Report on a Case by the Board of Ethical Review

Case No. 67-7

Certification of Plans Prior to Payment of Engineer

Facts:
An owner retained an architect to prepare plans and specifications for a building, using the standard AIA contract form. The architect, in turn, retained a structural engineer for the structural portion of the plans and specifications. The building was erected. Both professionals completed their respective portions of the contract, except the execution of the required certificate of compliance. During the progress of the work, the owner made partial payments to the architect, and the architect paid the appropriate amount from his payments to the structural engineer. However, when the building was completed and ready for occupancy, the owner still owed and refused to pay the architect a substantial sum which was due under the contract, and the architect accordingly owed the structural engineer a proportionate amount. The owner alleged that there had been several deficiencies in the work of the architect and refused to pay him the balance due. The owner requested the city officials to issue to him an occupancy permit, and they requested the architect, who in turn requested the structural engineer, to certify that the structural system was completed in compliance with the applicable building code and regulations. Such a certification is required before the city may issue an occupancy permit to the owner. The structural engineer refused to provide the certification until he had been paid for his services.

Question:
Is it unethical for the engineer to refuse to provide the certification which would enable the owner to secure an occupancy permit on the ground that he has not been paid for his services?

References:
Code of Ethics-Section 1- "The Engineer will be guided in all his professional relations by the highest standards of integrity, and will act in professional matters for each client or employer as a faithful agent or trustee."

Section 9-"The Engineer will uphold the principle of appropriate and adequate compensation for those engaged in engineering work."

Discussion:
In this case we are confronted with two sections of the Code which may be construed to indicate opposing concepts to govern the conclusion.

Section 1 of the Code points to the duty of the engineer to do all that can be reasonably expected of him to serve the purposes of his client. In this case, the owner is not the

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client of the engineer; the engineer's contractual relationship is with the architect. However, we do not rest our position on that technicality.

While not directed specifically toward the fact of payment as much as the amount of payment for services rendered, Section 9 of the Code points to the principle that those who provide professional services are entitled to fair and equitable compensation for those services. We believe that this language can and should be read to include the right of the engineer to be paid.

The refusal of the engineer to execute the certificate is a device or method whereby the engineer may exert pressure on the owner to bring about payment to the architect, which will lead to payment to the engineer.

Under these circumstances, we do not believe that such action by the engineer is improper or inappropriate. If the owner has a legitimate claim against the architect for alleged deficiencies, these should be resolved in an orderly fashion through negotiation, arbitration or legal proceedings. In effect, the owner is exerting pressure on the architect (and indirectly on the engineer) by refusing payment which is overdue.

We do not deal in this case with the question of the obligation of the architect to pay the engineer regardless of his failure to receive full payment from the owner. That point would necessarily be resolved in accordance with the code of ethics applicable to the architect, and more particularly the terms of the contract between the architect and the engineer.

Conclusion:*
It is not unethical for an engineer to refuse to execute the certificate to enable an owner to secure an occupancy permit on the ground that he has not been paid for his services.

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