

Before the Building Practitioners Board

	BPB Complaint No. 26765
Licensed Building Practitioner:	Bing Chen (the Respondent)
Licence Number:	BP 136811
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 Type:	On the Papers
Draft Decision Date:	14 August 2025
Final Decision Date:	28 October 2025

Board Members Present:

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

Disciplinary Finding:

The Respondent **has** committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

The Respondent is fined \$1,000 and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary of the Board's Decision

- [1] The Respondent failed to provide a Record of Work on completion of restricted building work. He is fined \$1,000 and ordered to pay costs of \$700. The disciplinary finding will be recorded on the Public Register for a period of three years.

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.¹

¹ 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.

Regulation 10 Decision

- [3] In this matter, the disciplinary charge the Board resolved to further investigate² was that the Respondent may, in relation to building work at [OMITTED], Auckland, 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.

Regulation 9 Decisions

- [4] The complaint to the Board also contained allegations that the Respondent had:
- (a) breached the code of ethics prescribed under section 314A of the Act (section 317(1)(g) of the Act); and
 - (b) 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 (section 317(1)(i) of the Act).
- [5] With regard to the allegations made, the Board decided that regulation 9(f)(ii) of the Complaints Regulations applied. It provides:

Complaint not warranting further investigation

A complaint does not warrant further investigation if—

- (f) *the investigation of it is—*
 - (ii) *unnecessary;*

- [6] The conduct complained about related to the failure to provide a record of work and other documentation. The Board does not have any jurisdiction in relation to the other documentation, and the record of work matter has been dealt with under the specific charge of section 317(1)(da)(ii) of the Act. As such, further investigation under section 317(1)(g) or (i) of the Act is not necessary.

Draft Decision Process

- [7] In this instance, the Board decided that a formal hearing was not necessary. The Board considered that there was sufficient evidence before it to allow it to make a decision on the papers. It noted, however, that there may have been further evidence in relation to the matter that the Board was not aware of. To that end, it issued a Draft Decision. The Respondent was provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. The Board further noted that if the Respondent requested an in-person hearing, then the Draft Decision would be set aside, and a hearing would be scheduled.

² 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.

- [8] The Board received a submission from the Complainant and the Respondent. It has taken them into consideration and has made a final decision.

Evidence

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed³. 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

- [10] 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.⁴
- [11] 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 work⁵ unless there is a good reason for it not to be provided.⁶

Did the Respondent carry out or supervise restricted building work

- [12] The Respondent was engaged to carry out and supervise building work on five new residential dwellings under a building consent. His work included work on the primary structure and external moisture management systems of a residential dwelling, both of which are restricted building work.⁷

Was the Restricted Building Work complete

- [13] On 22 May 2025, in response to the complaint, the Respondent provided a copy of his Record of Work, dated 23 April 2025, to the Investigator. The Respondent advised that it had also been provided to the Complainant on 23 April 2025. The Complainant confirmed its receipt on 24 April 2025.
- [14] On 28 May 2025, the Board obtained a copy of the Territorial Authority property. It did not contain a Record of Work from the Respondent.
- [15] The Respondent's work was carried out and supervised between May 2024 and some time in late 2024, as ascertained from building inspections. Late 2024 was when his restricted building work was complete, and that was when the record of work should have been provided.

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁴ Section 88(1) of the Act.

⁵ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

⁶ Section 317(1)(da)(ii) of the Act

⁷ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Has the Respondent provided a Record of Work

- [16] The Respondent did not provide a Record of Work on or soon after completion. A complaint was made about the non-provision on 4 April 2025. On 17 April 2025, the Respondent was informed of the complaint. On 22 May 2025, he stated: *"the record ROW form already send to owner. She told me it is already withdrawing"*. This was a reference to the Record of Work having been provided on 23 April 2025. Also, it was not provided to the Territorial Authority, as is the requirement in section 88 of the Act. Because of those facts, the Record of Work was not provided on or soon after completion as per the requirements of section 88(1) of the Act.

Was there a good reason

- [17] The Respondent stated on 22 May 2025 *"the record form already send to owner. She told me it is already withdrawing"*
- [18] The Record of Work was only provided after the complaint was made, and the Board had no notice of the Complainant withdrawing the complaint. Further, even if the complaint had been withdrawn, the Board has the discretion to continue with a matter as a Board Inquiry.
- [19] The provision of a Record of Work is a statutory requirement. They cannot be made a negotiable term of a contract and withheld because payment has not been made or because of a commercial dispute. There are other legal ways by which debts can be enforced.
- [20] The Respondent should also note that the requirement is on the Licensed Building Practitioner to provide a record of work, not on the owner or Territorial Authority to demand one. He is required to act of his own accord and not wait for others to remind him of his obligations. As such, lack of payment is not a good reason that the Respondent withheld the Record of Work from the Complainant. It was his duty to provide it, and he could have done so in a timely manner.

Further Evidence and Submissions Received

- [21] Following the Board issuing a Draft Decision, it received a submission from the Complainant and the Respondent.
- [22] The Complainant confirmed receipt of a Record of Work, placed blame on the Main Contractor who withheld the Record of Work because of payment issues, and asked that the decision be reversed.
- [23] The Respondent's submission was that he had sent the Record of Work to the owner a long time ago.
- [24] The submissions do not alter the decision. The facts remain that the restricted building work was completed in late 2024, a complaint was lodged in April 2025, and then, after the complaint had been made, a Record of Work was provided. It was clear that the Respondent did not provide a Record of Work because he had not been paid in full by the Main Contractor. As a result, a complaint was made, and the

Board has had to investigate it. To reverse the decision or not sanction the Respondent would be to encourage such behaviour, which would be contrary to the purposes of the disciplinary provisions in section 317 of the Act.

Board's Decision

[25] The Respondent **has** failed to provide a Record of Work on completion of restricted building work.

Penalty, Costs and Publication

[26] The matter was dealt with on the papers. The Board made an indicative order in its Draft Decision. It has since received submissions and has made a final decision regarding penalty, costs, and publication.

Penalty

[27] The Board has the discretion to impose a range of penalties.ⁱ Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.⁸ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:⁹

- (a) protection of the public and consideration of the purposes of the Act;¹⁰
- (b) deterring other Licensed Building Practitioners from similar offending;¹¹
- (c) setting and enforcing a high standard of conduct for the industry;¹²
- (d) penalising wrongdoing;¹³ and
- (e) rehabilitation (where appropriate).¹⁴

[28] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases¹⁵ and applying the least restrictive penalty available for the particular offending.¹⁶ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty¹⁷ that is consistent with other penalties imposed by the Board for comparable offending.¹⁸

⁸ *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

⁹ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁰ Section 3 Building Act

¹¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹² *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹³ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

¹⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁶ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

¹⁷ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁸ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

- [29] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.¹⁹
- [30] Record of work matters are at the lower end of the disciplinary scale. The Board's normal starting point for a failure to provide a record of work is a fine of \$1,500, an amount which it considers will deter others from such behaviour. The Respondent has, as part of the complaint investigation process, provided a record of work. That has been taken into account as a mitigating factor. The penalty is reduced by \$500 to a fine of \$1,000.

Costs

- [31] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.²⁰
- [32] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.²¹ The starting point can then be adjusted up or down, having regard to the particular circumstances of each case.²²
- [33] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings, simple, moderate and complex. The current matter was simple. Adjustments are then made.
- [34] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$700 toward the costs of and incidental to the Board's inquiry.

Publication

- [35] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public Register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act,²³ and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [36] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.²⁴ Further, as a general principle, publication may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing, and the courts have

¹⁹ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

²⁰ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

²¹ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²² *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

²³ Refer sections 298, 299 and 301 of the Act

²⁴ Section 14 of the Act

stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.²⁵

- [37] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

- [38] 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 \$1,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$700 (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, the Respondent will be named in this decision, which will be published on the Board's website.

- [39] 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

- [40] The right to appeal Board decisions is provided for in section 330(2) of the Actⁱⁱ.

Signed and dated this 11th day of November 2025.



Mr M Orange
Presiding Member

ⁱ **Section 318 Disciplinary Penalties**

(1) *In any case to which section 317 applies, the Board may—*

²⁵ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

- (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 1 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.*