



Discipline Report No 6

Background

In June 2015, the NZRAB received a complaint against an architect in regard to a residential project that the complainant (the client) had to abandon when the full cost of the design became apparent.

The complaint went before a NZRAB Board Disciplinary Hearing which found that the architect had breached Rule 49 from the Code of Minimum Standards of Ethical Conduct for Registered Architects which requires that: "A Registered Architect must perform his or her professional work with due care and diligence."

As a result, the architect was censured, fined \$2,000 and required to pay costs of \$26,841.79 (GST included).

The Complaint

Over a 12 month period, the architect was engaged by the client to provide the concept, design and documentation for renovations and alterations to the client's residential property.

Initially, the client advised the architect that the available budget was \$150,000. Early in the process, the architect advised the client that "this figure will struggle to deliver your brief and at first glance ... a number in the +\$200,000 would be more realistic."

Plans were then prepared and paid for, and resource and building consents were granted.

The client then obtained two quotes from two building companies, the first being approximately \$707,000 and the second being approximately \$556,000.

As a result, the client was not able to proceed with the project and laid a complaint with the NZRAB, alleging that the architect had failed to "perform his or her professional work with due care and diligence," as required by the architects' code of ethics.

The Response

In response, the architect said that some clients, including this client, seek to reduce costs by taking charge of budget and costing matters, and only use his services for design and drawings. He further said that the client led him to believe that as the project was developing advice was being taken from a builder and the client was happy with the costings.

The architect said that he rejected the client's claim that a \$200,000 budget had been agreed to, as there was no communication to that effect. He also said that after he had

mentioned a possible cost of over \$200,000 the client made changes to the scope of work, some of which increased costs and others of which reduced costs, which he took to mean that the client understood the cost implications of the various changes to the design.

Thus, the architect said, the client had full control and responsibility for costing and procurement and at no time was he asked to be a part of this process and nor was it allowed for in his scope of works.

Findings

The Board Disciplinary Hearing found as follows.

On the balance of probabilities, the client did not understand what taking responsibility for costing and procurement meant and thought that a budget of \$200,000 had been agreed to, whereas the architect envisaged a budget of between \$200,00 and \$300,000.

The architect's initial concept plan included elements not in the brief such that the cost would have been well beyond \$300,000 and there was no evidence that the architect alerted the client to this.

There was a "significant disconnect" between the architect and the client as to what constituted budget responsibility. The client was endeavouring to obtain costs for the work but this did not constitute budget responsibility that being a matter which both the client and architect should collectively manage.

The Board concluded that the architect had failed to ensure that the design was reasonably within the client's budget or draw the client's attention to this fact or otherwise manage the clients expectations in regard to budget. In doing so, the architect had breached his ethical obligation to perform his professional work with due care and diligence.

Lessons to be learnt

To meet the architect's ethical obligations and, regardless of the terms of appointment, on these matters, the NZRAB Board identifies a number of aspects of service that a reasonably competent registered architect must undertake in providing the architect's services and managing a client's expectation in regard to budget, including but not limited to:

1. establishing the scope of the client's budget and whether it is inclusive of all project costs including various fees and GST
2. advising how realistic the client's budget figure is and if suggesting a revised budget figure ensuring that figure is realistic
3. ensuring subsequent and revised figures clearly define what is or is not included (unless this information is provided by others)
4. ensuring clients understand the different types of cost estimates available and that these will contain margins of error
5. providing sufficient information, in the form of an outline specification or notations on drawings, that would enable an estimate of cost appropriate to the design stage (if the estimate is required)

6. advising that a project budget should include a contingency for unforeseen items
7. providing a concept/preliminary design that could reasonably be achieved for the budget, or where proposals extend the original scope of work advise the likely budget implications (i.e. minimal or significant)
8. providing cost information, including consultant costs expended, in a timely manner and promptly when requested
9. when project cost information is provided for other parties, i.e. consultants or on a Building Consent application, ensuring that information is accurate and well informed (obtained from those responsible for estimates).

Behind these requirements lies the fundamental fact that an architect cannot contract out of his or her ethical obligations. Architects ethical obligations to their clients are immutable. Indeed, this is the essence of being a member of a profession, namely that professionals exercise care and judgement in tending to the interests of those that they serve, and, where applicable, the broader public. While obtaining cost estimates is a deliverable that can be transferred to the client, managing the clients' expectations in regard to budget cannot be.

This is not an isolated case. The NZRAB, and also the NZIA, are regularly approached with similar complaints. A clear precedent has now been set which will guide how the NZRAB responds to similar complaints in the future.