

Before the Building Practitioners Board

	BPB Complaint No. C2-01587
Licensed Building Practitioner:	Andrew Etchells (the Respondent)
Licence Number:	BP 116552
Licence(s) Held:	Carpentry and Site AOP 2

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

Complaint or Board Inquiry:	Complaint
Hearing Location:	Tauranga
Hearing Type:	In Person
Hearing Date:	15 May 2018
Substantive Decision Date:	28 May 2018
Penalty Decision Date:	25 June 2018

Board Members Present

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
David Fabish, LBP, Carpentry Site AOP 2
Bob Monteith, LBP Carpentry and Site AOP 2

Procedure:

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

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Introduction

- [1] This penalty decision arises out of the Board's substantive decision in which it found that the Respondent had committed the following disciplinary offence(s):
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
 - (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) has 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] 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 13 June 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 a \$5,000 fine was the appropriate penalty for the disciplinary offence. Given the seriousness of the offending and the Respondent's cavalier attitude toward the licensing regime and his licence the Board had considered suspension of the Respondent's licence.
- [6] The Respondent has submitted:

While I have overlooked various legal requirements under LBP no underhand procedures were intended, I was simply helping out my [Omitted] when and

how I could as he was under a lot of pressure getting suitable staff to complete work his company [Omitted] were committed to.

I acknowledge my short comings with my input regarding the LBP issues and have reschooled up on legal requirements and the way I can use my qualifications. The points that have come up will never happen again I can assure you, it was error and oversight on my part.

[7] The Respondent's contriteness, his upskilling and intention to amend his ways is acknowledged and will be taken into consideration.

[8] The Respondent has also made submissions as regards his financial circumstances. He notes that he will have difficulty paying the fine and costs. In this respect he can make arrangement to pay over time with the Registrar. Notwithstanding the Respondent's financial circumstances are matters that can be taken into consideration when considering the appropriate penalty.

[9] A submission was also received from the Respondent's brother [Omitted], the director of [Omitted]. He noted:

I feel I should largely take responsibility for the position Andrew has been put in. I feel very disappointed in myself and am responsible for what has transpired and caused Andrew to be put in a position of law breaking and has tarnished is exceptional reputation as a builder.

[10] Having considered the submissions received the Board has decided to review its initial view. The original fine of \$5,000 will be reduced to \$4,000. The reduction is based on the acceptance of responsibility and steps taken by the Respondent since the Board released its substantive decision and on the financial circumstances of the Respondent.

Costs

[11] The Board's initial view was that \$2,500 in costs was appropriate. It notes the submissions made. The amount was set on the basis that a hearing was required as was a report from a Technical Assessor. It is considered to be appropriate. The Respondent should note that it is significantly less than 50% of actual costs incurred and that it is appropriate that the full burden of the costs of the investigation and hearing not fall on fully on other licensed building practitioners.

Publication of Name

[12] The Board's initial view was there were good reasons to further publish the matter. No submissions were received as regards publication. The order is confirmed.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is to pay a fine of \$4,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,500 (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 25th day of June 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.*