

Before the Building Practitioners Board

	BPB Complaint No. C2-01680
Licensed Building Practitioner:	Yong Zhang (the Respondent)
Licence Number:	BP 128057
Licence(s) Held:	Site AOP 2

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	Auckland
Hearing Type:	In Person – Consolidated with C2-01684 and C2-01685
Hearing Date:	20 February 2018
Decision Date:	20 March 2018
Board Members Present:	
	Chris Preston (Presiding)
	Mel Orange, Legal Member
	Robin Dunlop, Retired Professional Engineer
	Bob Monteith, 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.

Board Decision:

The Respondent **has not** committed a disciplinary offence.

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Introduction

- [1] The hearing resulted from a Complaint into 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 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 (s 317(1)(i) of the Act).

Function of Disciplinary Action

- [2] 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.
- [3] 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.”*
- [4] 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. It does not have any jurisdiction over contractual matters.

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

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

Background to the Complaint

- [5] The Board received related complaints regarding the failure to provide records of work on the completion of restricted building work. The Board noted that, on the basis of the evidence before it when considering the Registrar's Report that the Licensed Building Practitioners may have colluded and that such behaviour may have brought the regime into disrepute.

Evidence

- [6] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. 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.

- [7] The Board heard evidence from:

Yong Zhang	Respondent
Lidong Xie	Respondent in C2-01685

- [8] [Omitted], a former Licensed Building Practitioner whose licence was suspended as a result of disciplinary action, was the main contractor for the build. He engaged the services of the Respondent to manage the project for him. The Respondent in turn utilised his subcontractors to carry out the building work. The Respondent was paid and received a set fee for organising sub-trades.
- [9] The Complainant alleged the Respondent told various licensed building practitioners to withhold records of work and/or that he retained them and refused to pass them on as a result of money being owed to the subcontractors.
- [10] The Respondent denied having received any records of work or telling licensed building practitioners involved in the project not to provide them to the owner. The Respondent noted that the owner had paid [Omitted] but that [Omitted] had not paid some of the subcontractors involved in this and other jobs.
- [11] The Respondent did accept that he had told his subcontractors not to trust [Omitted] and not to give him documentation. He noted that [Omitted] had been known to have provided documentation that allegedly did not originate with the supposed authors in the past. He stated this advice did not extend to not providing documents to the owner.
- [12] The Respondent submitted that the transcript of the conversation he had with the owners was not true or accurate.

Board's Conclusion and Reasoning

- [13] The Board has decided that the Respondent **has not** 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 (s 317(1)(i) of the Act).

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

Disrepute

- [14] The disrepute disciplinary provision in the Act is similar to legislation in other occupations including medical professionals, teachers, lawyers and conveyancers, chartered accountants, financial advisors, veterinarians and real estate agents. The Board considered the disrepute provisions in Board Decision C2-01111⁶ and discussed the legal principles that apply.
- [15] The Oxford Dictionary defines disrepute as "the state of being held in low esteem by the public"⁷ and the courts have consistency applied an objective test when considering such conduct. In *W v Auckland Standards Committee 3 of the New Zealand Law Society*⁸ the Court of Appeal held that:
- the issue of whether conduct was of such a degree that it tended to bring the profession into disrepute must be determined objectively, taking into account the context in which the relevant conduct occurred. The subjective views of the practitioner, or other parties involved, were irrelevant.*⁹
- [16] As to what conduct will or will not be considered to bring the regime into disrepute it will be for the Board to determine on the facts of each case. The Board will, however, be guided by finding in other occupational regimes. In this respect it is noted disrepute was upheld in circumstances involving:
- criminal convictions¹⁰;
 - honest mistakes without deliberate wrongdoing¹¹;
 - provision of false undertakings¹²; and
 - conduct resulting in an unethical financial gain¹³.
- [17] The allegation that the Board considered in relation to disrepute was possible collusion between licenced building practitioners to withhold records of work. The Board found there was insufficient evidence before it to substantiate the allegation.
- [18] The Board did note that the transcript provided by the Complainant did contain some evidence of an arrangement to withhold records of work. The Board has not, however, been privy to the original recording and the transcript was produced by the Complainant. As such very limited weight can be given to it.

⁶ Board decision dated 2 July 2015.

⁷ Online edition, compilation of latest editions of *Oxford Dictionary of English, New Oxford American Dictionary, Oxford Thesaurus of English and Oxford American Writer's Thesaurus*, search settings UK English, accessed 12/05/15

⁸ [2012] NZCA 401

⁹ [2012] NZAR 1071 page 1072

¹⁰ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

¹¹ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

¹² *Slack, Re* [2012] NZLCDT 40

¹³ *Colliev Nursing Council of New Zealand* [2000] NZAR 7

Signed and dated this 20th day of March 2018

A handwritten signature in cursive script that reads "Chris Preston".

Chris Preston
Presiding Member