

Before the Building Practitioners Board

	BPB Complaint No. C2-01932
Licensed Building Practitioner:	Matthew Biddle (the Respondent)
Licence Number:	BP 118856
Licence(s) Held:	Design AOP 2

Penalty Decision of the Board under section 318 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Location	Tauranga
Hearing Type:	In Person
Hearing Date:	31 October 2018
Substantive Decision Date:	16 November 2018
Penalty Decision Date:	19 December 2018

Board Members Present

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
Robin Dunlop, Retired Professional Engineer
Faye Pearson-Green, LBP Design AOP 2

Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

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Introduction

- [1] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had committed the following disciplinary offence(s):
- (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) has 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] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [3] In its substantive decision the Board set out its indicative position as regards penalty, costs and publication and invited the Respondent to make written submissions on those matters.
- [4] On 12 December 2018, the Board received the Respondent’s submissions. It has considered them and made the following decisions.

Penalty

- [5] The Board’s initial view was that the cancellation of the Respondent’s licence was the appropriate penalty for the disciplinary offence. The Board set out its reasoning in its substantive decision.
- [6] The Respondent provided a set of plans which he submitted showed his competence as a licensed building practitioner. The Respondent also submitted that:
- Secondly the penalty is in appropriate as the contract for the works was between a company and a consumer not myself directly and any remedies sort would be through the company and not myself, I have attached the quote as proof of this matter.
- [7] The Board has not made findings as regards the contract or commercial matters. The Respondent’s conduct as a licensed building practitioner has been considered and he has been found to have been incompetent as regards the design that the complaint

related to and that he had brought the regime into disrepute. Who the contracting parties were is irrelevant for the purposes of disciplinary action under the Act. The Respondent cannot hide behind a company or trading entity. He is the licensed person. He is accountable for his conduct as a licensed person.

- [8] The Respondent also submitted that the penalty would be harsh on him and his family and that his business has contracted for services that require him to have a license.
- [9] The Board did not take the step of cancelling the Respondent's licence lightly. It is, however, required to uphold the standards of the licensing regime and to ensure that the public are protected from unscrupulous conduct. Given those factors, and the fact that the Respondent has a disciplinary history before the Board for similar conduct, the Board decided that the cancellation was appropriate. That remains the case.
- [10] The Respondent should note that whilst his licence is cancelled, he can carry out restricted design work under the supervision of another licensed person. His business could also contract in the services of a licensed person. As such there are options open to the Respondent.

Costs

- [11] The Board's initial view was that \$3,000 were appropriate. This remains the case.

Publication of Name

- [12] The Board's initial view was there were good reasons to further publish the matter. The Respondent did not submit on this matter. The Board confirms its order.

Section 318 Order

- [13] For the reasons set out above, the Board directs that:

Penalty: Pursuant to section 318(1)(a)(i) of the Act, the Respondent's licence is cancelled and the Registrar is directed to remove the Respondent's name from the register of Licensed Building Practitioners and pursuant to section 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of 18 months.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,000 (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 section 301(1)(iii) of the Act.

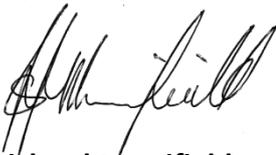
In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision.

- [14] The Respondent should note that the Board may, under section 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.

Right of Appeal

- [15] The right to appeal Board decisions is provided for in s 330(2) of the Actⁱⁱ.

Signed and dated this 19th day of December 2018



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:*
 - (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—

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- (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.*