

## Before the Building Practitioners Board

	BPB Complaint No. C2-01831
Licensed Building Practitioner:	Jamie Corrigan (the Respondent)
Licence Number:	BP 108577
Licence(s) Held:	Carpentry

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

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Complaint or Board Inquiry	Complaint
Hearing Location	Wellington
Hearing Type:	On the Papers
Hearing Date:	22 May 2018
Substantive Decision Date:	28 May 2018
Penalty Decision Date:	9 July 2018

#### Board Members Present

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)  
Mel Orange, Legal Member  
Catherine Taylor, Lay Member  
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 had 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<sup>1</sup>, 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 19 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 fine of \$1,500 was the appropriate penalty for the disciplinary offence.
- [6] The Respondent has variously submitted that he was totally un-aware that there was a time frame to complete a record of work and that it was never his intention not to provide one. As regards that submission the Board notes that there has been extensive communications to licensed building practitioners about records of work and their obligations with regard to them.
- [7] The Respondent also submitted the main issue was that subsequent builders had been involved in the job after me and I really wanted to make sure that I had documented everything that we had completed on site properly. A record of work is only a statement of what restricted building work has been carried out or supervised. It is not a statement as to the quality or compliance of that work. The Respondent should have known what was done and when. The involvement of

subsequent builders should not have been an impediment to his record of work being completed and provided.

- [8] The Respondent has also noted that he provided a record of work to the Territorial Authority. The Act requires that both the owner and the Territorial Authority receive a record of work. Not one or the other.
- [9] The Board does, however, note that the Respondent has stated that he will be providing records of work without delay in the future. On this basis the Board will provide a reduction in the fine of \$250. The fine will be \$1,250.

### Costs

- [10] The Board's initial view was that \$500 were appropriate. This remains an appropriate amount.

### Publication of Name

- [11] The Board's initial view was there were no good reasons to further publish the matter.
- [12] The Respondent has asked that the matter not appear on the register. The Board does not have a discretion as regards the details being recorded in the Register. The Register is established by section 298 of the Act and section 299 sets out its purposes which are:

*The purpose of the register is—*

- (a) *to enable members of the public to—*
- (i) *determine whether a person is a licensed building practitioner and, if so, the status and relevant history of the person's [licensing]; and*
  - (ii) *choose a suitable building practitioner from a list of licensed building practitioners; and*
  - (iii) *know how to contact the building practitioner; and*
  - (iv) *know which licensed building practitioners have been disciplined within the last 3 years; and*
- (b) *to facilitate the administrative, disciplinary, and other functions of the Board and the Registrar under this Act.*

- [13] Section 301 sets out the matters to be contained in the Register. The section uses the phrasing "must" which makes the provisions mandatory, not discretionary:
- (1) *The register must contain all of the following information, to the extent that the information is relevant, for each licensed building practitioner whose name is entered in the register:*
- (I) *information about the status and history of the person's [licensing], particularly—*
    - (i) *the class [in which the person is licensed]; and*
    - (ii) *the date on which the person's name was entered in the register; and*

(iii) any action taken under section 318 on a disciplinary matter in respect of the person in the last 3 years:

- [14] The final provision, action taken under s 318, is the reason why detail on the disciplinary offence must be contained in the Register.
- [15] Taking the above provisions into consideration it is clear that one of the purposes of the Register is to allow informed consumer and providing information as regards disciplinary action helps to facilitate this. It is also clear that the Board has no discretion as regards information on disciplinary action being retained on the Register.

### Section 318 Order

- [16] 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 \$1,250.

**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.

- [17] 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

- [18] The right to appeal Board decisions is provided for in s 330(2) of the Act<sup>ii</sup>.

Signed and dated this 9<sup>th</sup> day of July 2018



**Richard Merrifield**  
Presiding Member

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<sup>i</sup> **Section 318 of the Act**

(1) In any case to which section 317 applies, the Board may  
(a) do both of the following things:

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- (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.*