

January 7, 2008

Practice Review Board Report for Complaint Case Number 05-26

STATEMENT OF COMPLAINT

A Fire Inspector of the Richmond Fire Department alleged that a Registered Fire Protection Technician member installed a fire suppression system in a commercial kitchen application (restaurant) located in Richmond, BC, that did not meet code requirements. It was further alleged that the work and services provided at the site, and at one other Richmond restaurant, were completed without the required permits. The complaint was received on November 15, 2005.

BACKGROUND

A Richmond Fire Inspector discovered the installation of new fire suppression systems in two Richmond restaurants that had been completed without permits. In the opinion of the Fire Inspector, one of the installations did not meet code requirements. Specifically that the Richmond Fire Bylaw and NFPA 96 Code require that:

1. Permits shall be obtained (Richmond Fire Bylaw) for the installation of kitchen fire suppression systems and this was not done;
2. the hood size must be sufficient to capture grease laden vapours and with the current configuration of cooking appliances (one appliance not covered by the exhaust hood) the hood does not do this;
3. the cooking appliances must be protected by a fire suppression system and the appliance outside the hood has no fusible link (NFPA 17A clarifies the requirements for system activation) to activate the system in the case of a fire related to the appliance;
4. filters must be in place to capture grease laden vapours and, in the case of the appliance outside the hood, none were;
5. installations must be made according to manufactures instructions and there was no evidence of this; and
6. such installations shall be approved by the authority having jurisdiction and this had not been provided.

Upon identifying the Registered Fire Protection Technician (RFPT) responsible for the work, the Fire Inspector sent two notices to the RFPT member advising that the work did not meet the standards of the City of Richmond. It was claimed that the member did not rectify the situation, nor did he contact the Fire Inspector. A complaint was subsequently made to ASTTBC regarding the member's practice.

INVESTIGATION

An investigation was conducted by ASTTBC's Manager of the Fire Protection Registration Program. A cooking unit was found to be operating outside of the exhaust hood in the restaurant in which it is alleged that the fire suppression installation violated code requirements and that the member:

1. did provide an inspection and test report for a fire suppression system which he installed at the premises;

2. identified in his inspection and test report that there was a cooking unit installed outside of the hood (alleged code violation) as a 'Safety Deficiency';
3. did not ensure that the Safety Deficiency was reported to the local authority having jurisdiction, being the Richmond Fire Department;
4. failed to rectify the above-noted situation despite having been requested to do so by the Fire Inspector of the Richmond Fire Department;

In addition, it was determined that while Richmond requires permits for provision of the work and services in question, there may have been confusion as to possible communication between the City of Richmond and the member in this regard. The member alleged that he had contacted the City about the need for a permit and a City official could not confirm that the permit requirement may have been necessarily clearly provided to the member and suggested that a miscommunication might have been possible.

DISCUSSION

Based on the results of the investigation and under the authority of the Practice Review Board (PRB), a meeting was set up for the member with the Associate Registrar and Manager, Fire Protection Registration. Shortly after this meeting, ASTTBC Legal Counsel provided (March 8, 2006) the member with a proposed Stipulated Order Agreement, which offered the following conditions:

1. the RFPT member will satisfy all the concerns of the Richmond Fire Department with respect to this matter and provide the PRB with evidence that this has been accomplished within 30 days of acceptance of the Stipulated Order;
2. the RFPT member will provide to the PRB an acceptable 500 word essay, which would include acceptance and responsibility for his breach, describing why his actions were a violation of the ASTTBC Code of Ethics, within 30 days of acceptance of this Stipulated Order;

Subsequently, the member's lawyer advised ASTTBC that the member would not be signing the Stipulated Order Agreement.

OUTCOME

Based on the member's decision not to resolve the complaint by a Stipulated Order Agreement, the Practice Review Board had ASTTBC Legal Counsel inform (April 21, 2006) the member that a formal Discipline Hearing would be convened to deliberate on the complaint case against him. By September the PRB had selected three qualified RFPT members to serve as the Discipline Hearing Committee. Subsequently, the Discipline Committee and the member were supplied a number of possible dates in November for which a Discipline Hearing date could be set. Due to compelling personal issues, the member requested that the Discipline Hearing date be postponed until February. The PRB agreed to his request and the Discipline Hearing date was set for February 27th, 2007.

DISCIPLINE HEARING

On February 8th ASTTBC Legal Counsel informed the RFPT member that a formal disciplinary hearing was required in the matter of a complaint by the Richmond Fire Department against him and that the Discipline Hearing was scheduled for February 27th, 2007.

The Practice Review Board charge against the member was that he demonstrated unprofessional conduct in the conduct of his work at a restaurant in Richmond; in that he identified a 'safety deficiency' arising from the installation of a cooking unit outside of the fire hood but did not report such to the Richmond Fire Department and, further, failed to take appropriate steps to rectify this despite having been requested to do so by the Richmond Fire Department, all of which was contrary to Principle #1 of the Code of Ethics.

A Discipline Hearing was held on February 27th in the ASTTBC office. In attendance were the appointed Discipline Hearing Committee (three RFPT members – one acting as Chairman), ASTTBC Legal Counsel (advisor to the Committee), the Associate Registrar (serving as Prosecutor), a staff recorder and the RFPT member. Witnesses included the Fire Inspector from the Richmond Fire Department, who initiated the complaint and the Manager, Fire Protection Registrations, who investigated the case for ASTTBC. Photographic evidence, pertinent correspondence and documentation related to practice standards were introduced. The RFPT member acted on his own behalf to defend his actions against the charge. The meeting concluded with the Discipline Committee reserving their decision for a later date.

On March 11th the Discipline Committee presented to the Practice Review Board their reasons for judgment in the case. Their decision was as follows:

Decision

1. *In the Committee's view, the charge is based on two issues. First, (the RFPT member) failed to comply with Principle 1 of the Code of Ethics in that he did not report a safety deficiency arising from the installation of cooking equipment outside of the fire hood to the Richmond Fire Service. The second issue is that he failed to comply with Principle 1 of the Code of Ethics in that he knowingly modified a special fire extinguishing system to provide protection outside the hood and, in doing so, potentially gave the restaurant owner and or operator a false sense of comfort.*
2. *As to the first issue it is the finding of the Committee, based upon the evidence of the Fire Inspector of the Richmond Fire Rescue and the testimony of (the RFPT member), that (the RFPT member) did inform the owner or operator of the restaurant that there was a deficiency and that (the RFPT member)'s work was temporary. Whether (the RFPT member) advised the fire service of the deficiency is less clear. In his testimony, (the RFPT member) indicated that he had placed a telephone call to the Richmond Fire Prevention Office to advise of the deficiency, as has been the arrangement between special extinguishing system technicians and the respective fire services. However, this evidence was not corroborated and the Committee does not accept that it occurred. Also, the required ASTTBC system service certificate – which might be considered to be notice to the fire service – was, unfortunately, not put into evidence by either party.*
3. *Is a failure to advise the fire service of a deficiency in a special extinguisher system a breach of Principle 1 of the Code of Ethics? The Committee believes that would depend upon the severity of the deficiency but there was insufficient evidence presented in this hearing to allow it to come to that conclusion.*

4. *As to the second issue, the Committee concludes that (the RFPT member) modified a Special Fire Extinguishing System to address a non-compliant installation (by others) of a commercial cooking apparatus that produces smoke and grease laden vapours. In doing so, (the RFPT member) understood that the combination of the cooking appliances outside the hood and the modifications he provided to the special extinguishing system were not in compliance with NFPA 96 and the BC Fire Code. In addition, because (the RFPT member)'s modifications were undertaken without permit, the authority having jurisdiction did not have the opportunity to address the deficiency. On this basis, (the RFPT member) is guilty of a breach of Principle 1 of the Code of Ethics.*

Sentencing Recommendation

It is the recommendation of the Committee that (the RFPT member)'s continuing RFPT certification be conditional upon his obtaining re-certification of special extinguisher systems and his provision of satisfactory evidence of such to ASTTBC within 12 months. Should (the RFPT member) fail to provide satisfactory evidence of such to ASTTBC within the time allowed, the Committee recommends that his RFPT certification be revoked. In arriving at this recommendation, the Committee considered the following:

- *ASTTBC did not prove that Principle 1 required that (the RFPT member) to inform the fire service of the deficiency in this case;*
- *ASTTBC did not prove that a serious life safety condition existed, as there was no evidence of any cease and desist or rectification Order by the fire service;*
- *(the RFPT member)'s clear, if misguided; intention was to make a bad situation better rather than to mislead either the fire service or the restaurant owner or operator.*

The Practice Review Board approved the Discipline Committee reasons for judgment and on March 19th ASTTBC Legal Counsel notified the member of the decision. On April 25th the member's Legal Counsel appealed the decision of the Discipline Committee and Practice Review Board. The eleven stated reasons for appealing the decision included the claim that there was a violation of the principles of natural justice and procedural fairness. A report was prepared and the matter submitted to ASTTBC Council for a decision on the Appeal.

APPEAL

On September 27, 2007 ASTTBC Council, in a closed session, reviewed the staff report on the complaint case; along with the evidence presented at the Discipline Hearing, recorded Hearing minutes and Appeal letter from the member's Legal Counsel. Council decided to overturn the previous decision of the Practice Review Board and Discipline Committee. Counsel determined that the Appeal should be granted based on the arguments of the member's Legal Counsel and he was subsequently notified as to the granting of the Appeal. Council decided, however, that the Registrar was at liberty to proffer a new charge if the circumstances warranted it. It has since been determined that no other charge would be appropriate and the case has been closed.