

Before the Building Practitioners Board

At [REDACTED]

BPB Complaint No. C2-01063

Under the Building Act 2004 (the Act)

IN THE MATTER OF

A complaint to the Building Practitioners' Board under section 315

AGAINST

[REDACTED], Licensed Building Practitioner
No. [REDACTED]

DECISION OF THE BUILDING PRACTITIONERS' BOARD

1 Introduction

- 1.1 [REDACTED] (the Complainant) lodged a complaint with the Building Practitioners' Board (the Board) on 27 March 2014 in respect of [REDACTED], Licensed Building Practitioner (the Respondent).
- 1.2 The complaint alleged the Respondent has, in relation to building work in respect of [REDACTED], has failed, without good reason to provide a record of work, on completion of the restricted building work as required by 88(1) of the Act.
- 1.3 The Respondent is a Licensed Building Practitioner with a Brick and Blocklaying licence issued 23 August 2011.
- 1.4 The Board has considered the complaint under the provisions of Part 4 of the Act and the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Regulations).
- 1.5 The following Board Members were present at the hearing:
- | | |
|--------------------|-----------------|
| Chris Preston | Deputy Chairman |
| Brian Nightingale | Board Member |
| Richard Merrifield | Board Member |
| Catherine Taylor | Board Member |
- 1.6 No Board Members declared any conflicts of interest in relation to the matters under consideration.
- 1.7 The matter was considered by the Board in [REDACTED] on 12 December 2014 in accordance with the Act, the Regulations and the Board's "Complaints Procedure".
- 1.8 The following other persons were also present during the course of the hearing:
- | | |
|-------------|-----------------|
| Sarah Jones | Board Secretary |
|-------------|-----------------|

Members of the public were not present.

2 Board Procedure

- 2.1 The "form of complaint" provided by the Complainant satisfied the requirements of regulations 5(a) to (d) of the Regulations.
- 2.2 On 12 June 2014, the Registrar of the Board prepared a report in accordance with regulations 7 and 8 of the Regulations. The purpose of the report is to assist the Board to decide whether or not it wishes to proceed with the complaint.
- 2.3 On 21 July 2014 the Board considered the Registrar's report and in accordance with Regulation 10 it resolved to proceed with the complaint that the Respondent failed, without good reason to provide a record of work, on completion of the restricted building work as required by 88(1) of the Act.
- 2.4 On 20 November 2014 at 2:30pm, a pre-hearing teleconference was convened by David Clark. The Respondent and Registrar's Representative were both present. The hearing procedures were explained and the Respondent's attendance at the substantive hearing was confirmed.

3 The Hearing

- 3.1 The hearing commenced at 2pm on 12 December 2014.
- 3.2 The hearing was held on the papers as agreed by the Respondent.

4 Substance of the Complaint

- 4.1 The Respondent carried out brickwork at the Complainant's property. The Respondent was a subcontractor and the main contractor went into liquidation during the construction process. The Respondent has not been paid for the work he undertook.
- 4.2 He completed the work in about October 2013, and the Respondent was asked for the record of work in February 2014. The Respondent advised that due to an oversight the record of work was not sent until April 2014.

5 Evidence

- 5.1 The Respondent did not dispute the facts, and admitted that he had failed to provide a record of work in a timely manner.

6 Board's Conclusion and Reasoning

- 6.1 There is a statutory requirement under s 88(1) of the Building Act 2004 for an LBP to provide a record of work to the owner and the building consent authority on completion of restricted building work.
- 6.2 Failing to provide a record of work is a ground for discipline under s 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the LBP had "good reason" for not providing a record of work on "completion" of the restricted building work.

- 6.3 It was clear on the evidence that restricted building work had been done by the LBP and that it was complete. As such, the obligation to provide the record of work arose. The question then was whether there was a good reason to withhold it.
- 6.4 The Board has previously held that whilst the Board accepts that it is common for parties to with-hold work or documentation to provide “leverage” in the event of dispute or non-payment, a Record of Work is a statutory requirement, not a negotiable term of a contract. The requirement for it is not affected by the terms of a contract, nor by a contract dispute. Accordingly this of itself is not a good reason and the Board finds in this particular case that it was not a good reason to withhold.
- 6.5 The Board considered issues surrounding records of work more fully in decision C1100 which is now published on the Board’s web site. Whilst each decision will turn on its own facts in C1100 the Board provided some useful guidance:
- (a) The Record of Work is in relation to Restricted Building Work and not necessarily related to the whole of a project.
 - (b) Whilst it may be sensible to “roll up” the documentation when a project is “complete”, the completion of any or all Restricted Building Work could occur at any stage before the completion of a project.
 - (c) A Record of Work is a requirement of legislation, unaffected by contract terms.
 - (d) The obligation to provide a Record of Work lies with the individual LBP, not with the contracting party.
 - (e) Building code compliance is required for Restricted Building Work, but this may or may not be the same standard as required by contract, or the standards aspired to by an LBP.
 - (f) Section 88(4) makes it clear that the Record of Work does not – of itself – create additional liability.
 - (g) The reason for the Record of Work is to identify who did Restricted Building Work. The standard forms provide the opportunity to describe the work done, which could be all or part of an item of building work.
 - (h) If an LBP is not able to complete the intended restricted building work or to supervise the completion of it then, unless arrangements are made for another LBP to complete it and provide a record of work which includes the work completed or supervised by the original LBP, the original LBP will have to provide a Record of Work for the restricted building work they completed or supervised prior to their involvement coming to an end.
 - (i) It is in the best interests of LBPs to properly document what they did at the time it was done; a Record of Work provides that opportunity.

7 Board Decision

- 7.1 The Board has decided that the LBP has failed, without good reason, to provide a record of work on completion of restricted work as required by s 88(1) of the Building Act.

8 Disciplinary Penalties, Publication and Costs

- 8.1 The grounds upon which a Licenced Building Practitioner may be disciplined are set out in s 317 of the Act. If one or more of the grounds in s 317 applies, then the Board may apply disciplinary penalties as set out in s 318 of the Act. Under s 318(4) of the Act, the Board has the power to order the LBP to pay the reasonable costs and expenses of, and incidental to, the Board’s inquiry and pursuant to s 318(5) of the

Act, the Board may publicly notify any disciplinary action taken against a Licensed Building Practitioner in any way it thinks fit.

- 8.2 The Board's Complaints Procedures allow the Board to either set out the Board's decision on disciplinary penalty, publication and costs or to invite the LBP to make written submissions on those matters.
- 8.3 The Board considered the evidence on the papers presented including the admission by the Respondent that he had not provided the record of work in a timely manner. The Respondent made submissions which were relevant to penalty, publication and costs and the Board has taken these into consideration.
- 8.4 The Board is mindful that the Licenced Building Practitioner scheme is relatively new, that there is some misunderstanding about record of work provisions, and a general lack of knowledge as to the practitioner's obligations. This has been taken into consideration in determining the penalty. There will come a point, however, when there has been sufficient opportunity for practitioners to familiarise themselves with the Act's provisions and the penalties the Board imposes will have to increase where there is a failure to adhere to the requirement to provide a record of work.
- 8.5 With regard to costs the Board notes the LBP has been cooperative in regard to the Board's inquiry and had not obstructed the Registrar in his investigation.
- 8.6 On the matter of publication, the LBP's name and the disciplinary outcomes will be recorded in the public register maintained as part of the Licenced Building Practitioners' scheme as is required by the Act. Having taken into account the circumstances of the case, the Board does not find it necessary to further publish the Respondent's name or to specifically identify him in other publications.
- 8.7 For the reasons set out above, the Board directs that:

Penalty:

Pursuant to s 318(1)(f) is ordered to pay a fine of \$250 (GST included).

Costs:

Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$250.00 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication of name:

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 no action taken to publicly notify the Board's action, except for the note in the register.

9 Right of Appeal

9.1 The right to appeal Board decisions is provided for in s 330(2) of the Act.

14

A handwritten signature in blue ink that reads "Chris Preston". The signature is written in a cursive style with a horizontal line underlining the name.

Deputy Chairman