Before the Building Practitioners Board

	BPB Complaint No. C2-01648
Licensed Building Practitioner:	White Bai (the Respondent)
Licence Number:	BP 126975
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	19 December 2017
Substantive Decision Date:	15 January 2018
Penalty Decision Date:	13 February 2018

Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
Robin Dunlop, Retired Professional Engineer
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 committed the following disciplinary offence(s):

(a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);

(b) carried out (other than as an owner-builder) or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise (s 317(c) of the Act); and

(c) 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).

[2] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Act[i], 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 is indicative position as regards penalty, costs and publication and invited the Respondent to make written submissions on those matters.

[4] On 6 February 2018, the Board received the Respondent's submissions. It has considered them and made the following decisions.

Penalty

[5] The Board's initial view was that cancellation of the Respondent's licence and a restriction on reapplying for six (6) months was the appropriate penalty. The reasons why were outlined in the Board's Substantive Decision. They included:

> *[45] The most serious matter before the board though is the disciplinary offence under section 317(1)(c) of the Act that he carried out and supervised restricted building work of a type that he is not licensed to carry out or supervise. The licensing regime exists to ensure the public can have confidence in those who carry out restricted building work. Restricted building work in turn is that building work which is integral to the safe and healthy functioning of a home and the licensing regime*

was established so as to ensure persons with the requisite competencies, as set out in the Licensed Building Practitioners Rules 2007, carry out or supervise that work. The Respondent, by stating that he was licensed in Brick and Blocklaying and in undertaking and supervising bricklaying, has defeated the purposes of the regime.

[46] The Respondent's offending has been aggravated by his falsely claiming to be licensed. Moreover he knowingly made those claims having been twice denied a licence to carry out brick and blocklaying. Such conduct cannot be condoned.

[6] The submissions filed by the Respondent show that he has not, despite the Board's decision, grasped that he was not licenced to carry out or supervise the restricted building work and that the offending is a serious matter. He has not accepted any responsibility for his conduct nor shown how he will ensure such offending will not occur again in the future. There is also a tendency in the submissions made to try and defer responsibility onto others and to imply that his disciplinary offending is mitigated by the fact that there is an ongoing commercial dispute. The Respondent should understand as a licensed building practitioner that his responsibilities and obligations as a licensed person need to be separate from contractual and commercial matters.

[7] Having considered the submissions the Board does not consider there are grounds for it to alter its decision. It has therefore decided to uphold its initial view.

Costs

[8] The Board's initial view was that $2,500 were appropriate. No submissions on costs were included. Notwithstanding the Board has reviewed its indicative decision and has decided that the amount remains as reasonable as it is significantly less than 50% of actual the costs incurred.

Publication of Name

[9] The Board's initial view was there were good reasons to further publish the matter. The Board noted in its Substantive Decision:

[60] … The Board considers publication of the Respondent's name is necessary to give effect to its order and to ensure the deterrence element of the penalty. Such publication will be made in the Code Words publication and on the Board's website and by way of such other means as is considered necessary to effectively inform the public.

[10] Again no direct submission on publication have been received. However, as the board has decided to uphold the cancellation it is appropriate that publication also occurs.

Section 318 Order

[11] For the reasons set out above, the Board directs that:

Penalty: **Pursuant to section 318(1)(a)(i) of the Building Act 2004, the Respondent's licence is cancelled and pursuant to s 318(1)(a)(ii) the Respondent may not apply to be relicensed before the expiry of 6 months from the date of this order.**

Costs: **Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $2,500 (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 be action taken to publicly notify the Board's action.

[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 Act[ii].

Signed and dated this 13th day of February 2018



Richard Merrifield
Presiding Member

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[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:*
- *(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.