

20 March 2014

### **Discipline Report 3**

#### **Background**

In March 2011, a complaint was laid against an architect in relation to a residential project. A disciplinary hearing was held, which resulted in a recommendation, accepted by the Board of the NZRAB, that the architect breached the Code of Minimum Standards of Ethical Conduct for Registered Architects. The breach was of section 50 of the architects' code of ethics which states:

*A registered architect must not undertake professional work unless the registered architect and the client have agreed the terms of the appointment, which may include but need not be limited to,—*

- (a) scope of work:*
- (b) allocation of responsibilities:*
- (c) any limitation of responsibilities:*
- (d) fee, or method of calculating it, and terms of trade:*
- (e) any provision for termination:*
- (f) provision for professional indemnity insurance.*

Following submissions, the NZRAB Board determined that the architect should be:

- censured
- required to submit for review his current agreements for service within two months and then annually all agreements for service for all work entered into for two years, supported by statutory declarations
- required to pay costs of \$26,561.38.

#### **The Complaint**

In 2001, the complainants retained the architect to prepare plans for the renovation of their house. Two efforts in that regard came to naught and in 2007 the complainants accepted the architect's recommendation that a better approach was to demolish their home and build a new dwelling, the architect being instructed to prepare a design.

The complainants did NOT specify a budget to the architect, their reason being that they did not want to encourage the architect to design up to any stated sum of money. However, a price per square metre was discussed.

Detailed plans were prepared, but later the project was abandoned. In March 2011, the complainants lodged a complaint with the NZRAB.

The NZRAB investigated the complaint and concluded that there was one matter for which the architect should be held to account, that being the lack of terms of appointment between the parties. There was no contract between the parties, their only agreement being a verbal understanding that the architect would charge an agreed fee based on hours worked.

## **The Response**

The architect said in general he used the standard NZIA agreement for architects' services, but: "In this case I did not use either of these documents due to the long-standing relationship with the client, and the agreement to only charge for services at the reduced hourly rate. I accept that I did not follow best practice."

The architect, through his counsel, went on to say that though he hadn't followed best practice, an agreed hourly rate of payment was, in effect, agreed terms of appointment. Argument was also presented that the numerous emails between the parties as the work progressed and various authorisations by the client to proceed amounted to a contract.

## **Findings**

In its report to the NZRAB Board, the Disciplinary Committee said: "Accepted professional architectural standards require agreed terms of appointment comprising much more than oral agreement on an hourly charge-out rate."

The Disciplinary Committee reviewed the work done and said that:

- the architect was experienced and should have known that the code of ethics require agreed terms of appointment between architects and their clients
- there was no agreement between the parties on the scope of the project and the architectural services to be provided
- there were no agreed stages for the provision of services and timelines for their provision
- there was no agreed provision of the scope of fees and costs; including an estimate of the total cost of the total services to be provided, each stage of the agreed services, and consultant services
- the mutual responsibilities of the architect and client, the basis and extent of the architect's liability, the architect's professional indemnity insurance, and details of the contract's administration were not identified or recorded.

The Disciplinary Committee Report noted the advice of an expert witness that:

*Obtaining an initial verbal agreement for charging on a time charge basis and agreed hourly rate without clearly addressing any other matters, including failure to define the scope, range of services and even the various rates for the different personnel in the office, is grossly deficient and falls well below what is recognised and expected as standard practice and minimum professional standards in New Zealand.*

The Disciplinary Committee's Report concluded that there were grounds for disciplining the architect, as the architect had breached the code of ethics requirement that "a registered architect must not undertake professional work unless the registered architect and the client have agreed the terms of the appointment."

## **Lessons to be learnt**

When accepting a commission, clear terms of appointment are required, of sufficient detail to give clarity to both parties given the nature of the work. The NZRAB recommends that agreed terms of appointment should be in writing and prepared with care. An architect is taking a great risk working in any other way. Not having clear expectations in writing is commercial and professional folly.

Though it was not central to the finding, the architect was also unwise to accept a commission from clients who were not prepared to specify a budget.