

Before the Building Practitioners Board

	BPB Complaint No. C2-01745
Licensed Building Practitioner:	Misi Sau Evile (the Respondent)
Licence Number:	BP 116267
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:	21 February 2018
Substantive Decision Date:	20 March 2018
Penalty Decision Date:	7 May 2018

Board Members Present:

Chris Preston (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 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).
- [2] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Act¹, 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 10 April 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 should be cancelled and that he not be able to reapply to be licensed for a period of two years.
- [6] The Respondent has submitted that the cancellation will have a detrimental impact on him, his family and his health. He notes that he requires his licence for his current employment as a foreman supervising restricted building work. The Respondent states he will not operate a business again.
- [7] It is to be noted that in the submissions the Respondent has not taken responsibility for what occurred but rather pointed to the actions of others.
- [8] It is also to be noted that this is not the first time the Respondent has been disciplined by the Board. The Respondent does not appear to have learnt from the first occasion.
- [9] As was noted in the Substantive Decision the purpose of professional discipline is to uphold the integrity of the profession and to deter others from similar behaviour.
- [10] The Respondent was found to have brought the regime into disrepute. The matters before the Board were serious and the penalty should reflect this. It should also

reflect that the Respondent has previously been found to have committed a disciplinary offence.

- [11] The Board considered the above in making its decision to cancel the Respondent's licence. The submissions received have not convinced the Board should change its decision and in this respect the Respondent should note that he can work under supervision and given the Board's findings in this matter the Board considers that this is appropriate.

Costs

- [12] The Board's initial view was that \$1,000 in costs was appropriate. The Board's normal starting point for a half day hearing is \$2,000. Given this the amount is considered to be appropriate.

Publication of Name

- [13] The Board's initial view was there were no good reasons to further publish the matter. The order is conformed.

Section 318 Order

- [14] 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 two years.

Costs: Pursuant to s 318(4) of the Act, the Respondent is ordered to pay costs of \$1,000 (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 s 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.

- [15] 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

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

Signe and dated this 7th day of May 2018



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:*
 - (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.*