

**BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR THE BUILT ENVIRONMENT
("APPEAL COMMITTEE")**

In the appeal between

DANIEL HELLENBERG

Appellant

and

**SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL
PROFESSION**

Respondent

APPEAL COMMITTEE RULING

INTRODUCTION

- [1] The appellant lodged an appeal in respect of the decision of the South African Council for the Architectural Profession (SACAP) to declare his Monthly Training Records (MTR's) invalid and that he's required to re-register with a mentor who will supervise his work. The decision by SACAP was communicated to the appellant through a letter sent by email on the 19 August 2024. The same letter also provided the appellant, amongst other things, the opportunity to appeal the decision of SACAP within the period of 90 days. That opportunity resulted in the appellant lodging this appeal.
- [2] It is, in the Appeal Committee's view, not necessary to deal with all contentions raised by the appellant, save to deal with the following few points: -
- (a) the appellant contends that the MTR hours provided by him have not been substituted fraudulently, steps were taken to ensure that SACAP was made aware of changes made to the mentorship agreement form and this was not done without SACAP knowledge. To this end, the appellant submits that it is, therefore, not the responsibility of him to amend this mistake by redoing two (2) years of candidacy.
 - (b) the appellant admitted under oath that the mentorship agreement form received from Council was amended by him and the appointed mentor Mark Bell, stating that the appellant would not be in his employ nor receive any work from him and instead would freelance under professionals as needed to receive the necessary hours, these changes were highlighted in an email to SACAP. This form was accepted by SACAP whereas a

candidacy number was received and therefore the mentorship letter submitted should be upheld.

(c) the appellant further contends that in terms of Rule 2.6 of the Code of Conduct,¹ a registered candidate must perform work under the direction, control and/or continual supervision of a registered professional entitled to perform such work and who must assume responsibility for any such work performed by the candidate. By virtue of this proviso, the appellant submits that, it is not written or stated anywhere that the candidate should only receive work from the designated and registered mentor and that only the said work will count towards the candidate's hours needed, it only states that a registered professional is to oversee all work.

(d) the appellant's prayer is that the appeal is to be upheld because his practice has been above board with the necessary professional supervision.

[3] The respondent raised several points, and it is important to highlight a few here: -

(a) the respondent contends that the decision taken by the Council in this matter is correct. The respondent submit that the mentor nominated in the mentorship agreement form, Mark Bell, was employed by the City of Cape Town and as such, could not have employed the appellant. Due to this fact, the mentorship agreement was not compliant from the start and in terms of the policy, mentors are expected to ensure that candidates obtain the required training by providing opportunities for a variety of experience and by actively imparting knowledge. The mentor nominated by the appellant was not able to discharge this obligation as it is indicated in the mentorship form that the appellant was not under his employ.

(b) the respondent further contends that the designated mentor for the appellant could not verify, sign off and confirm that the training records were in compliance with the required standards. The requirement of section 18(3) of the Architectural Profession Act 44 of 2000 could not have been met since the appellant was not under the control of the designated mentor.

(c) the respondent further contends that the policy requires the appellant to have received structured practical training in a professional practice. Since the appellant was a freelance,

¹ Code of Conduct for Registered Persons. The Code of Conduct published in terms of Board Notice 7 of 2021 by South African Council for the Architectural Profession Act 44 of 2000.

he could not have operated in a professional practice as candidates are not allowed to establish an architectural practice.

(d) the respondent submitted in prayer that the appeal be dismissed.

[4] Section 18(3) of Architectural Profession Act 44 of 2000 provides that:

“(3) A person who is registered in the category of candidate must perform work in the architectural profession only under the supervision and control of a professional of a category as prescribed.”

[5] Rule 2.6 of the Code of Conduct deal with competency and provide that:

“2.6 a registered candidate must perform work under the direction, control and/or continual supervision of a registered professional entitled to perform such work and who must assume responsibility for any such work performed by the candidate.”

[6] Rule 5.10 of the Code of Conduct provide that:

“5.10 a person registered in the category of a candidate shall not establish an architectural practice, act as a principal or a shareholder in an architectural practice.”

[7] In the case of ***Van Heerden v Joubert*** 1994 4 SA 793 (A) at [795], the court held that the golden rule of statutory interpretation was that words had to be given their ordinary literal meaning and if it is clear and unambiguous, it is this grammatical meaning that must be adhere to. Departure from such a grammatical interpretation is only permissible if not doing so would lead to an absurdity that could never have been envisioned by the legislature.

- [8] The case of *Kalla v The Master* 1995 (1) SA 261 (T) also dealt with the interpretation of statute. The court provided guidelines for interpreting the statute, which included considering the purpose and context of the legislation, the ordinary meaning of the words used, and the legislative history. It is the Appeal Committee view that the wording of the Architectural Profession Act 44 of 2000 and the rules of the Code of Conduct purpose and meaning are clear, and its proviso should be given its grammatical interpretation.
- [9] The appellant, in his own admission, testified that he was a “freelance”. The Oxford Dictionary define a freelance as “self-employed and hired to work for different companies on particular assignments.” The fact that the appellant was a freelance was further confirmed by several professionals who praised him as, amongst other things: an excellent draftsman; an invaluable partner; as a professional who conducts work with utmost diligence; and a competent professional. In the Appeal Committee view, all the professional who provided testimonial for appellant appeared to have considered the appellant as a professional, not a candidate. The appellant also testified that he had opened his own company and received work on a referral basis.
- [10] The undertaking by the mentor (Mark James Bell) clearly indicate that the appellant was not under his employ because Mark James Bell works for the City of Cape Town and that the appellant has been undertaking supervised freelance work. This seems to contradict the term and the meaning of the word “freelance” and cannot be accepted by the Appeal Committee. This issue is exacerbated by the fact that none of MTR’s of the appellant were signed by Mark James Bell in his capacity as a mentor. No evidence submitted to the committee to prove that Mark James Bell was able to verify the nature and level of work performed and the professional competency of the appellant by appending his signature on the Monthly Training Records.
- [11] The appellant under oath admitted that his MTR’s hours were not signed by his mentor prior to submission to SACAP as stipulated in the Practical Training Policy and that he (not the mentor) amended the undertaking by mentor form and submitted it to SACAP. The appellant confirmed that the MTRs presented as evidence were indeed submitted by him and admitted to the Appeal Committee upon being questioned on the excessively higher than reasonable entries in specific years that the figures which were higher than the minimum required had indeed been inflated and with errors.

[12] It's important to note that SACAP exercises public power. What makes the power public is the fact that it has been vested in a public functionary, that is required to exercise it in the public interest. When officials from SACAP took a decision to invalidate appellant's MTR's, the public official exercised public power by virtue of the fact that SACAP is a public entity created by the statute and it operates under statutory authority. As a public authority, its decision to invalidate MTR's involves the exercise of public power and that power is sourced in statutory provision, whether general or specific, and behind it, in the Constitution.

[13] In terms PAJA,² a decision is defined as:

“(1) decision means any decision of an administrative nature made, proposed to be made, or required to be made, as the case may be, under an empowering provision, including a decision relating to-

(a) making, suspending, revoking or refusing to make an order, award or determination;

(b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;

(c) issuing, suspending, revoking or refusing to issue a license, authority or other instrument;

(d) imposing a condition or restriction;

(e) making a declaration, demand or requirement;

(f) retaining, or refusing to deliver up, an article; or

(g) doing or refusing to do any other act or thing of an administrative nature, and a reference to a failure to take a decision must be construed accordingly.”

[14] SACAP has not disputed that when the appellant applied to write his Professional Practice Exam (PPE) in 2023, it was confirmed by it that he had met the minimum requirements. Most importantly, SACAP did not pay attention to the undertaking by mentor Mark James Bell that the appellant couldn't be under his employ as he was employed by the City of Cape Town and not a single entry of the Monthly Training Records (MTRs) had been

² Section 1 of Promotion of Administrative Justice Act 3 of 2000.

signed by the Mentor. These serious administrative errors on the part of SACAP created an impression that everything was in order with the mentorship programme of the appellant. The Appeal Committee cannot overlook this error but to evaluate whether any remedy can be imposed which is proportionate to the infringement.

[15] After careful consideration of all evidence, the Appeal Committee has come to the following conclusion:

[15.1] that the appeal is dismissed;

[15.2] that the MTR's submitted by the appellant are invalid;

[15.3] that the appellant is ordered to re-register with a professional mentor who is in good standing with SACAP;

[15.4] that the costs of re-registration be waived; and

[15.5] that the appellant be refunded of the cost of appeal by SACAP.



Adv. MB Ndlazi

Chairperson: CBE Appeal Committee



Mr T Njokwana

Professional Quantity Surveyor

Appeal Member (Generalist)



Mr C Mugwagwa

Professional Architectural Technologist

Appeal Member (Specialist).

Date: 09/12/2024