Before the Building Practitioners Board

	BPB Complaint No. C2-01775
Licensed Building Practitioner:	David Moselen (the Respondent)
Licence Number:	BP 120282
Licence(s) Held:	Roofing AOP Metal Tile Roof

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

Complaint or Board Inquiry	Complaint
Hearing Location	Wellington
Hearing Type:	On the Papers
Hearing Date:	8 May 2018
Substantive Decision Date:	21 May 2018
Penalty Decision Date:	25 June 2018

Board Members Present

Chris Preston (Presiding)
Mel Orange, Legal Member
Robin Dunlop, Retired Professional Engineer
Faye Pearson-Green, LBP Design 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 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 Act[i], 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 is indicative position as regards penalty, costs and publication and invited the Respondent to make written submissions on those matters.

[4] On 12 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 $1,500 fine was the appropriate penalty for the disciplinary offence.

[6] The Respondent has submitted that non-payment for work carried out is a good reason not to provide a record of work, that it has been their policy to withhold for non-payment and that it has been an effective means of recovering monies due. This was dealt with in the Substantive Decision where the Board pointed out that it is not a good reason. It is also to be noted that the Board has carried out extensive communications to ensure licensed building practitioners are aware of their obligations. There have also been compulsory readings/learnings as part of the licensed building practitioner's skills maintenance. As such there are no excuses for not being aware of the requirements and it is disappointing that notwithstanding this the Respondent has adopted a debt recovery policy contrary to it.

[7] The Respondent has also submitted that he finds it "both surprising and disappointing that the board does not back one of its members in a situation such as this". The Board is not a membership organisation and it does not represent the interest of licensed building practitioners. The Board is a statutory entity appointed by the Minister. Its functions are set out in section 343 of the Act. The licensing regime is designed to ensure standards are maintained and improved and protect the public.

[8] Finally the Respondent has submitted that the fine of $1,500.00 and costs of $500.00 is disproportionate to the value of the contract and the losses incurred.

[9] The Board's penalty is relative to the conduct. Not to the value of the work carried out. The losses incurred are, however, a matter that can be taken into account as mitigation. At the same time the matters set out in paragraph [6] above are aggravating features and, as such, balancing all of the factors the Board has decided that the fine will stand at $1,500.

Costs

[10] The same applies as regards costs. The amount has already been reduced. There are no reasons to further reduce the amount.

Publication of Name

[11] The Board's initial view was there were no good reasons to further publish the matter. This remains the case.

Section 318 Order

[12] 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 ordered to pay a fine of $1,500.**
Costs:	**Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $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 not be action taken to publicly notify the Board's action, except for the note in the Register and the Respondent being named in this decision.**

[13] 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

[14] The right to appeal Board decisions is provided for in s 330(2) of the Act[ii].

Signed and dated this 25th day of June 2018



Chris Preston
Presiding Member

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[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.*