

Before the Building Practitioners Board

	BPB Complaint No. C2-01621
Licensed Building Practitioner:	Ashok Maharaj (the Respondent)
Licence Number:	BP 122781
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	15 March 2018
Substantive Decision Date:	30 April 2018
Penalty Decision Date:	31 May 2018

Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
David Fabish, LBP, Carpentry Site AOP 2
Catherine Taylor, Lay Member
Faye Pearson-Green, LBP Design AOP 2

Appearances:

Robert Warburton for the Respondent

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.

Contents

Introduction.....	2
Penalty.....	2
Costs.....	3
Publication of Name.....	3
Section 318 Order.....	3
Right of Appeal.....	4

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 manner (s 317(1)(b) of the Act); and
 - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) 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 Act¹, 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 18 May 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 Respondent’s licence should be suspended for a period of six months.
- [6] The Respondent made submissions as regards the impact a suspension of his licence would have on him, his business and his employees. The Respondent submitted:
- 8. *In my submission a suspension of licence is to be retained as a potential penalty in only the very worst cases - where the practitioner has walked away from responsibility for mistakes.*
 - 9. *I have not walked away. I have given evidence of my willingness and preparedness to remediate. I have taken responsibility for my lack of care. I am not the worst type of practitioner who is required to be sanctioned by way of suspension.*

10. *If I had avoided my responsibilities, I could understand suspension being appropriate, but I have not done that. I have maintained my commitment to concluding the work in a proper and professional manner and ensuring that the owner obtains code within the terms of the contract agreement.*
11. *I want to be able to carry out my commitments as a licensed building practitioner, both to the industry and my customer.*
12. *I cannot do that if the Board imposes the sanction of suspension. I request that the Board reconsider the proposed penalty to allow me to honour my obligations.*

[7] Having considered the submissions received the Board has decided to uphold its initial view.

[8] The Board notes the Respondent's submission that he has not walked away from his responsibilities. That said, he is doing no more than he contracted to do and was obligated to do under the Act. The key aspect, however, in determining the appropriate penalty is the actual conduct that led to the complaint and the disciplinary finding. The Respondent failed in his obligations as a supervisor. He displayed a high degree of negligence and allowed a dwelling to be constructed in a manner that was contrary to the building consent that had been issued. He neither identified the issues nor dealt with them until after a complaint was made.

[9] As was noted in the Board's substantive decision the purpose of professional discipline is to uphold the integrity of the profession and the enforcement of a high standard of propriety and professional conduct but that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards.

[10] The Board considers that this is one of those cases.

Costs

[11] The Board's initial view was that the sum of \$3,000 in costs was appropriate. The Respondent did not make submissions as regards costs. The Board affirms its decision.

Publication of Name

[12] The Board's initial view was there were good reasons to further publish the matter. Again no submissions were received and the Board affirms its decision.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(b) of the Act, the Respondent's licence is suspended for a period of 6 months and the Registrar is directed to record the suspension in the register of Licensed Building Practitioners.

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 31st day of May 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.

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- (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.*