Before the Building Practitioners Board

	BPB Complaint No. C2-01677
Licensed Building Practitioner:	Satish Chand (the Respondent)
Licence Number:	BP 113469
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:	20 December 2017
Substantive Decision Date:	15 January 2018
Penalty Decision Date:	29 January 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 or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act); and

(c) has 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).

[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 16 January 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 the Respondent's licence be cancelled for a period of not less than two years was the appropriate penalty for the disciplinary offences. In its Substantive Decision the Board noted:

[35] *The Respondent has previously appeared before the Board and has been found guilty of disciplinary offences and has been penalised as follows:*

Complaint Number	***Disciplinary Offences***	***Penalty***
C2-01445	*317(1)(da)(ii)*	*Fine of $1,500*
C2-01468	*317(1)(b) and (da)(ii)*	*Fine of $1,500*
C2-01565	*317(1)(b) and (d)*	*Licence cancelled for 6 months*

[36] In C2-01565 the Board noted:

[42] The Board needs, in coming to its penalty decision, to consider the purposes of the regime for licensed building practitioners and the need for the public to have confidence in those that are licensed to carry out or supervise restricted building work.

[43] In this instance the Board considers the Respondent's conduct to have been sufficiently serious enough to warrant either a suspension or a cancellation of his licence. As the Respondent has been found to have been incompetent it is minded toward cancellation as this means that the Respondent will, if he reapplies for a licence, be reassessed as to his competency. This in turn creates an element of public protection.

[44] Additionally the Respondent's licence is already suspended. As such the Board considers that cancellation is appropriate. The Board will also order that he may not reapply to be licenced for a period of six months.

[37] The Respondent has again committed multiple disciplinary offences. The negligence and incompetence and contrary to consent matters are very serious. The licensing regime exists to ensure the public can have confidence in those who carry out restricted building work. Moreover the scheme is designed to ensure a base level of competence so that restricted building work or is carried out or supervised competently and in accordance with the building code and any building consent issued. The Respondent has been found to have been lacking with regard to those competencies on more than one occasion.

[38] Taking all of the above factors into account the Board considers that a further cancellation of the Respondent's licence is not only warranted to punish the Respondent but also required to deter others from such conduct and to ensure the Respondent's competency is reassessed if he decides to reapply for a licence at a future date.

[39] Accordingly the Board will cancel the Respondent's licence and order that he may not apply to be relicensed for a period of 2 years from the end of his current period of cancellation.

[6] The Respondent has submitted:

> *I would like to state that before the builders license was introduced I was still an experienced builder. I had fulfilled the requirements of the of the lbp board to get the builders license, I have been working on both big and small projects without any issues up till now.*

[7] The Respondent's conduct and the findings of the Board on multiple occasions show that the Respondent is not competent.

[8] The Respondent further submitted that he has:

> *… been ignorant and led to work with a contractor who has made me supervise more than one projects at a time and this is the reason most of work done by others has been put under my name under bad repute as a lbp builder.*

[9] The Respondent needs to take responsibility for his decisions and for the consequences of them.

[10] In terms of his personal circumstances the Respondent has noted that his employment has been affected by the Board's decision and that his age should be taken into consideration. He submitted that the Board should not cancel his licence as it will impact on his family and his ability to earn an income.

[11] In this respect the Board notes the Respondent can still work in the building trade. He can carry out non restricted building work and can also carry out restricted building work under supervision.

[12] The Respondent should also note that the Board's responsibility is to uphold the purposes of the licensing regime and to protect the public. It also notes that the Respondent has not taken any responsibility for his actions or acknowledged the impact his conduct has had on others. Nor has he in any way set out how future work would be completed in a compliant manner or how he has learnt from the matter. Rather he has tended to try and blame others.

[13] Given the above the Board has decided to uphold its initial view.

Costs

[14] The Board's initial view was that costs of $2,000 was appropriate. The Respondent has submitted the amount is too high, that the Board has been heavy handed and that the impact on his family should be taken into account.

[15] As set out in the Substantive Decision the amount of costs is significantly less than the guideline of 50% of the actual costs incurred in dealing with the matter. The Respondent should also note, as regards costs, that other licensed building practitioners are, in effect, subsidising the costs of the investigation and hearing through their licence fees. Given this and the costs incurred further reductions are not warranted.

Publication of Name

[16] The Board's initial view was there were good reasons to further publish the matter.

[17] The Respondent has made submissions as regards the effect past publication has had on him. He has noted:

> *I don't agree publically humiliating a lbp for something which can be looked up by the customers who need them.*

[18] The Respondent should note that sections 298 and 299 set out the purposes of the Registrar which are:

> *The purpose of the register is—*
> *(a) to enable members of the public to—*
> *(i) determine whether a person is a licensed building practitioner and, if so, the status and relevant history of the person's [licensing]; and*
> *(ii) choose a suitable building practitioner from a list of licensed building practitioners; and*
> *(iii) know how to contact the building practitioner; and*
> *(iv) know which licensed building practitioners have been disciplined within the last 3 years; and*
> *(b) to facilitate the administrative, disciplinary, and other functions of the Board and the Registrar under this Act.*

[19] Publication on the Register has the above effect and achieves those purposes and is mandatory under section 301 of the Act.

[20] The reasons for further publication under section 318(5) were set out in the Substantive Decision. They include ensuring that others may learn from the matter and that the public are informed.

[21] Given the above the Board has decided to uphold its initial view.

Section 318 Order

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

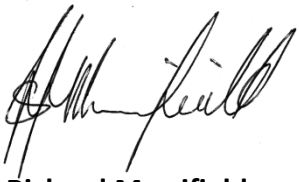
Penalty:	**Pursuant to s 318(1)(a)(i) of the Act, the Respondent's licence is cancelled and the Registrar is directed to remove the Respondent's name from the register of Licensed Building Practitioners and pursuant to s 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of 2 years from the date his current cancellation ends.**
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 be action taken to publicly notify the Board's action, in addition to the Respondent being named in this decision.**

[23] 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

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

Signed and dated this 29th day of January 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.