

Before the Building Practitioners Board

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| | BPB Complaint No. C2-01614 |
| Licensed Building Practitioner: | Ioane Ngaata (the Respondent) |
| Licence Number: | BP 130413 |
| Licence(s) Held: | Carpentry and Site AOP 1 |

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

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|----------------------------|------------------|
| Complaint or Board Inquiry | Complaint |
| Hearing Location | Auckland |
| Hearing Type: | In Person |
| Hearing Date: | 21 December 2017 |
| Decision Date: | 15 January 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

Appearances:

[Omitted] for the Complainant

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.

Board Decision:

The Respondent **has** committed disciplinary offences under section 317(1)(b), 317(1)(d), 317(1)(da)(ii) and 317(1)(i) of the Act.

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Introduction

[1] The hearing resulted from a Complaint into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:

- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
- (b) carried out (other than as an owner-builder) or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise (s 317(c) of the Act);
- (c) 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);

¹ The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

- (d) 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);
- (e) held himself or herself out as being licensed to carry out or supervise building work or building inspection work of a type that, at that time, he or she was not licensed to carry out or supervise (s 317(1)(db) of the Act); and
- (f) 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).

Function of Disciplinary Action

[2] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*² and in New Zealand in *Dentice v Valuers Registration Board*³.

[3] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a Respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*⁴ Collins J. noted that:

“... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”

[4] The Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. It does not have any jurisdiction over contractual matters.

Background to the Complaint

[5] The Complainant engaged the Respondent to undertake an extension to her home under a building consent. The work commenced in January 2016. The building work has not been completed. The Complainant set out various allegations as regards to the building work including:

- (a) Delaying the project;

² *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

³ [1992] 1 NZLR 720 at p 724

⁴ [2016] HZHC 2276 at para 164

- (b) Delaying payments to suppliers
- (c) Delaying final commissioning of the work;
- (d) Not paying suppliers;
- (e) Work did not commence until March 2016 when they were asked to move out in January 2016;
- (f) Giving incorrect reasons for delays;
- (g) Damage to the existing veranda roof and resulting water damage left for seven months;
- (h) Damage to the new roof – dents and rust caused by workers leaving nails and pliers on the roof;
- (i) Young workers left unsupervised to do work that they did not know how to do;
- (j) Incomplete external cladding – battens falling off – leading to further water damage on the South East side of the house;
- (k) No front door after 14 months;
- (l) Doors not replaced as per the plans;
- (m) Windows not replaced as per the plans (no window in one bathroom);
- (n) No workers turning up for months;
- (o) He broke his promise not to take on any other jobs until their work was complete;
- (p) He told them it was a 3-4 month project, still not finished after 14 months;
- (q) He asked the Gib stopper/painter to falsify his invoice and add an extra \$4,000 to it so he could pay a different sub-contractor;
- (r) He asked the Complainant to pay for the delivery of the Gib board in August at a cost of \$200;
- (s) Requested payment for work that was not complete;
- (t) Lied about reasons of the delays; and
- (u) The contract price of \$240,000 includes items that were not used for the project.

[6] It was also alleged that the Respondent failed to provide a record of work on completion of restricted building work.

Evidence

- [7] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. Under section 322 of the Act the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.
- [8] The Complainant provided copies of correspondence to the Respondent and to Auckland Council with her complaint. She also provided photographs of noncompliant and/or substandard building work and of damage she claimed was caused by the Respondent and/or his workers. A photocopy of the Respondent's licence together with a Master Builders logo and a Licensed Building Practitioners logo was also provided. The Complainant alleged the Respondent had represented that he was a Master Builder. Enquiries of Master Builders revealed that the Respondent had applied for membership but had been rejected.
- [9] The Complainant also provided:
- (a) a spreadsheet with a breakdown of costs and comments on the extent to which the work had been completed and alleged issues with the building work;
 - (b) a copy of the \$240,000 fixed price Building Agreement entered into with the Respondent's company Perlite Construction Limited; and
 - (c) a copy of Perlite Construction Limited payment claims.
- [10] The 5 payment claims provided covered:

| No | Payment Claim | Date | Amount |
|----|---|---------------|----------|
| 1 | Deposit | | \$48,000 |
| 2 | Mid floor structure | 10 March 2016 | \$36,000 |
| 3 | Framing and roof structure | 6 April 2016 | \$84,000 |
| 4 | Eaves, gables, plumbing and electrical wiring | 12 May 2016 | \$33,500 |
| 5 | Insulation, linings, doors and mouldings | 13 July 2016 | \$33,500 |

- [11] Total payments claimed and paid to 13 July 2016 was \$235,000 of the total contract price of \$240,000.
- [12] The Respondent provided a written response to the complaint. He stated he was on site 90% of the time and that he had a second year apprentice and a hammer hand on site. He noted financial issues with electrical fit-out as a result of a lack of

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

electrical plans and that financial issues and delays also arose in relation to changes to plumbing fit-out. The Respondent set out details as regards existing laminate beams, his engagement with an engineer to try and preserve them and the resulting impacts on the alterations and on project costs. The Respondent saw budget issues as the primary driver of the onsite issues.

- [13] The Board instructed a Technical Assessor to review documentation and complete a site visit and report on the compliance and quality of the workmanship. The Technical Assessor made a site visit on 03 November 2017. He reviewed/observed evidence of the following:

Exterior:

1. *Board and Batten wall cladding not installed as per normal trade practice;*
2. *Roof cladding and flashings not installed as per normal trade practice, and impact damage of steel roof sheets;*
3. *There are no exterior rainwater goods installed;*
4. *1st floor door to exterior boarded up as the 1st floor balcony deck has not been installed;*
5. *Existing skylight and other removed materials left in the exterior elements and subsequent damage has occurred;*
6. *The 1st floor attic space roof appears to have too low slope for the roof sheet profile installed.*

Interior:

7. *Exposed grain plywood interior flooring not installed as per normal trade practice;*
8. *Changes in design lay out from approved building consent drawings, 9. Bathroom fittings not installed as per normal trade practice;*
10. *Installation of plasterboard linings, plasterboard stopping and door joinery not as per normal trade practice;*
11. *Evidence of water entry from exterior into the dwelling.*

Incomplete works:

12. *Stair handrail not installed;*
13. *Electrical service second fix and certification;*
14. *Plumbing service second fix and certification;*
15. *1st floor Balcony deck;*

16. *Two bath rooms incomplete;*
17. *Bath room waterproofing incomplete;*
18. *Concrete void in studio not filled in;*
19. *Wall insulation;*
20. *Plasterboard stopping;*
21. *Decoration;*
22. *Certificates required from subcontractors for code compliance issue;*
23. *Licensed Building Practitioner memorandum record of work for works carried out or supervised.*

[14] The Technical Assessor noted:

1.8 Compliance with Recognised Guidelines, Standards and Industry Practice

As identified within the report there have been documented evidence of shortfalls in regard to the building work undertaken at the subject property. Some of these shortfalls are departures from the building consent, and subsequently, the Building Act and New Zealand Building Code.

I was informed by the complainant that there was unsupervised restricted work carried out on the roof by way of makeshift scaffold when it was not safe to do so. I have not observed or reviewed photographs of the scaffold described by the complainant.

The Respondent, replied when contacted, however has not responded to me formally in regard to the complaints.

[15] The Technical Assessor concluded as follows:

1.10 Conclusion

The Complainant alleges that the subject building project contained various construction defects that require remedial attention before being able to be completed post the departure of the Respondent from site.

The effect of remediation to defective work described in the complaint would lead to subsequent construction delays and extensive extra cost in regard to investigation and remedial design service, contractor's labour, additional material cost and extended plant hire.

The Respondent has an opposite position to the complaints about the project. The Respondent has answered questions from the Building Practitioners Board Registrar in regard to his position.

A review of all the documentation provided by the Building Practitioners Board, the Complainant and Respondent has taken place. The documentation has revealed, issues in regard to the following:

1. *Departures from the building consent documentation,*
2. *Differences between the Respondent and Complainant, following the departure of the Respondent from the projects,*
3. *Incomplete works,*
4. *Amendments to design drawings during the projects,*

Construction contracts and costs are outside of the scope of and not analysed as part of the LBP board Special Advisor's investigation and report, however the complaints related to construction and compliance that are analysed usually lead to the unexpected and inflated construction costs as mentioned above.

[16] The Technical Assessor also provided setting out the chronology of the alteration:

| Date | Event |
|-------------------|--|
| 03 February 2014 | Application for building consent received by Auckland Council |
| 04 March 2014 | Building Consent 20140099 granted and issued by Auckland Council |
| 15 January 2016 | Work commenced on site Circa January-March 2016 |
| 13 May 2016 | Auckland Council Under Slab plumbing/drainage – Pass |
| 13 May 2016 | Auckland Council, Pre-wrap (framing) – Fail |
| 18 August 2016 | Auckland Council, Pre-line building works – Pass (Partial) |
| 18 August 2016 | Auckland Council, Pre – wrap building works – Pass (Updated) |
| 13 September 2016 | Auckland Council, Final inspection – Fail |
| 14 September 2016 | Auckland Council, Post Line – Fail |
| 14 September 2016 | Auckland Council, Exterior Cladding – Fail |
| 28 September 2016 | Application for Minor variation – Approved by Auckland Council |
| 29 September 2016 | Auckland Council, Post line – pass |
| 29 September 2016 | Auckland Council, Pre-line Building Works – pass |

| Date | Event |
|-------------------|--|
| 29 September 2016 | Auckland Council, Exterior Cladding – pass |

[17] At the hearing the Board heard evidence from:

| | |
|----------------|---------------------------------------|
| Ioane Ngaata | Respondent |
| [Omitted] | Complainant |
| [Omitted] | Witness for the Complainant |
| Graeme Calvert | Technical Assessor |
| Peter Moloney | Auckland Council, Inspections Manager |
| [Omitted] | Engineer |

[18] The Complainant gave evidence that the work started in January 2016. The Respondent disputed this stating that the building work did not commence until after he was licensed but that preparatory work had been undertaken. The Respondent's licence was granted on 28 April 2016. The Respondent's assertion was inconsistent with his invoicing with claims 2 having been made on 10 March for mid floor structure and payment claim 3 on 6 April 2016 for framing and roof structure. The timing may, however, have accorded with council inspection records which note first inspections occurring on 13 May 2016. The Engineer gave evidence of a site meeting on 23 February 2016 to discuss the Respondent's proposal to reuse existing beams instead of installing steel beams as consented. He noted that no actual building work had commenced when the meeting was held.

[19] The Respondent when questioned further as to whether he had carried out restricted building work prior to being licensed accepted that he had but stated that the work was under the supervision of another Licensed Building Practitioner. He named the supervisor as Wayne Ireland. That person did not appear in any of the documentation before the Board or in Auckland Council documentation. The Complainant did not know of Wayne Ireland.

[20] The Complainant also gave evidence that the Respondent was seldom on site and that his workers were mostly working unsupervised. The Respondent stated he had another large job on at the same time but still maintained that he was on site 90% of the time. He noted the Complainant was not on site most of the time and as such she would not have known whether he was there or not. The Complainant stated she worked from home much of the time during the build and as such she knew who was and was not on site when she was there. She reaffirmed her assertion as regards to the Respondent not being on site.

- [21] The Respondent provided a general response to the complaint in which he stated that the budget was very tight and that the Complainant's requested changes to the design and involvement in the project as a project manager created problems and delays. He further reiterated issues created through a lack of detailed electrical and plumbing plans and generally stated that everything was negotiable or in negotiation although it was unclear as to what he meant by this.
- [22] The Board questioned the witnesses with regard to some of the specific allegations set out in an Analysis Table within the Technical Assessor's report which is appended to this decision. Of specific note were:
- (a) The manner in which external cladding was fitted. The consented plans and specifications noted the cladding was to match existing which was board and batten with rose head nail fixings. The fixings used were nail gun "t" nails counter sunk into the timber and over the front entrance door a sheet of plywood had been used as the cladding. The Technical Assessor noted there were too many fixings in the board and batten cladding which did not allow for timber movement and that this had led to problems with the cladding. He also noted that the cladding over the door should have matched the remainder of the cladding. The Respondent stated the nails were temporary and that he was going to add the correct fixings and that the cladding over the door was not complete and that materials for it would have had to be machined due to gauge differences. The Technical Assessor noted that, in his opinion, the cladding should not have passed a Building Consent Authority inspection. The Council witness stated that the inspections were done by a junior inspector under supervision and that an inspection pass cannot be withdrawn;
 - (b) Why the scaffolding and protective plastic wrap was removed prior to a ridge capping on the roof being installed. The Respondent stated that this was the fault of the roofer he had engaged and that the contract was put on hold due to commercial disputes before the work was complete. The Complainant claimed that this and other items were not completed by sub-trades as the Respondent was not paying them even though he had been paid and that the capping was left unfinished for some time prior to the scaffold being removed;
 - (c) Details as to changes to the consented building work. The Complainant noted changes to the design and construction of an upstairs bathroom/ensuite that impacted on access to a bedroom. The Respondent stated that it was completed in consultation with the Complainant, the designer who developed the consented design and Auckland Council and that it was required due to a defective design. The Complainant disputed those claims. Documentation showed contact was made with the Auckland Council with regard to the changes on 29 September 2016. The building work in question had been invoiced as complete by that date and the cladding, which would

have been completed after the changes were made, had been inspected by that date. It was also noted that the Respondent ceased to work on the site in October 2016 soon after the contact with the Council.

- [23] The Complainant's legal counsel noted the impact the Respondent's alleged failures had on the Complainant and that recent received was that a total rebuild will be required as a result of weathertightness issues created.

Board's Conclusion and Reasoning

- [24] The Board has decided that the Respondent **has**:

- (a) carried out or supervised building work in a negligent and incompetent manner (s 317(1)(b) of the Act);
- (b) carried out or supervised building work that does not comply with a building consent (s 317(1)(d) of the Act);
- (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); and
- (a) conducted himself 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)

and should be disciplined.

- [25] The Board has also decided that the Respondent **has not**:

- (a) carried out (other than as an owner-builder) or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise (s 317(c) of the Act); or
- (b) held himself or herself out as being licensed to carry out or supervise building work or building inspection work of a type that, at that time, he or she was not licensed to carry out or supervise (s 317(1)(db) of the Act);

- [26] The reasons for the Board's decisions follow.

Jurisdiction

- [27] The Board only has jurisdiction over licensed persons⁶. The Respondent was not licensed until 28 April 2016 and as such the Board only has jurisdiction with regard to his conduct after that date.

- [28] The evidence before the Board showed that the Respondent carried out and supervised building work both prior to and after the date that he was licensed. As

⁶ Pursuant to section 315 of the Act.

such, and to the extent that building work was carried out after 28 April 2016, the Board has jurisdiction over the conduct of the Respondent.

Credibility

- [29] The evidence heard from the Respondent and the Complainant varied. The Complainant's evidence was, however, consistent with the documentation before the Board and the Board found her to be a more credible witness.

Negligence and/or Incompetence

- [30] In considering whether the Respondent has carried out or supervised building work in a negligent or incompetent manner the Board has had regard to the case of *Beattie v Far North Council*⁷. Judge McElrea provided guidance on the interpretation of those terms:

[43] Section 317 of the Act uses the phrase "in a negligent or incompetent manner", so it is clear that those adjectives cannot be treated as synonymous.

[44] In my view a "negligent" manner of working is one that exhibits a serious lack of care judged by the standards reasonably expected of such practitioners, while an "incompetent" manner of working is one that exhibits a serious lack of competence.

[46] The approach I have adopted recognises that the terms "negligent" and "incompetent" have a considerable area of overlap in their meanings, but also have a different focus - negligence referring to a manner of working that shows a lack of reasonably expected care, and incompetence referring to a demonstrated lack of the reasonably expected ability or skill level.

- [31] The Board has also considered the comments of Justice Gendall in *Collie v Nursing Council of New Zealand*⁸ as regards the threshold for disciplinary matters:

[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

- [32] There was ample evidence before the Board of negligent building work and of the Respondent's incompetence. The Technical Assessor's Analysis Table at Appendix One contains numerous examples. The Board had noted that the manner in which the building work to the exterior of the dwelling has been carried out has been of such a poor standard that it has compromised the existing dwelling.

- [33] The Respondent's evidence was that he both carried out and supervised the building work. It is clear from the quality and noncompliance of the building work that the Respondent was not providing adequate supervision of his staff. The Board

⁷ Judge McElrea, DC Whangarei, CIV-2011-088-313

⁸ [2001] NZAR 74

therefore finds that the Respondent has been negligent and incompetent with respect to both his carrying out of building work and to his supervision of others.

- [34] Accordingly and on the basis of the evidence and in accordance with the tests set out above the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent's conduct not only displayed a lack of reasonably expected care but also a lack of reasonably expected ability or skill.

Contrary to a Building Consent

- [35] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Code has been complied with and the works will meet any required performance criteria. In doing so the building consent process provides protection for owners of works and the public at large. Any departure from the consent which is not minor (as defined in s 45A of the Act) must be submitted as a variation to the consent before any further work can be undertaken. It is also an offence under section 40 of the Act to carry out building work other than in accordance with a building consent when one is issued.
- [36] In *Tan v Auckland Council*⁹ the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

[35] The building consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act). If a person fails to obtain a building consent that deprives the Council of its ability to check any proposed building work.

- [37] The same applies to the ongoing verification of building work. A failure to notify the Council of changes to the consented documents defeats the purpose of the process. Moreover undertaking building works that vary from those that have been consented can potentially put person and property at risk of harm.
- [38] It was clear on the evidence before the Board that the changes to the layout of the upstairs bathroom/ensuite and the associated building work were carried out prior to the necessary consenting changes being made. It was also clear that much of the building work and especially that related to the exterior cladding that had been completed was not done so in accordance with the building consent. Accordingly the Respondent is found to have committed the disciplinary offence.

Record of Work

- [39] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work¹⁰.

⁹ [2015] NZHC 3299 [18 December 2015]

¹⁰ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

- [40] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.
- [41] The Board discussed issues with regard to records of work in its decision C2-01170¹¹ and gave guidelines to the profession as to who must provide a record of work, what a record of work is for, when it is to be provided, the level of detail that must be provided, who a record of work must be provided to and what might constitute a good reason for not providing a record of work.
- [42] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner-builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.
- [43] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states “on completion of the restricted building work ...”. In most situations issues with the provision of a record of work do not arise. The work progresses and records of work are provided in a timely fashion. Contractual disputes or intervening events can, however, lead to situations where the licensed building practitioner will have to provide a record of work even though all of the intended restricted building work has not been completed.
- [44] This is what has occurred in the present case. The contractual relationship came to an end in or about November 2016 and from that point in time it was clear to the Board that the Respondent would not be returning to carry out any further restricted building work. Given those circumstances the Respondent’s restricted building work had, in effect, been completed and a record of work was then due. One has not been provided and on this basis that Board finds that the disciplinary offence has been committed.
- [45] Section 317(1)(da)(ii) of the Act provides for a defence of the licenced building practitioner having a “good reason” for failing to provide a record of work. If they can, on the balance of probabilities, prove to the Board that one exists then it is open to the Board to find that a disciplinary offence has not been committed. Each case will be decided by the Board on its own merits but the threshold for a good reason is high. No good reasons have been advanced.

Disrepute

- [46] The disrepute disciplinary provision in the Act is similar to legislation in other occupations including medical professionals, teachers, lawyers and conveyancers, chartered accountants, financial advisors, veterinarians and real estate agents. The

¹¹ *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

Board considered the disrepute provisions in Board Decision C2-01111¹² and discussed the legal principles that apply.

- [47] The Board, in C2-01111 considered whether the conduct complained of needs to be conduct carried out in the capacity of a licensed building practitioner. The Board notes that in the professions listed above there is no requirement for the conduct to have been in the course of carrying out that person's trade or profession. For example in the High Court held in *Davidson v Auckland Standards Committee No 3*¹³ a company director, who, in the course of his duties as a director was charged with offences under the Securities Act 1978, had brought the legal profession into disrepute. He held a lawyer's practising certificate at the time, however, he was not providing legal services. It was submitted in the case that when the acts are outside of the legal practice, only acts which exhibit a quality incompatible with the duties of the legal profession, for example dishonesty or lack of integrity, could bring the legal profession into disrepute. This was rejected by the Court.
- [48] Similarly in a determination of the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants¹⁴, convictions for indecent assault and being found without reasonable cause in a building was found to bring the profession into disrepute as it was inconsistent with the required judgment, character and integrity.
- [49] Turning to the conduct which brings or is likely to bring the regime into disrepute the Act does not provide guidance as to what is "disrepute". The Oxford Dictionary defines disrepute as "the state of being held in low esteem by the public"¹⁵ and the courts have consistency applied an objective test when considering such conduct. In *W v Auckland Standards Committee 3 of the New Zealand Law Society*¹⁶ the Court of Appeal held that:
- the issue of whether conduct was of such a degree that it tended to bring the profession into disrepute must be determined objectively, taking into account the context in which the relevant conduct occurred. The subjective views of the practitioner, or other parties involved, were irrelevant.*¹⁷
- [50] As to what conduct will or will not be considered to bring the regime into disrepute it will be for the Board to determine on the facts of each case. The Board will, however, be guided by finding in other occupational regimes. In this respect it is noted disrepute was upheld in circumstances involving:
- criminal convictions¹⁸;
 - honest mistakes without deliberate wrongdoing¹⁹;

¹² Board decision dated 2 July 2015.

¹³ [2013] NZAR 1519

¹⁴ 24 September 2014

¹⁵ Online edition, compilation of latest editions of *Oxford Dictionary of English, New Oxford American Dictionary, Oxford Thesaurus of English and Oxford American Writer's Thesaurus*, search settings UK English, accessed 12/05/15

¹⁶ [2012] NZCA 401

¹⁷ [2012] NZAR 1071 page 1072

¹⁸ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

- provision of false undertakings²⁰; and
- conduct resulting in an unethical financial gain²¹.

- [51] It is also noted that there are a number of cases where the conduct related to specific or important tasks a licensed building practitioner is required to complete within their occupations. Often such behaviour is measured within the context of a code of conduct or ethics. A code is yet to be established within the Building Act although provision for one is made. What is clear from the cases though is that unethical or unprofessional conduct can amount to disreputable conduct.
- [52] In the present case the conduct that came within the ground for discipline was that related to invoicing for work that had not been completed and false representations that he was a Master Builder.
- [53] With regard to invoicing by the time the relationship came to an end the Respondent, by way of his company, had invoiced for all but \$5,000 of the contracted building work whereas substantial amounts of the work remained incomplete. Moreover the Respondent had sent all 5 of his progress claims by 13 July 2016 which was well in advance of the work. Whilst from time to time there are timing variances between invoices and work completed the variances in the present case are in the extreme and as such, on the basis of the evidence before it, the Board has found that the Respondent has obtained an unethical financial gain and in doing so has brought the regime into disrepute.
- [54] In terms of Master Builders the Respondent was not a member and had been refused membership by the organisation. He knowingly made a false representation and the Board heard evidence that this influenced the Complainant in her making a decision to use his services.

Not Licensed to Carry Out or Supervise Restricted Building Work or Holding out the Same

- [55] The building work was carried out under a building consent and as such certain elements involved restricted building work. Under section 84 of the Act:
- All restricted building work must be carried out or supervised by a licensed building practitioner [who is licensed] to carry out or supervise the work.*
- [56] Whilst there was evidence that the Respondent may have carried out restricted building work prior to being licensed that is not a matter that comes within the Board's jurisdiction.
- [57] As regards the Respondent carrying out restricted building work that he was not licensed to carry out or holding himself out as being able to do the same the Board did not hear or receive any evidence that substantiated these grounds of discipline and as such the Respondent is found to have not committed disciplinary offences under section 317(1)(c) or section 317(1)(db) of the Act.

¹⁹ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

²⁰ *Slack, Re* [2012] NZLCDT 40

²¹ *Colliev Nursing Council of New Zealand* [2000] NZAR 7

Penalty, Costs and Publication

[58] 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.

[59] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

[60] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*²² commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

[61] Deterrence was also noted in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*²³. The High Court when discussing penalty stated:

[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner's conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner's offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner's decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.

[62] Cancellation of a license is the equivalent of striking off within the licensed building practitioner regime.

²² HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²³ [2012] NZAR 481

- [63] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*²⁴ the court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act they have the advantage of simplicity and transparency. The court recommended adopting a starting point for penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [64] The Respondent has committed four disciplinary offences. The negligence and incompetence, contrary to consent and disrepute matters are all very serious. The licensing regime exists to ensure the public can have confidence in those who carry out restricted building work. Moreover the scheme is designed to ensure a base level of competence so that restricted building work or is carried out or supervised competently and in accordance with the building code and any building consent issued. The Respondent has been found to have been lacking with regard to those competencies.
- [65] Taking all of the above factors into account the Board considers that a cancellation of the Respondent's licence is not only warranted to punish the Respondent but also required to deter others from such conduct and to ensure the Respondent's competency is reassessed if he decides to reapply for a licence at a future date.
- [66] Accordingly the Board will cancel the Respondent's licence and order that he may not apply to be relicensed for a period of 12 months.

Costs

- [67] Under section 318(4) the Board may require the Respondent "to pay the costs and expenses of, and incidental to, the inquiry by the Board."
- [68] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case²⁵.
- [69] In *Collie v Nursing Council of New Zealand*²⁶ where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:
- But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*
- [70] A hearing was required as was a Technical Assessors report. Based on the above and taking those factors into account the Board's costs order is that the Respondent is pay the sum of \$3,000 toward the costs of and incidental to the Board's inquiry. This is still significantly less than 50% of actual costs.

²⁴ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

²⁵ *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

²⁶ [2001] NZAR 74

Publication

- [71] As a consequence of its decision the Respondent's name and the disciplinary outcomes will be recorded in the public register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act²⁷. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:
- 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.*
- [72] As a general principle such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.
- [73] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²⁸. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁹. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive³⁰. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*³¹.
- [74] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest³². It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [75] Based on the above the Board will order further publication. The Board considers publication of the Respondent's name is necessary to give effect to its order and to ensure the deterrence element of the penalty. Such publication will be made in the Code Words publication and on the Board's website and by way of such other means as is considered necessary to effectively inform the public.

Section 318 Order

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

Penalty: Pursuant to s 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

²⁷ Refer sections 298, 299 and 301 of the Act

²⁸ Section 14 of the Act

²⁹ Refer sections 200 and 202 of the Criminal Procedure Act

³⁰ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

³¹ *ibid*

³² *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Practitioners and pursuant to s 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of 12 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 Respondent being named in this decision.

- [77] 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.

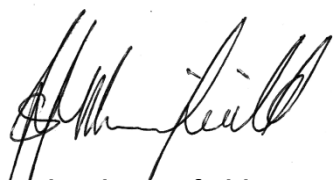
Submissions on Penalty, Costs and Publication

- [78] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **7 February 2018**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received then this decision will become final. If submissions are received then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

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

Signed and dated this 15th day of January 2018



Richard Merrifield
Presiding Member

Annexure 1 – Technical Assessor Analysis Table

| Reference | Description of Action from Complaint Form | Building Consent Documentation (Appendix C) | Relevant Legislation | Industry Technical Literature (Appendix D) | Comments by Parties |
|--|--|--|---|--|--|
| Complaint 1 | | | | | |
| Deviations from approved building consent | <i>11 – No front door for over 14 months.</i> | <p>Drawings: Hodgins Design – A2-A15</p> <p>Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A.</p> <p>Project Specification: Sections 4 and 5.</p> | <p>Building Act 2004</p> <p>Section 14E(1), (2) & (3) – Responsibilities of builder</p> | <p>Building Regulation – New Zealand Building Code (NZBC) E2 – External Moisture.</p> <p>NZBC E2/Acceptable Solution 1 (E2/AS1) Amendment 6 – 14 February 2014 – Section 9.4.5-9.5.6 and Figures 79 and 84</p> <p>NZS 3604:2011 – Timber Framed Buildings Section 11.</p> <p>BRANZ Good Timber Cladding Practice. Sections 3.13 and 4.7</p> <p>Tables 1 and 3.</p> | <p>Complainant's Position: As per complaint documents.</p> <p>Respondent's Position: No response.</p> <p>Special Advisor: I have reviewed the drawings #A2-A15 dated August 2013 and specification dated December 2013. The documents appear to be of an adequate standard for a competent contractor to follow. The cladding installation does not appear to be installed in accordance with the building consent documents.</p> <p>I have also reviewed the Auckland Council On-site application for minor variations to approved plans – Pages 1-21. The front door did not appear to form part of the amendment.</p> <p>A sheet covering the interior of the front door opening was water stained. Kitchen joinery adjacent to the door was water damaged. The exterior timber cladding and steel flashing installation around the door area was incomplete and not of a normal trade standard.</p> <p>Refer photographs: 11 and 12 Appendix B, and location: Appendix C</p> <p>Refer – Complaint 2/10 and Special Advisor's site observation 1 and 11.</p> |
| | <i>12 – Doors not replaced as per plans, windows not replaced as per plans. (We have no window now in one bathroom).</i> | <p>Drawings: Hodgins Design – A2-A15</p> <p>Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A.</p> <p>Project Specification: Sections 4 and 5.</p> | <p>Building Act 2004</p> <p>Section 14E(1), (2) & (3) – Responsibilities of builder</p> | N/A | <p>Complainant's Position: As per complaint documents.</p> <p>Respondent's Position: No response.</p> <p>Special Advisor: I have reviewed the drawings #A2-A15 dated August 2013 and specification dated December 2013. The documents appear to be of an adequate standard for a competent contractor to follow.</p> <p>Cavity sliders I observed were installed to an average standard with the door leafs not in alignment with the jamb/cavity. Adjustment is required to align.</p> <p>I have also reviewed the Auckland Council On-site application for minor variations to approved plans – Pages 1-21. The doors did not appear to form part of the amendment.</p> <p>Refer photographs: 26 and 27 Appendix B, and location: Appendix C</p> |

| Reference | Description of Action from Complaint Form | Building Consent Documentation (Appendix C) | Relevant Legislation | Industry Technical Literature (Appendix D) | Comments by Parties |
|--|--|---|---|--|--|
| Complaint 2 | | | | | |
| Defective workmanship, damage to materials and unsafe practices | <i>7 – Damage to existing veranda roof and resulting water damage left for 7 months before builder's insurance assessor came out (28/11/16).</i> | <p>Drawings: Hodgins Design – A2-A15</p> <p>Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A.</p> <p>Project Specification: Sections 1/8, 1/9.</p> | <p>Building Act 2004</p> <p>Section 14E(1), (2) & (3) – Responsibilities of builder</p> | <p>New Zealand Metal Roof and Wall Cladding Code of Practice – Version 2.2/2012. Section 14.</p> | <p>Complainant's Position: As per complaint documents.</p> <p>Respondent's Position: No Response.</p> <p>Special Advisor: I observed impact damage to the veranda roof and water staining to the interior linings in the living area. It is not definitive the water entry to the living area is through the veranda roof, however the damage to the roof material warrants replacement. The respondent notified his Insurer of the damage. I consider the respondent to have assumed some responsibility to the damage. Refer document bundle 2.5.41, 2.5.90-2.5.94, 2.1.59 and 2.1.60. Refer Maynard Marks photograph 14 Appendix B and location: Appendix C.</p> |
| | <i>8 – Damage to new roof, - dents, rust caused by workers leaving nails and pliers on the roof.</i> | <p>Drawings: Hodgins Design – A2-A15</p> <p>Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A.</p> <p>Project Specification: Sections 1/8, 1/9.</p> | <p>Building Act 2004</p> <p>Section 14E(1), (2) & (3) – Responsibilities of builder</p> | <p>New Zealand Metal Roof and Wall Cladding Code of Practice – Version 2.2/2012. Section 14.</p> | <p>Complainant's Position: As per complaint documents.</p> <p>Respondent's Position: No response.</p> <p>Special Advisor: I observed the corrosion to the southeast roof material from the tool (vice -grip) being left on top of the roof. I also observed building material left on the roof surface, some of which is Macrocapa cladding that has detached. Refer document bundle: 2.5.93 – 2.5.102, 2.5.105. Refer Maynard Marks photographs 13-16 Appendix B and location: Appendix C.</p> |
| | <i>9 – Young workers left un-supervised to do work they admitted they barely knew how to do.</i> | <p>Drawings: Hodgins Design – A2-A15</p> <p>Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A.</p> <p>Project Specification: Section 6.</p> | <p>Building Act 2004</p> <p>Section 14E(1), (2) & (3) – Responsibilities of builder</p> <p>Health and safety at work Act 2015</p> | <p>New Zealand Metal Roof and Wall Cladding Code of Practice – Version 2.2/2012. Section 14.</p> | <p>Complainant's Position: As per complaint documents.</p> <p>Respondent's Position: No Response.</p> <p>Special Advisor: The BPB licence holder should be either undertaking the restricted building works or supervising non-licensed workers. To leave an unexperienced worker un supervised, not only poses risk for compliance and quality of the building work, it also is a potential risk to health and safety of staff members and building occupants.</p> |
| | <i>10 – Incomplete external cladding –</i> | <p>Drawings: Hodgins Design – A2-A15</p> | <p>Building Act 2004</p> <p>Section 14E(1), (2) & (3) –</p> | <p>Building Regulation – New Zealand Building Code (NZBC) E2 –</p> | <p>Complainant's Position: As per complaint documents. The claimant also advised in person that water entry has taken place on multiple occasions into the living and kitchen areas. This water entry has damaged interior linings, floor coverings</p> |

| Reference | Description of Action from Complaint Form | Building Consent Documentation (Appendix C) | Relevant Legislation | Industry Technical Literature (Appendix D) | Comments by Parties |
|-----------|---|---|------------------------------------|---|---|
| | <p><i>Battens falling off – which has now led to further water damage to the southeast side of the house.</i></p> | <p>Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A.</p> <p>Project Specification: Sections 1/4, 1/8, 1/14, 1/15, 4/2, 4/9.</p> | <p>Responsibilities of builder</p> | <p>External Moisture.</p> <p>NZBC E2/Acceptable Solution 1 (E2/AS1) Amendment 6 14 February 2014 – Section 9.4.5-9.5.6 and Figures 79 and 84</p> <p>NZS 3604:2011 – Timber Framed Buildings Section 11.</p> <p>BRANZ Good Timber Cladding Practice. Sections 3.13 and 4.7 Tables 1 and 3.</p> | <p>and kitchen joinery.</p> <p>Respondent's Position: No response.</p> <p>Special Advisor: (Site Observation 1). I observed poor installation and fixing of the cladding timber, cladding detached and sitting on roof, wall underlay exposed to the elements. When exposed, the underlay has a warranty of three months. The following issues were also observed: Incorrect profile of new boards in relation to original boards with minimum drainage mechanisms; Service penetrations not flashed and a complete vent opening left exposed to weather and vermin; Flashing material durability inadequate for timber type in contact and from water off flow. It is not clear weather an original or new horizontal transition flashing has been installed to the east elevation. In any event the flashing is inadequate and should not be used; Weather grooves not aligned; Incomplete flashings to corners, inter-storey junction, joinery and roof/wall junctions. Small mechanically applied 't' nails are fixed through the battens and through the boards. The length and steel type were not able to be observed, however the fixings are clearly inadequate as cladding elements are deflected, dislodged and detached at multiple locations. The battens are double nailed, through the boards which prevents adequate movement to prevent board split. Single fixing of the battens and boards is the correct fixing method. This is especially important with Macrocapa as the nature of the timber</p> <p>I observed water stained/damaged materials, linings and joinery reveals within the interior.</p> <p>The cladding/enclosure installation initially failed three Auckland City Council Building inspections from 18/08/16-14/09/17. The cladding was then passed by the Auckland Council Cladding inspection on 29/09/16.</p> <p>From the enclosure deficiencies observed, I consider this inspection should not have been given a pass. A failed inspection form should have been issued with a follow up letter requesting the construction departures and deficiencies are rectified with a time frame to achieve compliance, with information that a notice to fix would follow should compliance not be achieved within the stipulated timeframe.</p> <p>Refer Document Bundle: 2.5.107-109, 2.5.112-118,</p> <p>Refer Photographs: 8-13, 17-25, 29 and 30 Appendix B, and location: Appendix C</p> |

| Reference | Description of Action from Complaint Form | Building Consent Documentation (Appendix C) | Relevant Legislation | Industry Technical Literature (Appendix D) | Comments by Parties |
|---|--|---|--|--|--|
| 3. | Site Visit Observations - Refer 1.6 | | | | |
| Other observations during site visit: Exterior | 2 – Roof cladding and flashings not installed as per normal trade practice. | <p>Drawings: Hodgins Design – A2-A15</p> <p>Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A.</p> <p>Project Specification: Sections 4/3, 6.</p> | Building Act 2004 Section 14E(1), (2) & (3) – Responsibilities of builder | <p>Building Regulation – New Zealand Building Code (NZBC) E2 – External Moisture.</p> <p>NZBC E2/Acceptable Solution 1 (E2/AS1) Amendment 6 14 February 2014. Sections 4, 5 and 8, 8.4</p> <p>New Zealand Metal Roof and Wall Cladding Code of Practice – Version 2.2/2012. Section 5.</p> | <p>Complainant's Position: As per complaint.</p> <p>Respondent's Position: No response.</p> <p>Special Advisor: I observed roof apron flashing incomplete at the northeast corner.</p> <p>Refer photographs: 3, 19 and 20, Appendix B, and location: Appendix C</p> |
| | 3 – There are no exterior rainwater goods installed. | <p>Drawings: Hodgins Design – A2-A15</p> <p>Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A.</p> <p>Project Specification: Sections 4/3, 7/5.</p> | Building Act 2004 Section 14E(1), (2) & (3) – Responsibilities of builder | <p>Building Regulation – New Zealand Building Code (NZBC) E1 – Surface Water.</p> <p>NZBC E2/Acceptable Solution 1 (E2/AS1) Amendment 6 14 February 2014.</p> <p>New Zealand Metal Roof and Wall Cladding Code of Practice – Version 2.2/2012.</p> | <p>Complainant's Position: As per complaint.</p> <p>Respondent's Position:</p> <p>Special Advisor: I observed that there are no external gutters or storm water downpipes installed or connected. The consented drawings depict spouting and down pipe details.</p> <p>Refer photographs: 1-6 and 8, Appendix B, and location: Appendix C</p> |
| | 4 – 1 st floor door to exterior boarded up as the 1 st -floor balcony deck has not been installed. | <p>Drawings: Hodgins Design – A2-A15</p> <p>Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A.</p> <p>Project</p> | Building Act 2004 Section 14E(1), (2) & (3) – Responsibilities of builder | Building Regulation – New Zealand Building Code (NZBC) F4 – Safety from Falling. | <p>Complainant's Position: As per complaint.</p> <p>Respondent's Position: No response.</p> <p>Special Advisor: I was advised by the Complainant that they had to put the hoarding in themselves as the respondent had left the site incomplete.</p> <p>The deck has not been started, therefore I consider it incomplete works. I have viewed a photograph of a full scaffold in place on the elevation where the deck was to be</p> |

| Reference | Description of Action from Complaint Form | Building Consent Documentation (Appendix C) | Relevant Legislation | Industry Technical Literature (Appendix D) | Comments by Parties |
|---------------------------|---|--|--|---|---|
| | | Specification: Section 1/6. | | | constructed. The scaffold has since been removed without the deck being built. The Respondent (as a main contractor/LBP Carpenter) has a responsibility to ensure all reasonable steps are taken in regard to safety from falling. Refer photograph: 28, Appendix B, and location: Appendix C |
| | 5 – Existing skylight and other removed materials have been left in the exterior elements and subsequent damage has occurred. | Drawings: Hodgins Design – A2-A15 Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A. Project Specification: Section 1/1. | Building Act 2004 Section 14E(1), (2) & (3) – Responsibilities of builder | N/A | Complainant's Position: As per complaint. Respondent's Position: No response. Special Advisor: The complainant showed me a skylight that was outside. She said that it was to be reinstalled as part of the project. Drawing A5.1 depicts the existing skylight in place at the west end of the roof. The skylight has deteriorated, and is no longer fit for purpose unless fully reconditioned or replaced. Timber matched lining was also removed by the Respondent and left under the veranda. The timber was not strip stacked or covered neatly to protect the timber. Refer photograph: 31, Appendix B, and location: Appendix C |
| | 6 – The 1 st -floor attic space roof appears to have too low slope for the roof sheet profile installed. | Drawings: Hodgins Design – A2-A15 Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21 - Applicable Project Specification: Sections 4/3, 6. | Building Act 2004 Section 14E(1), (2) & (3) – Responsibilities of builder | NZBC E2/Acceptable Solution 1 (E2/AS1) Amendment 6 14 February 2014. New Zealand Metal Roof and Wall Cladding Code of Practice – Version 2.2/2012. | Complainant's Position: N/A Respondent's Position: No Response. Special Advisor: The drawings depict an existing roof line that has been extended. The roof slope appears to be less than 8-degree pitch, which is the minimum pitch for corrugated profile steel to be used. I used a mobile phone app. Level to gauge the angle of the interior line of the skillion (mono slope) roof. The gauge depicted a 5.2-degree slope. The interior gauge is not an exact accurate way to determine the roof slope as the ceiling may be at a slightly different pitch. The exterior could not be safely accessed. The exterior does appear too low a pitch for the corrugated profile. The original roof appeared to be the same profile from when first constructed and the extension has followed the same. Should the Respondent have noticed this issue, a call to the designer should have been made to review and amend the design pitch or the roof material. I am not aware of this process taking place. Refer photographs: 32 - 34 Appendix B, and location: Appendix C |
| Other observations | 7 – Exposed grain | Drawings: Hodgins Design | Building Act 2004 | N/A | Complainant's Position: As per complaint. |

| Reference | Description of Action from Complaint Form | Building Consent Documentation (Appendix C) | Relevant Legislation | Industry Technical Literature (Appendix D) | Comments by Parties |
|-----------------------------|---|--|---|---|--|
| during site visit: Interior | plywood interior flooring not installed as per normal trade practice. | <p>– A2-A15</p> <p>Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A.</p> <p>Project Specification: Section 4/18.</p> | Section 14E(1), (2) & (3) – Responsibilities of builder | | <p>Respondent's Position:</p> <p>Special Advisor:</p> <p>I have reviewed the drawings #S100-S113 dated 23/08/15. They appear to be of an adequate standard for a competent contractor to follow.</p> <p>Refer photograph: 35 Appendix B.</p> |
| | 8 – Changes in design layout from approved building consent drawings. | <p>Drawings: Hodgins Design – A2-A15</p> <p>Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – Applicable.</p> <p>Project Specification: Section 1/1.</p> | <p>Building Act 2004</p> <p>Section 14E(1), (2) & (3) – Responsibilities of builder</p> | N/A | <p>Complainant's Position: As per complaint documents.</p> <p>Email from Complainant forwarded 07/11/17:</p> <p><i>As discussed on Friday I don't think these minor variations match what was built, & neither I or the designer (Jim) consented to these variations being lodged with council, or even being built the way John built them.</i></p> <p><i>I had spent so long with the designer when he 1st did the designs to make sure my eldest daughter would have access from her attic bedroom via my bedroom, so she would not have to go thru the bathroom if someone was in the bathroom.</i></p> <p>Respondent's Position: No response.</p> <p>Special Advisor: I have reviewed the drawings: Hodgins Design – A2-A15. They appear to be of an adequate standard for a competent contractor to follow.</p> <p>I have been provided with an as-built plan by the complainant. There are departures from the building consent plans, both in location of fixtures and room dimension.</p> <p>A minor variation for drawing changes was approved by the Auckland Council. The variation appears to cover some areas, however not all of the incomplete works.</p> <p>Refer Appendix F.</p> |
| | 9 – Bathroom fittings not installed as per normal trade practice. | <p>Drawings: Hodgins Design – A2-A15</p> <p>Amendment: Auckland Council On-site application for minor variations</p> | <p>Building Act 2004</p> <p>Section 14E(1), (2) & (3) – Responsibilities of builder</p> | <p>BRANZ Good Internal Lining Practice</p> <p>Section 7, Figure 31.</p> | <p>Complainant's Position: As per complaint.</p> <p>Respondent's Position: No Response.</p> <p>Special Advisor:</p> |

| Reference | Description of Action from Complaint Form | Building Consent Documentation (Appendix C) | Relevant Legislation | Industry Technical Literature (Appendix D) | Comments by Parties |
|-----------|---|---|--|--|--|
| | | to approved plans – Pages 1-21. – N/A. Project Specification: Section 4/3, 7. | | | I have reviewed the drawings #S100-S113 dated 23/08/15. They appear to be of an adequate standard for a competent contractor to follow. Refer photographs: 36-38 Appendix B, and location: Appendix C |
| | 10 – Installation of plasterboard linings, plasterboard stopping and door joinery not as per normal trade practice. | Drawings: Hodgins Design – A2-A15 Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A. Project Specification: Sections 4/17, 4/20. | Building Act 2004 Section 14E(1), (2) & (3) – Responsibilities of builder | BRANZ Good Internal Lining Practice Section 7, 8, 10, Figures 53 page 103 and Table 18. | Complainant's Position: As per complaint. Respondent's Position: No Response. Special Advisor: The plasterboard lining application was observed as inadequate and not in accordance with a manufacturers technical literature or established BRANZ literature. The plaster board stopping to the first floor was also inadequate in many locations, particularly around joinery openings. Refer photographs: 39 and 40, Appendix B, and location: Appendix C |
| | 11 – Evidence of water entry from exterior into the dwelling. | Drawings: Hodgins Design – A2-A15 Amendment: Auckland Council On-site application for minor variations to approved plans – Pages 1-21. – N/A Project Specification: Sections 1/4, 1/15, 4/2, 4/9, 6, 7. | Building Act 2004 Section 14E(1), (2) & (3) – Responsibilities of builder | Building Regulation – New Zealand Building Code (NZBC) E2 – External Moisture. NZBC E2/Acceptable Solution 1 (E2/AS1) Amendment 6 14 February 2014 – Section 9.4.5-9.5.6 and Figures 79 and 84. NZS 3604:2011 – Timber Framed Buildings Section 11. BRANZ Good Timber Cladding Practice. Sections 3.13 and 4.7 Tables 1 and 3. | Complainant's Position: As per complaint. Respondent's Position: No Response. Special Advisor: Refer Complaint 1/11 and Refer photographs: 29, 30, Appendix B, and location: Appendix C |

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—

- (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.*