

## Before the Building Practitioners Board

	BPB Complaint No. 26502
Licensed Building Practitioner:	Yaseen Abdul Sharif (the Respondent)
Licence Number:	BP 131969
Licence(s) Held:	Carpentry

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### Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

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Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	27 November 2024
Decision Date:	6 March 2025
Board Members Present:	

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2  
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor

#### 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.

#### Disciplinary Finding:

The Respondent **has not** committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

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## Summary

- [1] The Respondent did not carry out restricted building work at the property complained about. As such, the Respondent has not failed to provide a record of work on completion of restricted building work, as alleged.

## The Charges

- [2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.<sup>1</sup>
- [3] In this matter, the disciplinary charges the Board resolved to further investigate<sup>2</sup> were that the Respondent may have failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out 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) of the Act contrary to section 317(1)(da)(ii) of the Act.
- [4] The Board<sup>3</sup> initially dealt with the complaint by way of a Draft Decision. The Respondent disputed the findings. The Draft Decision was set aside, and a hearing was scheduled.

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<sup>1</sup> 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. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

<sup>2</sup> The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

<sup>3</sup> The Board is a statutory body established under section 341 of the Act.<sup>3</sup> Its functions include receiving, investigating, and hearing complaints about, and to inquire into the conduct of, and discipline, licensed building practitioners in accordance with subpart 2 of the Act. It does not have any power to deal with or resolve disputes.

## **Evidence**

- [5] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>4</sup>. 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.

## **Failure to Provide a Record of Work**

- [6] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.<sup>5</sup>
- [7] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work<sup>6</sup> unless there is a good reason for it not to be provided.<sup>7</sup>

## **Did the Respondent carry out or supervise restricted building work**

- [8] The complaint alleged that the Respondent had carried out or supervised the foundations of a new residential dwelling. If he did, the work would have been restricted building work because they form part of the primary structure of a residential dwelling.<sup>8</sup>
- [9] At the hearing, the Respondent stated he had not carried out any restricted building work at the complaint address, which was lot 14. He gave evidence as to who it was that he believed had carried out or supervised the work.
- [10] Evidence was heard that the subdivision had been developed by a single developer but that three different contractors had been engaged as main contractors to undertake the builds. The Respondent subcontracted to one of those main contractors.
- [11] The Respondent had been identified in the building consent documentation as the Licensed Building Practitioner (LBP) carrying out the restricted building work for the foundations at lot 14. His evidence was that he had been the foundations LBP for Lots 11, 12, 13, 21, 22, 28 and 30 but not Lot 14.
- [12] The Board decided that it would obtain further evidence to corroborate the Respondent's statements prior to it making a decision. The hearing was adjourned.
- [13] Following the adjournment, the Respondent provided copies of his records of work for lots where he did carry out the foundations. Inquiries were also made of other

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<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

<sup>5</sup> Section 88(1) of the Act.

<sup>6</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

<sup>7</sup> Section 317(1)(da)(ii) of the Act

<sup>8</sup> Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

potential witnesses. No evidence indicating the Respondent was the LBP for the foundations on the Lot under investigation was obtained.

**Board's Conclusion and Reasoning**

- [14] The Board accepted that the Respondent was not the LBP who carried out or supervised the foundations. On that basis, the Board has decided that the Respondent **has not** failed to provide a record of work on completion of restricted building work.

Signed and dated this 21<sup>st</sup> day of March 2025

A handwritten signature in black ink, appearing to be 'M Orange', written in a cursive style.

**Mr M Orange**  
Presiding Member