

In the matter of the complaint dated March 4, 2015 (herein the "Complaint") by:

SONOMA HOMES INC., CARMEN CHIARAVALLE AND MICHAEL CHIARAVALLE

(herein the "Complainants")

in respect of the conduct of:

SERGIO MANCHIA

(herein the "Member")

pursuant to Article 1.1, Appendix 11 of By-law No. 1 of the Ontario Professional Planners Institute (herein "OPPI")

This is a Hearing of a complaint pursuant to OPPI's General By-law 1-86, as amended, and procedures and Procedural Order #1 dated January 18, 2016, Procedural Order #2 dated July 15, 2016 and Procedural Order #3 dated January 31, 2017, submitted by Sonoma Homes Inc., Carmen Chiaravalle, Michael Chiaravalle ("Complainants") against OPPI Member Sergio Manchia ("Member") related to sections 2.1, 2.2, 2.3, 2.6, 2.7, 2.8 and 3.5 of the OPPI Professional Code of Practice.

Appearances:

For the Complainants:

Dermot P. Nolan

Counsel

Witnesses

Michael Chiaravalle (Complainant)

John Ariens (Associated Director IBI Hamilton Office)

(under summons)

John Restivo (Yachetti, Lanza & Restivo)

For the Member:

Arleen Huggins

Counsel

Joel Farber

Counsel

Witnesses

Sergio Manchia (Member)

Tony Sergi (City of Hamilton)

(under summons)

This was a three (3) day Hearing with submissions of a large volume of written material contained in eight (8) filed document books and three (3) exhibits filed as individual sheets. Having considered all of the evidence presented and able arguments of Counsel, the Hearing Panel, consisting of D. Granger, W. Nott and C. Saunders, submits the following findings in respect to the Complaint received against the conduct of the Member within the context of the OPPI Professional Code of Practice:

FINDINGS

“2.1 impart independent professional opinion to clients, employers, the public and tribunals;”

The Hearing Panel finds no breach of section 2.1.

“2.2 work with integrity and professionalism;”

Although the Hearing Panel finds no breach of section 2.2, the Hearing Panel does note the difficulty with multiple relationships between the Parties. In this case, the Member was acting as a land use planning consultant to the Complainants' development application on one property and both parties were acting as business partners in a separate development application (known as Koppercreek Developments Inc.). While it was clear that a third-party planning consultant was retained on behalf of this private business relationship, it did become germane to the Complaint in that it was evident that a dispute in this private business matter led to the professional conduct breach (as discussed below), namely the telephone conversation that occurred on October 26, 2011 and the lack of professionalism associated with that telephone conversation. That ultimately led to the termination of the retainer between the parties on October 27, 2011.

This should serve as a warning to OPPI members of the difficulties that might arise in undertaking business relationships while separately and concurrently providing professional independent planning services pursuant to the Professional Code of Practice.

From the OPPI perspective, the onus rests with the planner to ensure that those potential conflicts and role confusion come to bare.

With respect to the matter of the contractual dispute between the Member and the Complainants relating to a business arrangement pertaining to a management fee related to the Koppercreek Developments Inc. development, the Hearing Panel does not find it relevant to the conduct of the Member, other than the effect that it did lead to the unprofessional conduct as noted above.

“2.3 not perform work outside of his/her professional competence;”

With respect to section 2.3, having considered all of the evidence presented, the Hearing Panel finds no issue with respect to the land use planning advice that had been given by the Member up to the termination of the retainer with Somona Homes Inc. on October 27, 2011.

“2.6 respect the client or employer right to confidentiality of information gathered through a professional relationship;”

The Member accepted a retainer on October 7, 2011 for lands in proximity to the Sonoma Homes Inc. development application in the Mewburn neighbourhood (the “LPF lands”), as further discussed under section 2.8 below.

The Sonoma Homes Inc. development applications were deemed complete by the municipality in March 2012 and were approved in April 2013. While letters of objection and appeals were filed by LPF Realty Retail Inc. (“LPF”) with respect to the Sonoma Homes Inc. applications, at the time of the letters/appeals (April 2013 and June/July 2013 respectively), the scope and content of the Sonoma Homes Inc. applications were public knowledge.

Therefore, with respect to section 2.6, the Hearing Panel finds no breach of confidentiality of information gathered through a professional relationship.

“2.7 inform the client or employer in the event of a conflict between the values or actions of the client or employer and those of this Code, in a timely manner;”

With respect to section 2.7, the Hearing Panel finds no breach.

“2.8 ensure full disclosure to a client or employer of a possible conflict of interest arising from the Member’s private or professional activities, in a timely manner;”

With respect to section 2.8, the Hearing Panel finds that the evidence presented clearly set out that a retainer was exercised by the Member for LPF for lands located within the Mewburn development area on or about October 7, 2011, while the Member was clearly still retained by Sonoma Homes Inc. to provide planning advice and services for development in the same Mewburn development area.

The Hearing Panel finds that the evidence presented shows that there was no attempt by the Member to formally or informally disclose to the parties that these two retainers existed and to outline to the parties the possible conflict of interest between the two potentially competing developments. Based on the evidence presented, the Hearing Panel is not satisfied that the internal administrative IBI process for the determination of conflicts satisfied this matter for either client. It is noted that there was some evidence that the parties may informally have been aware that at different times in history the Member represented LPF, however there was no evidence that Sonoma Homes Inc. or LPF had explicitly been provided with any notice that the Member would be concurrently representing both developers in the Mewburn development area and the potential that they could have competing interests in the overall development of the area.

The Hearing Panel therefore finds the Member to be in breach of section 2.8.

“3.5 not in professional practice, extra-professional activities or private life, engage in dishonourable or questionable conduct that may cast doubt on the Member’s professional competence or integrity or that may reflect adversely on the integrity of the profession;”

With respect to section 3.5, the Hearing Panel finds that the evidence clearly shows that the Member did undertake dishonourable or questionable conduct that may cast doubt on the Member’s integrity or that may reflect adversely on the integrity of the profession, specifically as it relates to his actions during a telephone conversation that took place on October 26, 2011 between the Member and one of the Complainants.

There was a considerable amount of evidence presented, that was undisputed, with respect to the conversation that took place between the parties. While the Hearing Panel must rely on notes and recollections of the individuals involved in the telephone conversation, it is clear, based on the evidence of the Member, that the conversation was “heated”, that it was “regrettable”, that it “was not a good conversation” and that “bad language” was used. This admission is sufficient for the Hearing Panel to determine that the conduct of the Member did not reflect a reasonable level of professionalism.

In addition, the Member acknowledged that he provided no response to, nor did he dispute the allegations made by Counsel for the Complainants to the Counsel for the Member with respect to his lack of professionalism and allegations raised through the course of this telephone conversation. The Member also made no effort to apologise for his conduct despite being asked to do so by Counsel for the Complainants through its Counsel.

The Hearing Panel therefore finds the Member to be in breach of section 3.5.

REMEDIES

The Hearing Panel submits the following remedies for the breaches found respecting sections 2.8 and 3.5 of OPPI’s Professional Code of Conduct,:

1. With respect to section 2.8, the Hearing Panel finds that the Member shall, in writing, within 30 days of the issuance of this decision, confirm to OPPI of his obligation, in all future retainers, to ensure full disclosure, in writing, to his clients wherever there is any possibility of existing or future conflicts.
2. With respect to section 3.5, the Hearing Panel determines that the Member shall, within 30 days of the issuance of this decision, provide an unequivocal written apology to the Complainants and the Complainants’ Counsel for the unprofessional nature of the exchange that occurred during the telephone conversation that took place on October 26, 2011 that has led, in a large part, to this extended adjudication process.
3. The Member shall pay a financial penalty of \$1,000.00 to OPPI within 30 days of the issuance of this decision.

It is the determination of this Hearing Panel that this decision be reported in summary and made available, in full, to members of the OPPI.

A rectangular box containing a handwritten signature in cursive that reads "Don Granger".

D. Granger
Hearing Panel Member

A handwritten signature in cursive that reads "Wendy Nott".

W. Nott
Hearing Panel Member

A handwritten signature in cursive that reads "C. Saunders".

C. Saunders
Hearing Panel Member

Dated: May 5, 2017