

BPB Complaint No. C2-01312

IN THE MATTER OF

Under the Building Act 2004 (the Act)

A complaint to the Building Practitioners Board under section 315 of the Act

AGAINST

Rex Wood, Licensed Building Practitioner No. BP 102304

FINAL DECISION OF THE BUILDING PRACTITIONERS' BOARD IN RESPECT OF PENALTY, COSTS AND PUBLICATION OF NAME

Introduction

- [1] This decision arises out of a decision by the Building Practitioners Board (“the Board”) where the Board found that the Respondent had:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act); and
 - (b) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).
- [2] The Respondent is a Licensed Building Practitioner with a Carpentry Licence issued 28 September 2010.
- [3] The Board considered the complaint under the provisions of Part 4 of the Act, the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Regulations) and the Board’s Complaints Procedures.
- [4] The Board heard the complaint on 1 February 2017 in Auckland. The Board Members present for the hearing were:
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|--------------------|--------------------------|---|
| Richard Merrifield | Deputy Chair (Presiding) | Licensed in Carpentry and Site Area of Practice 2 |
| Mel Orange | Board Member | Legal Member appointed under s 345(3) of the Act |
| Robin Dunlop | Board Member | Retired Professional Engineer |
| Catherine Taylor | Board Member | Layperson |
- [5] The Board’s substantive decision was issued on 20 February 2017. In it the Board outlined the principles on which its decisions on penalty, costs and publication are based.

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- [6] The Board noted in its substantive decision that the Respondent had stated at the hearing that he would compensate the Complainant following the hearing. He was given an opportunity to do so prior to the Board making its decision on penalty. The Respondent was also invited to make written submissions as regards penalty, costs and publication.
- [7] On 21 March 2017 the Board received the Respondent's submissions by way of his solicitor. It has considered those and made the following decision.

Penalty

- [8] The Respondent was found to have committed two disciplinary offences. Both were serious and as such a more, rather than less, severe penalty is warranted. The penalties the Board can impose are set out in s 318 of the Act¹.
- [9] The Respondent noted that he was supervising staff and that one of them had misled him as to his licensing status and that he has since removed him from his employ. He also noted his own involvement in the building work was limited and he had, as regards the quality of the building work, been let down by his staff. He also set out, as regards a failure to obtain a building consent, that he had "learnt from (the) ordeal and will take steps to ensure that Council consent is obtained when required in the future".
- [10] The Respondent set out his remorse which is acknowledged as genuine and that he has taken legal advice to educate himself on his obligations and responsibilities and is now fully aware of the standards required of him as a licensed building practitioner.
- [11] The Respondent's submissions also noted that:
- In keeping with his word to make things right, he has agreed to refund the sum of \$70,369.11 in full and final settlement of all issues. This has been recorded in a deed and accepted by the Complainant.*
- [12] Evidence to substantiate the above was provided and the Complainant has confirmed receipt of payment. It is noted that the Respondent has borrowed the funds in order to satisfy the undertaking to pay compensation by way of a refund of the sum paid by the Complainant.
- [13] The Respondent's actions in taking responsibility for the matters which led to the complaint are laudable and the Board considers he has, as a result of the complaint and hearing process, learnt from it.
- [14] The Respondent's submissions also set out other matters as regard mitigation including a hitherto clean disciplinary record and the importance of his licence to his maintaining an income as the family breadwinner.
- [15] A submission was made that the appropriate penalty was that of a fine of \$1,000 and that this was consistent with other Board penalty decisions.
- [16] The Board's initial view was that cancellation or suspension of the Respondent's licence was the appropriate penalty. This view was taken on the basis of the overall seriousness of the matter, the need to maintain standards and the need to protect the public and maintain confidence in the licensed building practitioner regime. Given the mitigation presented and, in particular the fact that the Respondent has compensated the Complainant, the Board no longer considers such action is necessary.

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- [17] It should be noted that whilst the compensation paid has been a significant factor in the Board deciding that cancellation or suspension is not warranted this will not always be the case. In this instance it is noted that the Respondent's competence as a licensed building practitioner was not in question. His conduct, disrepute aside, amounted to negligence and it was clear from the submissions made that he has learnt from the ordeal and will pay closer attention to the building work he is responsible for in the future.
- [18] The level of negligence found was, however, high and the Respondent has also been found to have brought the regime into disrepute. A significant penalty is therefore still warranted. This is to not only ensure that the Respondent does not reoffend but also to send a message to the industry that such behaviour is not countenanced.
- [19] Given the above and in all the circumstances the Board considers a censure and a fine of \$2,000 is warranted.

Costs

- [20] With regard to costs the Respondent has submitted that an order of \$1,000 would be appropriate. In support he has noted he was cooperative with the Board's inquiry and has compensated the Complainant.
- [21] The Board notes that extensive specialist reports were required as was a half day hearing. As such considerable costs have been incurred. The Board therefore considers that costs of \$1,500 is warranted. It should be noted that this is significantly less than the 50% of actual costs outlined by the Courts as being reasonable.

Publication of Name

- [22] The Respondent has submitted that further publication is not required. The Board does not agree. The matters that led to the complaint and the circumstances of the case are such that others can learn from it. Accordingly the Board considers that further publication is warranted.
- [23] The Board, in considering further publication can either name the Respondent or order that he not be named. Naming a licensed building practitioner is, at times, necessary where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing and of the licensed building practitioner's involvement.
- [24] Given the factors discussed above with regard to the Board's penalty findings the Board has decided that naming the Respondent in its further publication is not necessary. As such an article or articles will be published in Code Words and/or on the Board's website and in such other publications as the Board sees fit detailing the circumstances of the case and the learnings from it without naming the Respondent.

Board's Decision

- [25] For the reasons set out above, the Board directs that:
- Penalty:** Pursuant to s 318(1)(d) of the Act 2004, the Respondent is censured and under s 318(1)(f) the Respondent is ordered to pay a fine of \$2,000.

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Costs: Pursuant to s 318(4) of the Act, the Respondent is ordered to pay costs of \$1,500 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with s 301(1)(iii) of the Act.

In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action except that the Respondent will not be named in that publication.

Non Payment of Fines or Costs

[26] The Respondent should take note that the Board may, under s 319 of the Act, suspend or cancel a licensed building practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid. Section 319 provides:

319 Non-payment of fines or costs

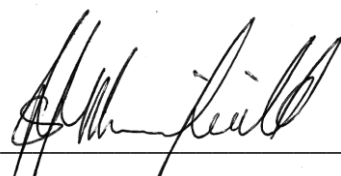
If money payable by a person under section 318(1)(f) or (4) remains unpaid for 60 days or more after the date of the order, the Board may—

- (a) cancel the person's [licensing] and direct the Registrar to remove the person's name from the register; or*
- (b) suspend the person's [licensing] until the person pays the money and, if he or she does not do so within 12 months, cancel his or her [licensing] and direct the Registrar to remove his or her name from the register.*

Right of Appeal

[27] The Respondent has a right to appeal the Board decisions under s 330(2) of the Actⁱⁱ.

Signed and dated this 4th day of April 2017.



Richard Merrifield
Presiding Member

ⁱ **Section 318 of the Act**

- (1) *In any case to which section 317 applies, the Board may*
 - (a) *do both of the following things:*
 - (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*

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- (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (d) *order that the person be censured:*
 - (e) *order that the person undertake training specified in the order:*
 - (f) *order that the person pay a fine not exceeding \$10,000.*
- (2) *The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
 - (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
 - (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
 - (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit."*

ii **Section 330 Right of appeal**

- (2) *A person may appeal to a District Court against any decision of the Board—*
 - (b) *to take any action referred to in section 318.*

Section 331 Time in which appeal must be brought

An appeal must be lodged—

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.*