

Before the Building Practitioners Board

	BPB Complaint No. CB25211
Licensed Building Practitioner:	Munesh Chand (the Respondent)
Licence Number:	BP 129866
Licence(s) Held:	Carpentry

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
Hearing Date:	30 October 2019
Decision Date:	11 December 2019

Board Members Present:

Chris Preston (Presiding)
David Fabish, LBP, Carpentry and Site AOP 2
Robin Dunlop, Retired Professional Engineer
Faye Pearson-Green, LBP Design AOP 2
Rob Shao, LBP, Carpentry and Site AOP 1

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.

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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 offence the Board resolved to investigate was that the Respondent failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act).

Consolidation

- [2] The Board may, under Regulation 13, consolidate two or more complaints into one hearing but only if the complaints are, in the opinion of the Board, about substantially the same subject matter and the complainant and the licensed building practitioner in respect of each complaint agree to the consolidation.
- [3] The Board sought agreement for consolidation of this matter with complaint numbers CB25213 and CB25212. The consent of all those involved was forthcoming. The matters were consolidated.

Function of Disciplinary Action

- [4] 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.

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

- [5] 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.”

- [6] 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.

Evidence

- [7] 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.
- [8] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.
- [9] In addition to the documentary evidence before the Board heard evidence at the hearing from:

Munesh Chand

Respondent

Stephen Tuckey

Auckland City Council Inspector

- [10] The Respondent’s name appeared on four inspection sheets for the property in question. The Complainant, based on this information, asked the Respondent for a record of work for the restricted building work noted in the inspections.
- [11] The Respondent gave evidence that he had attended the site to fix some penetrations in the building wrap and some missing timber work. He then attended the inspection post the work.
- [12] The Respondent’s name appears on both the drainage, pre line, post line and final inspection sheets. Notwithstanding his evidence was that the work was done by another licensed building practitioner and that he was there only for the inspections.
- [13] Mr Tuckey was asked if he had seen the Respondent during the inspections. He was unsure and, in any event, it was some time ago being around October and November

⁴ [2016] HZHC 2276 at para 164

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

2016. In any event the inspections with the Respondent's name were undertaken by a different inspector, Mr Bradford.

Board's Conclusion and Reasoning

- [14] The Board has decided that the Respondent **has not** failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act) and should not be disciplined.
- [15] The Board reached its decision on the basis that there was insufficient evidence, on the balance of probabilities, to determine that the Respondent carried out any restricted building work on the site.

Signed and dated this 11th day of December 2019

A handwritten signature in cursive script that reads "Chris Preston". The signature is written in dark ink and is positioned above the printed name and title.

Chris Preston
Presiding Member