

BPB Complaint No. C2-01305

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

Michael Siemelink, Licensed Building Practitioner No. BP 107607

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 in a negligent manner (s 317(1)(b) of the Act);
 - (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); and
 - (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act);
- [2] The Respondent is a Licensed Building Practitioner with a Carpentry Licence issued 17 June 2011.
- [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 3 August 2016 in Auckland. The Board Members present for the hearing were:
- | | |
|------------------|--------------------------|
| Mel Orange | Board Member (Presiding) |
| Robin Dunlop | Board Member |
| Dianne Johnson | Board Member |
| Catherine Taylor | Board Member |
- [5] The Board's substantive decision was issued on 15 August 2016. In it the Board outlined the principles on which its decisions on penalty, costs and publication are

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based and gave its preliminary views in respect of the appropriate penalty. The Board invited the Respondent to make written submissions prior to confirming its position.

- [6] On 30 August 2016 the Board received the Respondent's submissions. It has considered those and made the following final decision.

Penalty

- [7] The Board's initial view was that a fine of \$2,000 was the appropriate penalty for the disciplinary offence. The Respondent has not disputed this amount
- [8] The Respondent expressed his disappointment with the outcome, reiterated the difficulties he had with the complainant and obtaining payment for the work. These latter matters had already been taken into consideration by the Board.
- [9] Having considered the submissions received the Board has decided to uphold its initial view.

Costs

- [10] The Board's initial view was that \$1,000 was appropriate. Again the Respondent has not disputed the amount.
- [11] Having considered the submissions received the Board has decided to uphold its initial view.

Publication of Name

- [12] The Board's initial view was there were no good reasons to further publish the matter.
- [13] The Respondent has asked that the matter not be recorded on the Register. This is a matter of which the Board does not have any discretion. The Act is clear in its requirements that disciplinary outcomes be recorded for a period of three years.
- [14] Having considered the submissions received the Board has decided to uphold its initial view.

Board's Decision

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

Penalty: Pursuant to s 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$2,000.

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

In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the register and being named in this decision.

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Right of Appeal

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

Signed and dated this 29th day of September 2016



Mel Orange
Presiding Member

ⁱ **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.