

Before the Building Practitioners Board

	BPB Complaint No. CB25602
Licensed Building Practitioner:	Giles Bayley (the Respondent)
Licence Number:	BP119121
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Complaint
Hearing Location	Hamilton
Hearing Type:	In Person
Hearing Date:	24 November 2021
Decision Date:	30 November 2021

Board Members Present:

Mr M Orange, Deputy Chair, Barrister (Presiding)
Mr C Preston, BPB Chair
Mr D Fabish, LBP, Carpentry and Site AOP 2
Mr R Shao, LBP, Carpentry and Site AOP 1
Ms J Clark, Barrister and Solicitor, Legal Member

Appearances	Mr J Kaye for the Respondent
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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.

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Summary of the Board’s Decision

[1] The Board decided to discontinue the complaint against the Respondent. The evidence before the Board established that the Respondent did not carry out or supervise any building work complained about. As a consequence, it was not necessary to consider the charges alleged.

The Charges

- [2] The hearing resulted from a Complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act), as raised in the report of [Omitted] dated 24 July 2020 (Document 2.1.13 and Page 30 of the Board’s file) and in Taupo District Council Site Notices dated 19 November 2019 and 13 March 2020 (Documents 4.14 and Pages 488 and 191 of the Board’s files);
 - (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), as detailed in the documents referred to in paragraph 2 (a) above; and
 - (c) 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).

¹ The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

Function of Disciplinary Action

[3] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*² and in New Zealand in *Dentice v Valuers Registration Board*³.

[4] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,⁴ Collins J. noted that:

“... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”

[5] In a similar vein, the Board’s investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint’s Regulations focuses on serious conduct that warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons⁵:

... the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.

[6] Finally, the Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. Those grounds do not include contractual breaches other than when the conduct reaches the high threshold for consideration under section 317(1)(i) of the Act, which deals with disrepute.

[7] The above commentary on the limitations of the disciplinary process is important to note as, on the basis of it, the Board’s inquiries, and this decision, focus on and deal with the serious conduct complained about.

Inquiry Process

[8] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. Rather the Board sets the charges, and it decides what evidence is

² *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

³ [1992] 1 NZLR 720 at p 724

⁴ [2016] HZHC 2276 at para 164

⁵ *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

required at a hearing to assist it in its investigations. In this respect, the Board reviews the available evidence when considering the Registrar’s Report and determines the witnesses that it believes will assist at a hearing. The hearing itself is not a review of all of the available evidence. Rather it is an opportunity for the Board to seek clarification and explore certain aspects of the charges in greater depth.

- [9] Whilst a complainant may not be required to give evidence at a hearing, they are welcome to attend and, if a complainant does attend, the Board provides them with an opportunity to participate in the proceedings.

Procedure

- [10] The Respondent was legally represented by Mr Kaye. He made a submission dated 26 September 2021 (Page 541 of the Board’s files), in which he submitted that the Board was wrong to decide to proceed with the complaint because a number of criteria under regulation 9 of the Act applied, specifically regulations 9(a), (b), (e), and (f). The Board decided to deal with the application as a preliminary matter at the hearing.

Evidence

- [11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁶. Under section 322 of the Act, the Board has relaxed rules of evidence that allow it to receive evidence that may not be admissible in a court of law.
- [12] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision-maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.
- [13] In addition to the documentary evidence before the Board, it heard evidence at the hearing from:

[Omitted]	Complainant
Giles Bayley	Respondent
[Omitted]	Licensed Building Practitioner [Omitted]
[Omitted]	Building Consultant
Martyn Trainor,	Building Consent Officer, Taupo District Council
Dean Southey,	Building Consent Officer, Taupo District Council

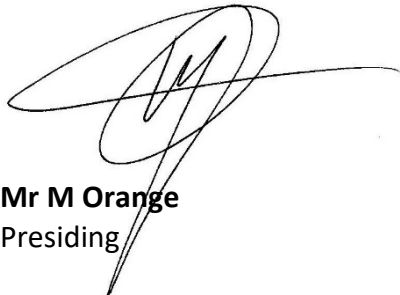
⁶ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [14] The complaint related to a new residential dwelling constructed using a pole barn building. The Complainant contracted [Omitted] to carry out the construction. It subcontracted the construction to the Respondent's company Bayley Developments Limited. A building consent was issued on 23 September 2016, and the work the Respondent's company had contracted to do was completed in March 2017.
- [15] The Respondent described his role on this project as supplying labour, supplying some materials, managing health and safety obligations and invoicing. The Respondent gave evidence that he did not carry out or supervise any work on the site. He advised that he employed [Omitted], a Licensed Building Practitioner [Omitted], to undertake the building work.
- [16] The Respondent stated that he only went to the site after the work Bayley Developments was undertaking was at an end to do some invoicing for the Complainant. In response to questions from the Board the Respondent confirmed that he did not arrange or attend any Council inspections.
- [17] The Complainant gave evidence that the Respondent was never on site. [Omitted], who was employed as a project manager and supervising Licensed Building Practitioner by Bayley Developments, stated that he was on-site for the entire duration of the project. [Omitted] had previously made contradictory statements to the Board as part of its investigations. He stated the Respondent had, and had not, been a supervising Licensed Building Practitioner on site. At the hearing, [Omitted] accepted that he was the only Licensed Building Practitioner carrying out the building work and that he was supervising other non-licensed staff employed by Bayley Developments.
- [18] The Complainant and [Omitted] agreed that [Omitted] left the site in May 2017, and no further work was carried out on behalf of Bayley Development Limited after [Omitted] left.
- [19] The Board queried 2 Council inspection records which noted the Respondent as the licensed building practitioner (Documents 2.1.49 and 2.1.77; Pages 66 and 94 of the Board's file). The Respondent explained that these were filled in by an agent and he was unaware of them before this investigation. The Board questioned the circumstances around the record of work dated 22 March 2017 (Document 4.11 and Page 306 of the Board's file). It implied that it had been issued by the Respondent but had been signed by [Omitted].
- [20] The Respondent said that he only became aware of the record of work during this investigation, and he is now aware of one other record of work filled in, in the same way by [Omitted]. He gave evidence that this was not his usual practice and provided a copy of another record of work from the same time period on a different project which was correctly completed.
- [21] [Omitted] had no explanation for the record of work being filled out in the way that it was.

Board's Conclusion and Reasoning

- [22] The Board is satisfied on the evidence before it that the Respondent did not carry out or supervise any building work on-site for this project. In order to proceed with any of the grounds of the complaint it is necessary to link the alleged conduct with the person being complained about. This was not established.
- [23] The Board decided to discontinue its investigations into the Respondent on the basis that regulation 9(e) of the Complaints Regulations applied. Regulation 9(e) provides that A complaint does not warrant further investigation if there is insufficient evidence to warrant the investigation of the complaint. This was determined as a preliminary matter. Accordingly, the charges alleged against the Respondent were not considered.

Signed and dated this 24th day of December 2021.



Mr M Orange
Presiding