



IN THE MATTER OF the *Architects Act*, R.S.O. 1990, c. A.26, as amended ("the Act"), and Ontario Regulation 27 under the Act, as amended, ("the Regulation");

AND IN THE MATTER OF the *Statutory Powers Procedure Act*, R.S.O. 1990 C. S.22

AND IN THE MATTER OF a proceeding before the Discipline Committee of the Ontario Association of Architects pursuant to Sections 34 and 35 of the *Act* to hear and determine allegations of professional misconduct against **Joseph Battaglia**

Brad Green, Chair of)
the Tribunal)
David Landry, Member)
Robert Sirman,)
Lieutenant Governor)
in Council Appointee)

Joseph Battaglia, self-represented
Barbra Miller, Counsel to the Association
David Outerbridge, Counsel to the Tribunal

REASONS FOR THE DECISION AND ORDER OF THE DISCIPLINE COMMITTEE

The Discipline Committee of the Ontario Association of Architects (the Association) met on Wednesday, September 9, 2015 to hear and determine allegations of professional misconduct against Joseph Battaglia (the Architect), an architect licensed by the Association.

It was alleged that the Architect committed the following acts of professional misconduct, as set out in the Notice of Hearing dated March 26, 2015:

1. during 2014, Mr. Battaglia affixed his seal to a design with respect to the construction of a proposed daycare at 29 Gervais Drive, Unit 104, North York, Ontario that was not prepared in its entirety under his personal supervision and direction, contrary to subsection 19 of Section 42 of the Regulation;
2. during 2014, Mr. Battaglia affixed his seal to a design with respect to the construction of a proposed daycare at 29 Gervais Drive, Unit 104, North York, Ontario that was not prepared in its entirety under the personal supervision and direction of a member or a holder of a temporary licence, contrary to subsection 19 of Section 42 of the Regulation;
3. during 2014, Mr. Battaglia provided architectural services with respect to the construction of a proposed daycare at 29 Gervais Drive, Unit 104, North York, Ontario without an express written or oral contract, contrary to subsection 52 of Section 42 of the Regulation; and
4. the conduct and acts in which Mr. Battaglia engaged, as referred to in items 1, 2 and 3 above, would reasonably be regarded by members of the Association as disgraceful, dishonourable or unprofessional, pursuant to subsection 54 of Section 42 of the Regulation.

EVIDENCE AND SUBMISSIONS

As the Architect was not present at the time scheduled for the commencement of the hearing, the Committee waited for 80 minutes to allow time for the Architect to appear. Following the Architect's arrival, the Committee convened the hearing at 10:20 a.m.

Following the reading of the charges, the Architect pleaded guilty to the four charges.

Counsel for the Association, and the Architect, presented evidence and made submissions on penalty.

The Association entered into evidence an Agreed Statement of Facts, agreed to by the Association and the Architect, with various attached documents. This volume was marked as Exhibit 1.

The Agreed Statement of Facts and the guilty plea demonstrate that:

- a) The Architect operates as Battaglia Architect Inc.
- b) The Architect was approached in approximately April 2014 by Mr. Stavros Charitonos, P.Eng in connection with the design of a proposed daycare facility at 29 Gervais Drive, Unit 104, North York, Ontario.
- c) Mr. Charitonos provided the Architect with architectural drawings prepared by an individual at A.R. Design Associates who is not a member of the Association or the holder of a temporary licence.
- d) Mr. Charitonos advised the Architect that the City of Toronto plan examiner had requested architectural drawings signed and stamped by a licensed architect. Mr. Charitonos asked the Architect to review and stamp the existing architectural drawings.

- e) The Architect signed and stamped the existing architectural drawings. The design that was set out in the drawings was not prepared in its entirety under the Architect's personal supervision and direction.
- f) Although there is a letter from Mr. Charitonos to the Architect dated April 4, 2014 asking the Architect to submit a proposal for reviewing and stamping the architectural drawings, there was no written contract, and the Architect by his guilty plea has acknowledged that there was no express oral contract.

The Association provided the Committee with a copy of Reasons for Decision and Order relating to the Architect's prior conviction by the Association's Discipline Committee in 1992 for professional misconduct involving the Architect's participation in a construction project for which a building permit had not been issued.

Counsel for the Association submitted that the professional misconduct at issue in this case was very serious. She argued that an architect's seal is sacrosanct, that all architects know they are not permitted to stamp drawings prepared by others, and that the Architect's conduct was a clear breach of applicable rules. Based on the seriousness of the misconduct, and the Architect's prior disciplinary history, she requested a penalty consisting of a three-month suspension of the Architect's licence and certificate of practice, publication of the Committee's reasons for decision and order, a requirement that the Architect attend meetings with the Association's practice advisors, and an order that the Architect pay the costs of these proceedings in the amount of \$8,760, which was identified as being approximately 60% of the Association's actual costs.

The Architect advised that he has been a licensed architect for 30 or more years, and is currently 61 years of age. He advised that Battaglia Architect Inc. employs seven people in addition to the Architect, and that none of these seven individuals is a licensed member of the Association, although one individual has completed the requirements for licensing. The Architect expressed concern

that, if his licence or certificate of practice were suspended, these individuals would lose their employment. The Architect asked for a transition period prior to the imposition of any such suspension, to allow time for these individuals to find new employment and to allow the Architect to finish work on existing projects.

The Architect did not apologize or express remorse for his actions. In his submissions to the Committee he stated that the daycare design was not a major project, and that he was simply trying to help other people who already had architectural drawings. The Architect submitted that the penalty requested by the Association was excessive, and that if a suspension was to be imposed it should be reduced to two months. He requested that, if he was to be ordered to pay costs, the quantum of costs be reduced.

FINDINGS

THIS COMMITTEE FINDS that:

- a) The Architect engaged in an act or acts of professional misconduct as defined in s. 42(19) of the Regulation made under the Act, in that, during 2014, the Architect affixed his seal to a design with respect to the construction of a proposed daycare at 29 Gervais Drive, Unit 104, North York, Ontario that was not prepared in its entirety under his personal supervision and direction;
- b) The Architect engaged in an act or acts of professional misconduct as defined in s. 42(19) of the Regulation made under the Act, in that, during 2014, the Architect affixed his seal to a design with respect to the construction of a proposed daycare at 29 Gervais Drive, Unit 104, North York, Ontario that was not prepared in its entirety under the personal supervision and direction of a member or a holder of a temporary licence;
- c) The Architect engaged in an act or acts of professional misconduct as defined in s. 42(52) of the Regulation made

under the Act, in that, during 2014, the Architect provided architectural services with respect to the construction of a proposed daycare at 29 Gervais Drive, Unit 104, North York, Ontario without an express written or oral contract; and

- d) The Architect engaged in an act or acts of professional misconduct as defined in s. 42(54) of the Regulation made under the Act, in that, the conduct and acts in which the Architect engaged, as referred to in items a, b and c above, would reasonably be regarded by members of the Association as disgraceful, dishonourable or unprofessional.

PENALTY

In determining the appropriate penalty, the Committee considered the nature of the offence, protection of the public, reformation of the Architect and the deterrence of others. The panel considered the evidence and the submissions on penalty of the Architect and counsel for the Association, including in particular the Architect's prior disciplinary history, his age and years of experience, and his lack of expression of remorse.

The Committee considers the Architect's professional misconduct in this case to be very serious. An architect's seal and signature represent a promise to the client, the public and the profession that the design reflected in architectural drawings was prepared by a licensed architect in accordance with applicable professional standards. It is highly prejudicial to the profession, and potentially dangerous to the public, for an architect to sell his or her seal without applying the professional judgment and care that the application of the seal signifies.

1. **THIS COMMITTEE ORDERS** that the Architect's licence and certificate of practice shall be suspended for a period of 3 months, beginning on January 15, 2016 or such earlier date as the Association and the Architect may mutually agree.

2. **THIS COMMITTEE ORDERS** that the Architect pay to the Association a portion of the costs of this proceeding, which is hereby fixed at \$ 8,760.00 to be paid in 17 installments of \$500 each, payable at the end of each month, commencing on October 31, 2015, followed by an 18th and final installment of \$260.
3. **THIS COMMITTEE ORDERS** that in the event that the Architect fails to comply with paragraph 2 above, the Architect's licence shall be automatically suspended until such time as the payment contemplated in paragraph 2 is made current.
4. **THIS COMMITTEE ORDERS** that the Decision and Order of the Discipline Committee, and the Reasons therefore, be published in an official publication of the Association including the name of the Architect and be recorded on the Register of the Association.

The deferred commencement of the suspension of the Architect's licence and certificate of practice as provided for in para. 1 of the Penalty Order above is designed to ensure that the Architect has adequate time to prepare himself, his clients and his employees for the transition. The Committee has ordered the suspension of the Architect's certificate of practice in para. 1 based on the Architect's evidence that there is currently no other licensed member of the Association within his practice. If, during the entire time of the suspension ordered in para. 1, another licensed member of the Association forms part of the Architect's practice, and the Association is satisfied as a result that the certificate of practice need not be suspended, then the order that the Architect's certificate of practice be suspended shall not apply.

DATED AT TORONTO THIS 9TH DAY OF SEPTEMBER, 2015