design goals. Even though the architect and client both signed the B151, the client did not insert an absolute maximum construction cost in Article 5.2.2. The oral communications about construction cost did not result in an understanding between the architect and client. The architect and client also held opposite views on the purpose of pre-bidding estimates--the architect expected to get a high estimate and revise downward; the horrified client expected the cost to increase substantially from the initial estimates. When the architect attempted redesign to reduce the cost of construction, the client balked at suggested changes that would have accomplished that goal because they did not meet his aesthetic criteria. These miscommunications and the client's refusal to modify his incompatible design goals resulted in an impasse and the termination of the architect's services.

The client's allegations all assumed that the architect had intentionally or recklessly misled



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him about the possibility of designing and building the kind of house the client wanted for the price he expected to pay. The Council has addressed R. 2.104 and the concepts of "fraud" and "wanton disregard" in previous Decisions. Fraud requires some intentional action to mislead.

Wanton disregard implies "...something more than simple negligence, but something less than intentionally damaging action." No evidence was presented that would support a finding that the architect intentionally misled the client or acted in any way calculated to or having the effect of damaging the client. The architect advised the client in the beginning that a \$50 per square foot construction cost would buy not much more than a box with a roof. After his first meeting with the client, the architect advised that the program presented by the client would require a design in the \$60-\$70 per square foot range. Apparently the client had some intention of paying \$70 per square foot because the \$210,000 construction cost represents the sum of the 3000 square feet envisioned in the client's program multiplied by the \$70 figure.

R. 3.301 "...is meant to preclude dishonest, reckless, or illegal representations by an architect..." No evidence was presented that would support a finding that the architect made any such representations. R. 4.106 prohibits architects from making "...false statements of material fact."

No evidence was presented that would support a finding that the architect made any false statements. The architect told the client after their first meeting that construction costs would exceed the \$50 per square foot figure given by the development's sales representative. At the review of the initial design, when the client made additions, the architect advised that construction costs would go up. The architect obtained the preliminary estimates precisely to determine whether he was in the range of the client's budget.

The client was unwilling to give up certain features of the design so that cost could be reduced. At the time of the hearing the client was in the process of completing construction of a home. However, no evidence was presented to show that the design was essentially similar to

what the architect had proposed or that it was being constructed for \$210,000 with no allowances.

Conclusion

The architect did not violate R. 2.104, R. 3.301, or R. 4.106. The person bringing an ethics Complaint has the burden of proving the case. No evidence was presented to show fraudulent, misleading, or false communication by the architect. No evidence was presented to show that the architect's initial design could be constructed for the client's expected budget. Whether the architect failed to perform contractual obligations is a matter for arbitration or the courts. The Council has no authority to resolve business disputes.

L. Kirk Miller, FAIA, Chairman
Samuel A. Anderson III, FAIA
Melvin Brecher, FAIA
Robert P. Madison, FAIA
D. Susan J. O'Brien, AIA
Norma Merrick Sklarek, FAIA

The hearing officer, Kenneth DeMay, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedures.

April 15, 1994