Before the Building Practitioners Board

	BPB Complaint No. C2-01777
Licensed Building Practitioner:	Bradley Gallagher (the Respondent)
Licence Number:	BP 126575
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	24 April 2018
Substantive Decision Date:	7 May 2018
Penalty Decision Date:	11 June 2018

Board Members Present:

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

Appearances:

Pierce Bedogni, Lawyer, Martelli McKegg

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.

Contents

Introduction 2
Penalty 2
Costs 3
Publication of Name 3
Section 318 Order 3
Right of Appeal 3

Introduction

[1] This penalty decision arises out of the Board's substantive decision in which it found that the Respondent had 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).

[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 29 May 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 six-month suspension of the Respondent's licence was the appropriate penalty for the disciplinary offence.

[6] The Respondent's submission, made by way of his legal counsel, included details on steps that the Respondent has taken to ensure that the conduct will not be repeated. The Board notes those steps which, on the face of it, will address many of the Board's concerns. At the same time the Respondent's behaviour was egregious. A message needs to be sent to the industry that such conduct is not acceptable.

[7] The Respondent has also noted the impact that the complaint has had on his business and on him personally. The Board also notes these factors. At the same time the Respondent's conduct has had an impact on the Complainant and the Board needs to also take this into account.

[8] Having considered the submissions received the Board has decided to review its initial position as regards penalty. It has decided that the period of suspension will be halved to three months. Whilst this will have an inevitable impact on the Respondent and his business the Respondent should note that he can still carry out

non-restricted building work and that he can contract the services of a person to supervise restricted building work during the period of his suspension.

Costs

[9] The Board's initial view was that $2,000 in costs was appropriate.

[10] The Respondent has submitted that he has been cooperative and that costs should lie where they fall. That is not acceptable. It would mean that the burden of the complaint and the hearing would fall to the profession as a whole.

[11] The amount of costs that was indicated was significantly less than the 50% starting point. Cooperation has been taken into account. At the same time the Respondent did not accept his wrong doing at the hearing and his penalty submissions indicate that he is still not taking responsibility having laid blame on his clients.

[12] Having considered the submissions received the Board has decided to uphold its initial view.

Publication of Name

[13] The Board's initial view was there were good reasons to further publish the matter.

[14] The Respondent has provided compelling reasons not to further publish. As such the Board has decided it will not further publish the matter.

Section 318 Order

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

Penalty:	**Pursuant to section 318(1)(b) of the Building Act 2004, the Respondent's licence is suspended for a period of three months and the Registrar is directed to record the suspension in the register of Licensed Building Practitioners.**
Costs:	**Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $2,000 (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 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.**

[16] 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

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

Signed and dated this 8th 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.*