

Before the Building Practitioners Board

	BPB Complaint No. CB24568
Licensed Building Practitioner:	Karl Bryant (the Respondent)
Licence Number:	BP 131496
Licence(s) Held:	Design AOP 2

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

Complaint or Board Inquiry	Complaint
Hearing Location	Tauranga
Hearing Type:	In Person
Hearing Date:	18 February 2020
Substantive Decision Date:	28 March 2020
Penalty Decision Date:	8 May 2020

Board Members Present:

Chris Preston, Chair (Presiding)
Robin Dunlop, Retired Professional Engineer
Bob Monteith, LBP, Carpentry and Site AOP 2
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 carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) 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 Actⁱ, 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 5 May 2020, the Board received submissions from the Respondent’s lawyer. It has considered them and made the following decisions.

Penalty

- [5] The Board’s initial view was that the Respondent should be fined the sum of \$3,000 was the appropriate penalty for the disciplinary offence.
- [6] Two licensed building practitioners were involved in the matters that lead to the hearing, the Respondent and [Omitted] (Design AOP 2, [Omitted]). Counsel noted the difference in penalties imposed and submitted that the culpability was the same and that, as such, the penalty outcome should be the same. Counsel also submitted that there were significant mitigating factors that the Board should take into account along with events subsequent to the complaint being made.
- [7] With respect to the submission that there was a disparity in penalties between the Respondent and [Omitted] the Board does not agree. The two factors the Board noted, as regards the Respondent’s conduct, which set it apart were the Respondent taking unilateral action and not considering all of the implications of the issue and that the Respondent appeared to take his responsibilities as a supervisor lightly.
- [8] The Board does accept that there were mitigating factors that it was not aware of when it made its indicative penalty decision. It has considered those and has decided that a reduction in the quantum of the fine is warranted. The fine will be reduced by 50%. The fine is set at \$1,500.

Costs

[9] Counsel did not address costs. The amount, which was significantly less than 50% of actual costs, is affirmed.

Publication of Name

[10] The Board's initial view was there were not good reasons to further publish the matter. This remains the case.

Section 318 Order

[11] 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 \$1,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,000 (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.

[12] 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

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

Signed and dated this 20th day of May 2020



Chris Preston
Presiding Member

ⁱ **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:*

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- (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.*