

Before the Building Practitioners Board

	BPB Complaint No. C2-01615
Licensed Building Practitioner:	Andrew Hollis (the Respondent)
Licence Number:	BP 125359
Licence(s) Held:	Carpentry

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner

Under section 315 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	12 April 2018
Decision Date:	14 May 2018

Board Members Present:

Chris Preston (Presiding)
David Fabish, LBP, Carpentry Site AOP 2
Catherine Taylor, Lay Member

Appearances:

Alden Ho 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 not** committed a disciplinary offence under section 317(1)(b) or 317(1)(d) 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); and
- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act).

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.

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

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

Background to the Complaint

- [5] The Respondent was engaged to carry out excavation, new footings, a block wall, water proofing and the creation of a new bathroom and storage area.
- [6] After completion the area inside the building flooded during heavy rain and remedial work was required to make the building water tight.

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] In addition to the documentary evidence before the Board heard evidence at the hearing from:

Andrew Hollis	Respondent
Lee Gallagher	Licensed Building Practitioner, Roofing, Respondent in C2-01746
[Omitted]	Complainant
[Omitted]	Witness
[Omitted]	Witness in C2-01746, Gallagher Roofing and Waterproofing

[9] The Technical Assessor's report confirmed that there were a number of failings in with the work being:

- (a) While the DPC was laid as per the drawings it was not good industry practise and ideally should have been laid in such a way as it extended beyond the foundation and would key into the tanking to be applied to the outside of the block wall.
- (b) That back fill had been used prior to the tanking and as such the tanking could not be applied down to the foundation level.
- (c) That the drainage coil had been put in place after some back fill had been placed so it was not at or below the foundation level.
- (d) And that the tanking membrane had not been protected when the back fill had been placed and damage was observed to the tanking when it was excavated to undertake repair.

[10] The Respondent was not present on site, or in fact easy to get hold of, having travelled to Australia during the time this work was undertaken. He had employed [Omitted] who he thought was licenced to undertake the work.

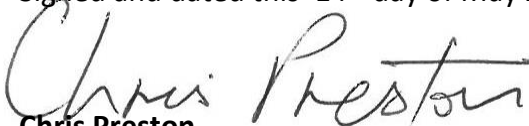
⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [11] The Respondent did not check to see if [Omitted] was licenced, which he was not at the time.
- [12] [Omitted] gave evidence that he was concerned about the application of the DPC as the plans were not in accordance with industry practise but due to the Respondent being overseas could not raise it with him, and was advised by the project manager [Omitted] to follow the plans.
- [13] At some point prior to the back fill being put in place and the tanking and drainage coil applied and installed, [Omitted] started reporting directly to [Omitted] as the Respondent's involvement in the project had come to an end.

Board's Conclusion and Reasoning

- [14] The Board has decided that the Respondent **has not**:
- (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 should not be disciplined.
- [15] The Boards view is that the Respondent failed to put supervision in place. This is because [Omitted] was not licenced during the laying of the DPC, when he was under the employ of the Respondent.
- [16] The balance of the work was done by [Omitted] while reporting directly to [Omitted]. [Omitted] accepted that he did not place the drainage coil at the correct depth and did back fill without providing any protection to the applied tanking to the block wall however the Respondent was no longer supervising him.
- [17] Having said the above, the Board sends a very strong warning to the Respondent that based on his evidence he must in future ensure he understands his responsibility to provide non-licensed people with appropriate supervision.
- [18] In this case the Respondent should have checked to see if [Omitted] was licenced and if not, should have had somebody who was licenced supervising his work while he was in Australia.
- [19] If [Omitted] had in fact continued to report directly to the Respondent for the duration of the work the Board's decision may well have been very different.

Signed and dated this 14th day of May 2018



Chris Preston
Presiding Member