

June 2008

## **Discipline Report 1**

### **Background**

In mid 2006, the New Zealand Registered Architects Board received a complaint about the conduct of a Registered Architect. The complaint was investigated and the Board determined that, subject to final submissions, it should be put before a Disciplinary Committee hearing.

Shortly after that decision in principle was made, the parties advised the Board that a monetary settlement had been agreed to. The Board then determined that there was no reason to proceed with the case in terms of the public interest.

Given when the events in question occurred, the case was investigated in terms of the requirements of the Architects Act 1963 which set a higher benchmark<sup>1</sup> in terms of professional behaviour that would warrant an intervention by the registration authority, relative to those established later under the Registered Architects Act 2005.

**The complainant** alleged the following.

The complainant commissioned the Architect to design a residential home. The complainant alleged that the Architect acted unethically in designing a house for which the estimated construction cost was well in excess of the complainant's stated budget. The complainant further alleged that the Architect acted outside the Code of Practice and Professional Conduct by failing to obtain more than one estimate for the cost of construction of a house for them, as requested by the complainant.

After initial work on concepts, the complainant advised the Architect that the budget was \$400,000 (GST included). The Architect obtained an estimate from a builder for \$456,800 (GST included). Although it was in excess of the initial budget, the complainant agreed to proceed on the basis of the quote. The complainant then signed with the Architect an Agreement for Architect Services Short Form (SF1 2000) with an assessed value of the work of \$450,000 (GST excluded).

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<sup>1</sup> IE, the offence had to be worse for a disciplinary action to be justified.

Then, prior to commencing construction, the builder announced his retirement and withdrew from the construction process. The Architect obtained a new quotation from another builder of \$937,600 (GST included), well in excess of the complainant's budget. The complainant also obtained a quote from another builder for \$875,000 (GST included), again in excess of the budget.

The complainant said:

- he or she relied upon the professional advice from the Architect, having sold a property in expectation of the project proceeding, and had wasted 18 months and \$40,000 (GST included) in Architect's fees for a proposed house that the complainant could not afford to build
- the Architect failed to appreciate that construction costs in accordance with the documented designs were well in excess of the complainant's budget
- the budget problem would have been identified before further design and documentation work was carried out at the complainant's expense, if the Architect had obtained at least one further estimate earlier on, as instructed
- the Architect should have been able to design a property within or near to the complainant's budget, even without obtaining a quotation for its construction
- the Architect did not properly advise the complainant of the increases in potential construction costs due to changes to the plans that the complainant, the Council and the Architect were making
- there were significant delays in the design and documentation process.

**The Architect** responded as follows.

The Architect agreed that the complainant's initial budget was \$400,000 (GST included). However, the Architect did not accept that the complainant's expectations were unchanged throughout the design and documentation process. The Architect said he or she advised the complainant that historical dollar rates per square metre could not be used to price the design, and that the complainant would need cost advice early.

The Architect rejected the claim that he or she was directly requested to obtain two or more additional quotes; although the Architect accepted that this was discussed as an option should the negotiations with the first builder not be successful.

The Architect said:

- the first builder employed a quantity surveyor and the first builder explained his detailed estimate fully to the complainant, who accepted it as the basis on which to further proceed
- considerable changes were made to the design after the estimate was made, and it was made clear to the complainant that the costs of the drawings and other documents, and of construction itself would be directly affected
- the second builder reviewed the first builder's estimate, and errors in the work of the first builder, sub trades altering their submitted prices, and changes made to the design had all contributed to the increase in the proposed construction cost
- he or she discussed the potential cost effects of scope changes to the design with the complainant and added them up with the complainant present
- the delays were caused by the retirement of the first builder and a resource consent application being required to resolve a mistake in the District Plan in which a roadway access was wrongly designated
- the complainant was difficult to deal with.

## **Findings**

An Investigating Committee considered the case and provided a report to the Board. That report suggested the following:

There was little evidence to support the Architect's view that the complainant did not instruct the Architect to obtain alternative estimates, as recorded in emails.

The Architect's 'Residential Capability Statement' set out steps in cost control of a design project consistent with the standards of a Registered Architect. There was a significant issue as to whether these important steps were carried out in a documented way.

There was a significant issue as to whether the detailed design and documentation work that followed could have "pared back" the cost of the design of the proposed house.

There was a significant issue as to whether the Architect could have reasonably made a per square metre calculation or made an inventory of the design changes including the various requests made by the complainant, with some indication of possible cost. This list could have been discussed with the complainant to obtain approval or otherwise.

There was a significant issue as to whether the Architect's invoices could properly have identified changes in the scope of his work.

There was a significant issue as to whether it would have been reasonable to have the design scheme's compliance checked earlier in the process.

The informality of the Architect's office practices in relation to this project was noteworthy, as there seemed insufficient recording at critical stages of the process.

The Architect's informal relationship with the first builder was noteworthy, including "having a beer with him around the time of preparation of his estimate".

Based on the above, the Investigating Committee's advice to the Board stated:

*The Investigating Committee considers the following matters should be referred to a Disciplinary Committee:*

*That (the Architect) failed to act responsibly in carrying out all the duties undertaken and did not have proper regard for the interests of (the complainant) in one or more of the following respects:*

- 1. by failing to act responsibly and offering or providing services by not alerting (the complainant) sufficiently of the effects of the changes and scope of the design on the potential construction cost of the proposed house (section 2.2 of the AERB Code); AND/OR*
- 2. by not establishing and confirming as early as possible the services to be provided by not clarifying how the Cost Control cited in his Residential Capability Statement was to differ for this project (section 2.3 of the AERB Code); AND/OR*
- 3. by not adequately recording changes in scope or services to be provided from the Agreement for Services.*

## **Lessons to be learned**

The Architect had been sole principal in a small practice for more than ten years and had no peers there to discuss problems with. As the facts illustrate, in this case the Architect failed to communicate effectively and lost control of the project, reflecting apparent overconfidence, along with complacency and sloppy work practices. Project control was especially poor in relation to the size of the budget. The client was not given effective timely advice that the likely cost of construction would be significantly greater than the client had indicated was affordable. The casual mode of communication

resulted in assumptions being made that should not have been made. Record keeping was poor. The failure to comprehend the client's limitations in terms of affordability was especially noteworthy. The Architect seemed to lack self awareness of his or her behaviour as the project got into difficulty.

From this case, Architects need to remember the fundamentals about:

- always having absolute clarity about what each project entails and what the client can afford
- always keeping the client regularly briefed about developments and especially the cost implications of any changes
- always making sure that the client has agreed to any increase in scope and costs before any additional work begins
- always ensuring that communications are formal and recorded, and emails have the same precision as formal business letters.

In short, Architects are experts and in control of the process. It is no good blaming the client if you fail to do your job properly. If a client is impossible and you can't maintain control, then withdraw from the commission.