

## Before the Building Practitioners Board

	BPB Complaint No. CB 25865
Licensed Building Practitioner:	Marcus Allen (the Respondent)
Licence Number:	BP 127968
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	Christchurch
Hearing Type:	In Person
Hearing Date:	7 September 2022
Substantive Decision Date:	12 September 2022
Penalty Decision Date:	22 November 2022

#### Board Members Present

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, LBP, Design AoP 2  
Mr G Anderson, LBP, Carpentry and Site AoP 2

#### Appearances:

M Gall for the Respondent

#### 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** committed disciplinary offences under sections 317(1)(b) and 317(1)(d) of the Act.

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

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### Summary of the Board’s Penalty Decision

[1] The Respondent carried out building work in a negligent and incompetent manner. He also carried it out in a manner that was contrary to a building consent. He is fined \$3,000 and ordered to pay costs of \$1,750. A record of the disciplinary offending will be maintained on the Public Register for Licensed Building Practitioners for a period of three years. The fine was reduced on the basis of further mitigating factors that were brought to the Board’s attention.

### The Charges

[2] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had committed the following disciplinary offences:

- (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).

[3] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

[4] 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.

[5] On 7 November 2022, the Board received the submissions from the Respondent’s Counsel. It has considered them and made the following decisions.

### Penalty

[6] The Board's initial view was that a starting point of a fine of \$4,500 was appropriate and that a reduction to \$4,000 was also appropriate.

11. *The project at [OMITTED] has had a significant impact on him, and in particular, his approach in his new business. As he explained at the hearing, that project and this process has been highly stressful, and a significant lesson for him. The mistakes made will never be made again.*

12. *Mr Allen accepts that he must take responsibility for what occurred, in failing to make adequate early enquiries about the consent conditions, and ensuring timely compliance. He also accepts that he should not have allowed time pressure from his client to be a factor in ensuring complete compliance with the consent conditions.*

[7] The submissions also outlined the learnings that the Respondent has taken from the matter steps and processes that have been put in place to ensure the matters that led to the Complaint are not repeated. Further, personal mitigating circumstances were brought to the Respondent's attention.

[8] Counsel traversed other decisions made by the Board and the penalties imposed in them. It was submitted that the starting point was too high, that a starting point of \$3,000 to \$2,500 was appropriate and that, making reductions for mitigating factors, a fine of \$2,500 to \$2,000 was reasonable, fair and proportionate in the circumstances.

[9] The Board recognises the additional mitigating factors raised and acknowledges the steps taken by the Respondent. It does not agree that the starting point was too high but will further reduce the fine in recognition of the additional factors that have been brought to its attention. The fine is set at \$3,000.

### Costs

[10] The Board's initial view was that \$1,750 in costs was appropriate. The costs were split between two practitioners that appeared. The submissions supported the costs being split. The order is affirmed.

### 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 \$3,000.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,750 (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(l)(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<sup>i</sup>.

Signed and dated this 7<sup>th</sup> day of December 2022



**Mr M Orange**  
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:
    - (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:

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- (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.