



Fraud and Wanton Disregard of the Rights of Others

Summary

Is failure to pay a court judgment fraudulent or a wanton disregard of the rights of the judgment holder?

The Council found no violation of R. 2.104 of the Code of Ethics and Professional Conduct when a Member failed to pay a judgment entered against him individually, and not in his capacity as an architect, for services rendered by a consultant.

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 which brings into serious question a Member's qualification 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.

Facts

The architect, Mr. A, engaged in a corporate business venture totally unrelated to the practice of architecture. The Internal Revenue Service (IRS) required that the business provide an MAI appraisal of some business property. Mr. B was

contacted by the accountant for the business and asked if he could provide such an appraisal. Mr. B responded in the affirmative and met with Mr. A to inspect the property. Mr. B learned that Mr. A was an architect. He also learned that the business venture and property in question were not related in any way to Mr. A's practice as an architect. When Mr. B's appraisal was presented to the accountant, he advised Mr. A that it was not an MAI appraisal and could not be used with the IRS. Another appraiser was hired who did provide an MAI appraisal, which was used in dealing with the IRS. Mr. B and the second appraiser agreed that "MAI" is a designation used by Members of the American Institute of Real Estate Appraisers (AIREA). It is not a type of appraisal. Mr. B claimed that what the IRS means by an MAI appraisal is a narrative appraisal prepared by someone who is a Member of AIREA. There was agreement that Mr. B was qualified by training and professional activities to prepare a narrative appraisal, even though he was not a Member of AIREA. However, the second appraiser and the business' accountant agreed that the narrative appraisal prepared by Mr. B was useless, because the information in it could not be duplicated using currently acceptable research techniques. Mr. B disputes that conclusion. When his bill for services went unpaid, he filed suit against Mr. A, individually. The business entity was not sued. Judgment was entered against Mr. A, individually. Mr. A claims that he did not receive notice of the suit. The parties dispute whether Mr. A can now legally appeal that judgment. It remains unpaid.

Discussion

A general definition of fraud can be stated as follows: Deceit or misrepresentation used to induce another to part with something of value.



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Mr. B parted with something of value—his time in preparing his appraisal—even though the end product could not be used by Mr. A and his business associates. However, there is no evidence that Mr. A or his accountant, who arranged for the appraisal, deceived Mr. B or misrepresented to him their requirements or intentions in order to obtain his services.

If we assume for the sake of argument that Mr. B has a "right" to have the judgment paid (and no evidence was presented that would support such a right), the issue of wanton disregard of that right must be addressed. Simply stated, wanton disregard is considered in the law to be something more than simple negligence, but something less than intentionally damaging action. Without making this Decision a legal treatise, a succinct definition of wanton disregard would be an action taken in disregard of a high degree of danger that is apparent or would be apparent to a reasonable person. Mr. A intentionally did not pay the judgment entered against him, because he sincerely, and not without some legal basis, believed that he should not be liable for a corporate debt. Additionally, Mr. A testified that the board of directors of the corporation for whom the appraisal was done voted not to pay Mr. B. because his appraisal was useless. Mr. A would have had a different kind of legal problem had he, as president of the corporation, paid the bill after being instructed not to. Nothing in this set of facts supports the conclusion that Mr. A's nonpayment represented an act done in disregard of a high degree of danger.

Conclusion

This is a case where a misunderstanding about the meaning of the phrase, "MAI appraisal," was compounded by the lack of anything in writing specifying the parties' intentions. There is no evidence that the architect engaged in any activity to defraud the appraiser of his services, or any activity showing a wanton disregard of the appraiser's "right" to be paid for those services.

The Council finds no violation of R. 2.104.

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As provided in the Rules of Procedure of the National Judicial Council, the Hearing Officer, Glenn Allen Buff, FAIA, did not participate in the decision of this case.

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