

2. The committee concluded unanimously:
 - 2.1 that the accused had brought the profession and its members into disrepute, thereby infringing Section 28(3)(c) of the Professional and Technical Surveyors Act.
 - 2.2 that the accused conducted himself in an improper manner, thereby infringing the provisions of Section 28(3)(d) of the Professional and Technical Surveyors Act.
 - 2.3 that the accused unreasonably delayed the execution and completion of work entrusted to him by the client thereby infringing Rule 15(24) of the Rules published in terms of the Act.

3. In furtherance of the above, it is contended that: -
 - (a) In coming to the aforesaid conclusion the Committee has taken account of the fact that his tender to his client was misleading and that he should have been aware of the fact that it was most improbable that you would have been able to deliver on his promises in respect of the turnaround time for the application and subdivisional approval process.
 - (b) Furthermore subsequent to his appointment, he failed to communicate effectively with his client. After his client had taken issue with him on this lack of communication, he documented a promise to interact with them on a monthly or bi-monthly basis. He failed to fulfil this promise as a consequence of which they eventually terminated his mandate. TFMC resorted to this action only after repeated attempts on their part to make contact with him were unsuccessful.
 - (c) Subsequent to the fore mentioned cancellation of his mandate, the Local Authority communicated to you its approval of his client's application. He failed to communicate the fact of this approval to his client, which the committee believes he was obligated to do as a simple matter of courtesy, despite the fact of the cancellation of his mandate. Some 18 months later the client then made contact with him in order to obtain a fee estimate from him for completion of the subdivision. Instead of reverting to the client with the requested quotation, he resolved to obtain the subdivisional approval from the Local Authority and then, disingenuously, submitted an account to his client which was in excess of the original quotation which had been accepted by his client. He then refused to hand the approved diagrams to the client until such time as they settled the account based on the inflated quotation.
 - (d) There are a range of aspects of the behaviour / conduct stipulated above which meets with the Committee's disapproval and which in its view constitutes improper conduct on Mr Edem's part. It is evident to them that in his interactions with this client he not only failed to communicate effectively but then also, through disingenuous means, sought to extract the payment of an inflated amount from his client in respect of the initial work conducted by him. This disingenuous conduct on his part, in the face of his initial improper behaviour where he failed to communicate with his client, is improper and risks bringing the profession into

disrepute. The client had every reason to be dissatisfied with his conduct and accordingly had every reason to lodge a complaint with the Council.

SANCTION

The sanction imposed by the Committee is a reprimand as is contemplated in Section 29(1)(b) of the Professional and Technical Surveyors' Act No. 40 of 1984.

The fact of Mr Edem being found guilty of the charges and the penalty imposed as stipulated herein will be published by the Council in newspapers in the Kimberley and Bloemfontein regions.

In accordance with Section 29(1) of the Act, the Council has resolved that he should be responsible for the costs associated with the constitution and conducting of the disciplinary enquiry. The costs award against Mr Edem comprises an amount of R7350.00 being one-third of the costs attributed to the constitution of the disciplinary proceedings held on 30 August 2010 in Johannesburg.

IN RE:

CHEMCITY (PTY) LTD

(Complainant)

and

DAVID NIGEL GORFINKEL

(Accused)

1. The Committee noted the evidence which had been recorded and the proceedings which were to be followed at the inquiry. viz:
 - 1.1 The evidence presented had not previously been seen by the Chairman or any member of the committee.
 - 1.2 The written evidence presented by the Complainant which had been accepted as factually true and correct in every respect in terms of Section 30(2) of Act 40 of 1984 Section 16 of the Rules and form J delivered by Fedex Courier Service on 27 July 2010 which allowed reasonable time for the accused to defend himself against the charge. Additional documents in the form of an affidavit was received from H J Kroep – Professional Land Surveyor.
- 2 The committee concluded unanimously:
 - 2.1 that the accused had conducted himself in an improper manner, thereby infringing the provisions of Section 28(3)(d) of the Professional and Technical Surveyors Act.

2.2 that the accused had performed through negligence or incompetence defective surveys or surveys to which adequate checks have not been applied thereby infringing Section 12(c) of the Land Survey Act NO 8 of 1997.

3 In furtherance of the above, it is contended that: -

3.1 in deliberating on sanction, the committee took into account the fact that he had previously been disciplined by the Council for a similar and related offence.

3.2 the sanction imposed is a period of suspension as is contemplated in Section 29(1)(c) of the Professional and Technical Surveyors Act No 40 of 1984, from practising as a Surveyor in the Republic of South Africa for a period of three (3) years.

3.3 of the aforesaid period of suspension of three years, two and a half years are suspended for a period of five (5) years. In effect he is therefore suspended for a period of six (6) months from practising as a Surveyor in the Republic of South Africa with effect from date therefore. Should he commit a similar offence during this period of five years he will be prohibited from practising as a Professional Land Surveyor for a further period of two and a half years.

3.4 Mr Gorfinkel be ordered to cover the costs associated with the constitution and conducting of the disciplinary inquiry. The costs awarded comprising of an amount of R 7350.00 being one-third of the costs attributed to the constitution of the disciplinary proceedings held on 30 August 2010.

3.5 publication of the findings be published in the local newspapers in the Sasolburg and Vereeniging areas and government gazette.

IN RE:

JUSTIN E SADLER

(Complainant)

and

CHOONILALL UMRATHLAL

(Accused)

1 The Committee noted the evidence which had been recorded and the proceedings which were to be followed at the inquiry. viz:

1.1. The evidence presented had not previously been seen by the Chairman or any member of the committee.

1.2. The written evidence presented by the Complainant which had been accepted as factually true and correct in every respect in terms of Section 28(3)(C) of Act 40 of 1984 Section 16 and 17 of the

Rules and Form J delivered by Fedex Courier Service on 27 July 2010 which allowed a reasonable time for the accused to defend himself against the charge.

2 The committee concluded unanimously:

- 2.1 that the accused had brought the profession and its members into disrepute.
- 2.1 that the accused conducted himself in an improper manner.
- 2.2 that the accused undertook work of survey nature for the execution of which he was inadequately qualified or insufficiently experienced.
- 2.3 that the accused has been advertising services of a survey nature in a manner which is not true and factual or in a manner which represents his qualifications.

The accused accepted the charges made against him.

3. **SANCTION**

With due regard to the foregoing the Committee recommends to Council:

- 3.1 The sanction imposed is a period of suspension, as is contemplated in Section 29(1)(C) of the Professional and Technical Surveyors Act No 40 of 1984 from practising as a Surveyor in the Republic of South Africa for a period of one (1) year.
 - 3.2 the aforesaid period of suspension is, however, suspended for a period of five (5) years. Should he commit an offence of the same or similar nature during this period of five years, with effect from date of notification he will be prohibited from practising as a Surveyor for a period of one year.
 - 3.3 that Mr Umrathlal be ordered to cover the costs associated with the constitution and conducting of the disciplinary inquiry. The costs awarded comprising of an amount of R7350.00 being one-third of the costs attributed to the constitution of the disciplinary proceedings held on 30 August 2010.
 - 3.4 publication of the findings be published in a newspaper circulating in the Port Shepstone region and the government gazette.
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