

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 *Architects Act* to hear and determine allegations of professional misconduct against **Lubomir Dzamba and Stafford Haensli Architects Inc.**

Catherine Friis, Member)	
)	
Rick Bruynson, Member)	Heard Wednesday, the 27 th day of
)	January, 2021
Elaine Mintz, Lieutenant Governor in Council)	
Appointee)	

John Terry, Counsel to the Tribunal
Paul Davis, Counsel to the Association

REASONS FOR THE DECISION AND ORDER OF THE DISCIPLINE COMMITTEE

The Discipline Committee of the Ontario Association of Architects met on Wednesday, January 27, 2021 (previously scheduled for November 11, 2020) to hear and determine allegations of professional misconduct against Lubomir Dzamba, a former architect licensed by the Ontario Association of Architects (the Association) and Stafford Haensli Architects, a former holder of a Certificate of Practice. Mr. Dzamba and Stafford Haensli Architects are also collectively referred to below as the "Former Architect/Holder".

It was alleged that the Former Architect/Holder committed the following acts of professional misconduct, as set out in the notice of Hearing dated September 18, 2019:

1. he engaged in an act or acts of professional misconduct as defined in s. 42(9) of the Regulation made under the Act in that he failed to maintain the standards of practice of the practice, and in particular, he failed to meet financial obligations to employees of the Former Holder, which, pursuant to s. 49(5) of the Regulation made under the Act, is part

of the standard of practice of architecture;

2. he engaged in an act or acts of professional misconduct as defined in s. 42(22) of the Regulation made under the Act and in s. 42(1) of the Regulation made under the Act by contravening s. 41 of the Act in that he failed to return a seal forthwith to the Registrar upon cancellation of your licence and certificate of practice;
3. he engaged in an act or acts of professional misconduct as defined in s. 42(1) of the Regulation made under the Act by contravening s. 11(1) of the Act in that he engaged in the practice or architecture or held himself out as engaging in the practice of architecture when no longer licenced or the holder of a certificate permitting him to do so under the Act after December 11, 2018;
4. he engaged in an act or acts of professional misconduct as defined in s. 42(26) of the Regulation made under the Act in that he failed to respond promptly to a letter he received from the Registrar in respect of his professional conduct on or about March 5, 2019; and
5. he engaged in an act or acts of professional misconduct as defined in s. 42(54) of the Regulation made under the Act, in that he engaged in conduct or an act relevant to the practice of architecture that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional, and in particular, he failed to meet financial obligations to employees, and repeatedly broke promises to and acted unprofessionally in respect of the employees of the Former Holder.

The Former Architect/Holder entered a plea of not guilty to the charges.

FACTS

At the hearing, the Association entered the following evidence: (a) the affidavit of Nedra Brown, former Registrar of the Association, dated October 13, 2020; (b) the affidavit of Joginder Dhanjal, Senior Project Manager at the Peel District School Board, dated November 2, 2020; and (c) the Reasons for Decision of the Employment Standards Officer respecting Stafford Haensli Architects, dated May 2, 1990. Mr. Dzamba provided oral evidence and was cross-examined by counsel for the Association.

Mr. Dzamba explained that he had practised with Stafford Haensli Architects since 1981. According to him, over the five or six years before the events giving rise to this disciplinary action, the firm had lost 60 per cent of its income due to changes in the industry because the fees the firm was able to charge did not adequately reflect the actual scope of the work carried out on its projects. When Mr. Dzamba was experiencing financial difficulty he reached out to Pro-Demnity Insurance Company, the mandatory insurer for architects and holders of a certificate of practice, to discuss premiums and payment options.

On November 20, 2018, Pro-Demnity advised the Registrar of the Association that the insurance policy for Mr. Dzamba and Stafford Haensli Architects had been cancelled for failure to make premium payments. On the same date, the Registrar issued a Notice of `Default and Intention to Cancel Mr. Dzamba's licence and Stafford Haensli Architects' certificate of practice as of December 11, 2018.

On December 11, 2018, Mr. Dzamba's licence and Stafford Haensli Architects' certificate of practice were cancelled. On December 12, 2018, the Registrar wrote to Mr. Dzamba advising him of the cancellation of his licence and Stafford Haensli Architects' certificate of practice, and requiring him to return his licence, certificate of practice, and seal to the Association by December 21, 2018. The Registrar's letter included a copy of the Association's Guidelines for a Former Architect whose Licence and Certificate of Practice have been cancelled. Mr. Dzamba did not return these items to the Association by December 21, 2018 and had still not done so as of the date of this hearing.

On January 29, 2019, the Registrar wrote to Mr. Dzamba advising him that a complaint had been filed with the Association in relation to him and Stafford Haensli Architects, and asked for a response by February 7, 2019. Although the Association, at Mr. Dzamba's request, granted him an extension of time to respond to this complaint, he never did so.

On January 6, 2019, a Stafford Haensli Architects employee (also one of the complainants to the Association) filed a claim with the Ministry of Labour against Stafford Haensli Architects alleging that she was owed wages. Despite being contacted by the Employment Standards

Officer responsible for this matter, Mr. Dzamba, who was identified as the representative of Stafford Haensli Architects, failed to submit any evidence in response to the claim. The Employment Standards Officer found that Stafford Haensli Architects had breached the Employment Standards Act and owed the employee \$35,535.76 in wages, and issued a Notice of Contravention and Order to Pay.

There is conflicting information as to when and if Mr. Dzamba clearly notified his clients of the revocation of his licence and Certificate of Practice. The affidavit of Mr. Dhanjal states that Stafford Haensli Architects continued to provide architectural services to the Peel District School Board after December 11, 2018 when Mr. Dzamba's licence and Stafford Haensli Architects' certificate of practice had been cancelled. During his testimony, Mr. Dzamba stated that his staff had provided documents to Mr. Dhanjal even though he advised his staff not to do so.

According to Mr. Dzamba, Stafford Haensli Architects was locked out of its office premises because of non-payment of rent at some time during the period at issue in this case, though the exact dates are unclear. According to Mr. Dzamba, the firm was allowed back into the office to pack things up.

FINDINGS

Having considered the evidence presented by the Association and by Mr. Dzamba, we find Mr. Dzamba guilty on counts 1, 2 and 5, and not guilty on counts 3 and 4.

With respect to count 1, the Committee relies on the Employment Standard Officer's Reasons for Decision, in which she determined that Stafford Haensli Architects did not pay wages to the claimant for the pay period in question. In his testimony before us, Mr. Dzamba described the economic circumstances that Stafford Haensli Architects was facing at the time and stated that he had intended to pay the employee. However, he did not deny the findings of the Employment Standard Officer. Based on this evidence, we find that Mr. Dzamba and Stafford Haensli Architects engaged in professional misconduct as defined in s. 42(9) of the Regulation by failing to meet financial obligations to an employee of Stafford Haensli Architects -- an obligation that is expressly set out in s. 49(5) of the Regulation as part of the standards of practice of architecture.

With respect to count 2, it is clear from the affidavit of Ms. Brown, and Mr. Dzamba has acknowledged, that he did not comply with the Registrar's letter dated December 18, 2018 or the Association's Guidelines for a Former Architect whose Licence and Certificate of Practice have been cancelled because he failed to return forthwith his seal, the certificate of practice, and his licence, and had still not done so at the time of this hearing. We therefore find that Mr. Dzamba and Stafford Haensli Architects engaged in an act of professional misconduct under ss. 42(22) of the Regulation, and 42(1) of the Regulation by contravening s. 41 of the Act, because Mr. Dzamba failed to return his seal forthwith to the Registrar upon cancellation of his licence and certificate of practice.

With respect to Count 5, Mr. Dzamba and Stafford Haensli Architects disregarded professional responsibilities to their staff, clients, the Association and Pro-Demnity, did not meet deadlines prescribed by the Association and Pro-Demnity, and have still not returned all the documents to the Association that they were required to provide to the Registrar more than two years before the hearing.

As for counts 3 and 4, the Committee is of the view that it has no jurisdiction with respect to the subject matter of these allegations because they occurred after Mr. Dzamba's licence and Stafford Haensli Architects' certificate of practice had been cancelled when Mr. Dzamba was no longer a member and Stafford Haensli Architects' no longer a holder of a certificate of practice.

In *Association of Professional Engineers of Ontario v. Leung*, 2018 ONSC 4527, the Divisional Court held that the Discipline Committee of the Association of Professional Engineers of Ontario had been correct in interpreting the definition of "member" in the *Professional Engineers Act* narrowly and finding that it did not have jurisdiction over the pre-licensing conduct of a member. The Court stated at paragraph 59 of its Reasons that the Discipline Committee's jurisdiction is "entirely statutory", that "the statute is clear that it has jurisdiction in respect of allegations of the misconduct or incompetence of *members or holders*", and that "the use of broader language of the provisions addressing the assessment of applicants' fitness to be members, and the offences and penalties provisions provide the context for the interpretation that the Discipline Committee's jurisdiction does not extent to pre-licensing conduct". Given the similarities between the legislative provisions governing professional engineers and architects, and the authority granted to the Discipline Committee under each of those provisions, the Committee accepts and adopts the Divisional Court's approach to this issue, and sees no reason for

making a distinction – on the facts of this case – between pre-licensing and post-licensing conduct.

Accordingly, the Committee makes the following findings:

1. **THIS COMMITTEE FINDS** that the Former Architect/Holder engaged in an act or acts of professional misconduct as defined in s. 42(9) of the Regulation made under the Act in that he failed to maintain the standards of practice of the practice, and in particular, he failed to meet financial obligations to employees of the Former Holder, which, pursuant to s. 49(5) of the Regulation made under the Act, is part of the standard of practice of architecture.
2. **THIS COMMITTEE FINDS** that the Former Architect/Holder engaged in an act or acts of professional misconduct as defined in s. 42(22) of the Regulation made under the Act and in s. 42(1) of the Regulation made under the Act by contravening s. 41 of the Act in that you failed to return a seal forthwith to the Registrar upon cancellation of your licence and certificate of practice.
3. **THIS COMMITTEE FINDS** that the Former Architect/Holder engaged in an act or acts of professional misconduct as defined in s. 42(54) of the Regulation made under the Act, in that you engaged in conduct or an act relevant to the practice of architecture that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional, and in particular, you failed to meet financial obligations to employees, and repeatedly broke promises to and acted unprofessionally in respect of the employees of the Holder.

PENALTY

In determining the appropriate penalty, consideration was given to the nature of the offence committed, protection of the public, reformation of Mr. Dzamba, and the deterrence of others. In its deliberations, the Committee considered all the evidence submitted to it, the submissions on penalty of the Association and Mr. Dzamba, and the fact that Mr. Dzamba and Stafford Haensli Architects have no record of prior disciplinary issues. Because Mr. Dzamba is no longer licensed, the Committee cannot impose a licence suspension, but agrees with the Association that it is appropriate to impose a period of 12 months from the date of the hearing before Mr. Dzamba is

allowed to apply for reinstatement of his licence and a certificate of practice. The Committee is also of the view that if Mr. Dzamba's licence is reinstated, he should work under someone else in a supervisory position with a certificate of practice, though it will leave that determination to be made by the Registrar if and when such an application is made. It should be noted that Mr. Dzamba advised the Committee that he did not intend to apply for his licence or a certificate of practice to be reinstated.

In the circumstances, the Committee finds that the appropriate penalty is a reprimand, a 12-month waiting period from the date of the hearing before Mr. Dzamba can apply for reinstatement of a licence and a certificate of practice, should he decide to do so, publication of the Committee's Decision and Order, and Reasons therefore, and costs in the amount of \$10,000, to be paid in monthly installments of \$416.66, commenced April 1, 2021. The Committee notes that this penalty is the same as that proposed by the Association in this case, except for the costs award, which is less than what the Association proposed.

Accordingly, the Committee imposes the following penalty against the Architect:

1. **THIS COMMITTEE ORDERS** that the Former Architect/Holder be reprimanded.
2. **THIS COMMITTEE ORDERS** that, should the Former Architect/Holder wish to apply for reinstatement of his licence and a certificate of practice, the Former Architect/Holder shall be not be allowed to do so until at least of 12 months following the date of hearing of this matter, and.
3. **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 Former Architect/Holder and be recorded on the Register of the Association.
4. **THIS COMMITTEE ORDERS** that the Former Architect/Holder pay to the Ontario Association of Architects a portion of the costs of these proceedings, which are hereby fixed at \$10,000.00 inclusive of the Harmonized Sales Tax (HST), in monthly installments each of \$416.66 commencing April 1, 2021.

DATED AT TORONTO THIS 13TH DAY OF APRIL, 2021



Catherine Friis, Member



Rick Bruynson, Member



Elaine Mintz, Lieutenant Governor in
Council Appointee