

## Before the Building Practitioners Board

	BPB Complaint No. CB25069
Licensed Building Practitioner:	Munesh Chand (the Respondent)
Licence Number:	BP 129866
Licence(s) Held:	Carpentry

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

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Complaint or Board Inquiry	Complaint but continued as a Board Inquiry
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Dates:	3 September 2019 and 8 July 2020
Substantive Decision Date:	20 July 2020
Penalty Decision Date:	24 August 2020

#### Board Members Present

Chris Preston, Chair (Presiding)  
Mel Orange, Deputy Chair, Legal Member  
Bob Monteith, LBP, Carpentry and Site AOP 2  
Rob Shao, LBP, Carpentry and Site AOP 1 (July 2020 hearing only)  
Robin Dunlop, Retired Professional Engineer (September 2019 hearing only)

#### 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 (Complaint and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

#### Disciplinary Finding:

The Respondent **has** committed disciplinary offences under sections 317(1)(b) and 317(1)(d) of the Act.

## Contents

<b>Summary of the Board's Penalty Decision .....</b>	<b>2</b>
<b>The Charges .....</b>	<b>2</b>
<b>Penalty .....</b>	<b>2</b>
<b>Costs.....</b>	<b>3</b>
<b>Publication of Name.....</b>	<b>3</b>
<b>Section 318 Order.....</b>	<b>4</b>
<b>Right of Appeal.....</b>	<b>4</b>

### Summary of the Board's Penalty Decision

- [1] The Respondent supervised building work in a negligent manner and carried out building work that was not in accordance with the building consent issued. The Board's indicative penalty position was the cancellation of the Respondent's licence for a period of six months. On the basis of the new mitigation presented, the cancellation is reduced to three months. Costs of \$3,500 are ordered. The matter will be published.

### The Charges

- [2] This penalty decision arises out of the Board's substantive decision in which it found that the Respondent had committed two disciplinary offences.
- [3] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [4] 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.
- [5] On 14 August 2020, the Board received submissions from the Respondent's Legal Counsel. It has considered them and made the following decisions.

### Penalty

- [6] The Board's initial view was that the Respondent's licence should be cancelled for a period of six months.
- [7] Counsel has submitted that the Board should review that decision and impose a warning or censure. The Board can censure. Section 318 of the Act does not provide for a warning.

- [8] Counsel's submissions, however, also state that the Respondent has instructed him to file an appeal and the bulk of the submissions focus on reasons why Counsel considers the Board's decision is wrong. It is not clear to the Board whether Counsel seeks a review of the indicative penalty or whether he is just putting the Board on notice that the Respondent will appeal and why. Notwithstanding the Board has taken those parts of the submissions which deal with the penalty as a plea in mitigation and has reviewed its decision based on them.
- [9] The Board also notes that Counsel has asked the Board to review its decision. Whilst not stated, it is presumed that Counsel is submitting that the Board should reverse its decision and find that the Respondent has not committed a disciplinary offence.
- [10] The Board notes that the hearing where the Respondent had the opportunity to present sworn evidence concluded, and the Board made its substantive decision. Notwithstanding it has reviewed the submissions to ascertain if there has been a miscarriage of justice. Having done so, the Board has decided that its decision will stand.
- [11] Turning to the indicative penalty, Counsel has submitted that the Respondent has not had any previous complaints made about him, that the complaint caused immense stress resulting in a matrimonial separation, the financial impact of a cancellation, and that the Respondent has no other industry to turn to.
- [12] With respect to the final item, the Respondent can continue to work in the building industry notwithstanding a cancellation. He can carry out work that is not restricted building work and can be engaged in restricted building work under the supervision of a licensed person. The Respondent can also apply to be relicensed when the period of suspension has ended.
- [13] The other matters raised are mitigating factors. At the same time, the Respondent has not accepted any responsibility and continues to deny any wrongdoing.
- [14] The Board, have taken the new mitigation presented into consideration, has decided to reduce the period of cancellation from six months to three.

#### **Costs**

- [15] The Board's initial view was that \$3,500 in costs was appropriate. This remains the case for the reasons set out in the Substantive Decision.

#### **Publication of Name**

- [16] The Board's initial view was there were good reasons to further publish the matter. The Board affirms this view. It will not, however, take any action pending the Respondent's appeal.

## Section 318 Order

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

**Penalty:** Pursuant to section 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 section 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of three [3] months.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,500 (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(l)(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 note in the Register and the Respondent being named in this decision.

[18] 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

[19] The right to appeal Board decisions is provided for in s 330(2) of the Act<sup>ii</sup>.

Signed and dated this 31<sup>st</sup> day of August 2020



**Chris Preston**  
Presiding Member

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### <sup>i</sup> **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:*

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- (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.*