Before the Building Practitioners Board

	BPB Complaint No. C2-01746
Licensed Building Practitioner:	Lee Gallagher (the Respondent)
Licence Number:	BP 118032
Licence(s) Held:	Roofing AOP Torch on Roof Membrane

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

Complaint or Board Inquiry	Board Inquiry
Hearing Location	Auckland
Hearing Type:	In Person – Consolidated with C2-01615
Hearing Date:	12 April 2018
Substantive Decision Date:	14 May 2018
Penalty Decision Date:	14 June 2016

Board Members Present:

Chris Preston (Presiding)
David Fabish, LBP, Carpentry Site AOP 2
Catherine Taylor, Lay Member

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 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);

[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 28 May 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 a six-month suspension of the Respondent's licence was the appropriate penalty for the disciplinary offence. In coming to that decision the Bard noted:

> *[36] The licensing regime was set up to raise standards and ensure that critical aspects of a build were carried out in accordance with any building consent issued and with the Building Code by having licensed person's complete it or supervise it. The Respondent has flagrantly disregarded the requirements set out in the Act and in doing so has put the objects of the scheme at risk. It is important that the Respondent and others learn from the Respondent's conduct and that the penalty provide a deterrent to others.*

[6] The Respondent has submitted:

> *I have reflected on the actions that I have taken with regards to the above complaint, I can see that I misjudged the implications of my actions and the adverse affect that this would have. I have always deemed myself to be a conscientious and diligent worker and take pride in the work that I produce. I would like to assure the board that this situation will never occur again.*

[7] The contriteness is at odds with the attitude noted at the hearing where he showed a total disregard for the importance of sighting consent documents and for the importance of tanking to the waterproofing and performance of the building. He also displayed a complete lack of understanding of the importance of supervision and a cavalier attitude toward compliance and his responsibilities as a licensed building practitioner.

[8] It is reassuring that the Respondent is now taking his responsibilities more seriously. The Board trusts that his future actions will reflect his submissions.

[9] The Board also notes the submissions made as regards the impact suspension would have on the Respondent's business. The Board has taken this into account.

[10] Having considered the submissions received the Board has decided to review its initial position as regards penalty. It has decided that the period of suspension will be halved to three months. Whilst this will have an inevitable impact on the Respondent and his business the Respondent should note that he can still carry out non-restricted building work and that he can contract the services of a person to supervise restricted building work during the period of his suspension.

Costs

[11] The Board's initial view was that $2,000 in costs was appropriate. No submissions were received as regards costs. The amount is confirmed.

Publication of Name

[12] The Board's initial view was there were no good reasons to further publish the matter. This remains the case.

Section 318 Order

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

Penalty:	**Pursuant to section 318(1)(b) of the Building Act 2004, the Respondents licence will be suspended for a period of three months.**
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.

[14] 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

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

Signed and dated this 14th day of June 2018



Chris Preston
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.