

Before the Building Practitioners Board

	BPB Complaint No. C2-01798
Licensed Building Practitioner:	Graham Gawn (the Respondent)
Licence Number:	BP 123661
Licence(s) Held:	Design AOP Design 2

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

Complaint or Board Inquiry	Complaint
Hearing Location	Hamilton
Hearing Type:	In Person
Hearing Date:	30 May 2018
Substantive Decision Date:	14 June 2018
Penalty Decision Date:	5 July 2018

Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
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 committed the following disciplinary offence(s):
- (a) carried out or supervised building work or building inspection work in a negligent and incompetent manner (s 317(1)(b) of the Act); and
 - (b) breached section 314B(b) of the Act (s 317(1)(h) 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 Actⁱ, 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 27 June 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 should be restricted to a Design AOP 1 licence.

- [6] The Respondent has submitted:

I formally request that the Board, look at reducing my financial penalty from \$2000 to \$1000.00,

As I have had little work since Hearing and am looking at other options and I in financial hardship,

Also I still face a small claims court hearing the [redacted] brought against me claiming \$3000.00 for the Design,

Also I will except the down grade in my Licence from level 2 to Level 1,

Please reply confirming my application

- [7] Having considered the submissions received the Board has decided to uphold its initial view.
- [8] The Respondent should note that the Board has not penalised him the sum of \$2,000. Its only penalty order was in respect of the downgrading of his licence. The \$2,000 was in relation to costs. The two should not be confused.

Costs

- [9] The Board's initial view was that \$2,000 in costs was appropriate. The Board will take the above submission as a request to reduce the amount.
- [10] The Board noted in its substantive decision that costs orders are made so that the burden of the costs of, and associated with investigations and hearings, are not left to other licensed building practitioners to bear. Whilst the financial position that the Respondent now finds himself in is acknowledged the Board still considers the amount to be appropriate. As regards the Respondent's financial hardship the Board notes that he can make arrangements with the Registrar to pay the amount over time.

Publication of Name

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

Section 318 Order

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

Penalty: Pursuant to section 318(1)(c) of the Act, the Respondent's licence is restricted to the carrying out of the or supervision of building work to that of a Design Area of Practice 1 licence and the Registrar is directed to record the restriction in the of register of Licensed Building Practitioners by noting his licence as a Design Area of Practice 1 licence.

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.

- [13] 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

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

Signed and dated this 5th day of July 2018



Richard Merrifield
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.*