

Before the Building Practitioners Board

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| | BPB Complaint No. CB25422 |
| Licensed Building Practitioner: | Alan Chellp (the Respondent) |
| Licence Number: | BP 119947 |
| Licence(s) Held: | Carpentry |

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

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| Complaint or Board Inquiry: | Complaint |
| Hearing Type: | In person |
| Substantive Decision Date: | 11 December 2020 |
| Penalty Decision Date: | 22 February 2021 |

Board Members:

Mr M Orange, Deputy Chair, Legal Member (Presiding)
Mrs F Pearson-Green, LBP, Design AOP 2
Mr R Shao, LBP, Carpentry and Site AOP 1
Mr F Thomas, LBP, Roofing

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.

Disciplinary Finding:

The Respondent **has** committed a disciplinary offence under section 317(1)(b) of the Act.

Contents

| | |
|--|---|
| Summary of the Board’s Penalty Decision | 2 |
| The Charges | 2 |
| Penalty | 2 |
| Costs | 3 |
| Publication of Name | 3 |
| Section 318 Order | 3 |
| Right of Appeal | 4 |

Summary of the Board’s Penalty Decision

[1] The Respondent negligently supervised roofing work that did not meet acceptable standards. The penalty, costs and publication orders are upheld. His licence is to be suspended for a period of six months. He is ordered to pay costs of \$3,500.

The Charges

[2] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act).

[3] 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.

[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] The Respondent made a submission on 7 December 2020, which asked questions and attempted to introduce more evidence. On 9 February 2021, the Board received a further submission from the Respondent.

[6] The Board has considered both submissions and has made the following decisions.

Penalty

[7] The Board’s initial view was that the Respondent’s licence should be suspended for a period of six months. The reasons why were set out in the Board’s Substantive Decision.

[8] The Respondent’s submissions did not address matters of penalty, costs or publication other than to state:

I hope I have clarified enough to have objective decision over this matter.

I hope that The Board’s counts my received experience and future building behaviors based on it.

I hope The Board counts imbalance of my ability to protect myself against The Board's punishment, as lawyer cost to defense this case is much greater than penalties.

I hope The Board increase license suspension period toward to penalties reduction.

- [9] The submissions focused on the Respondent's view of the Board's Substantive Decision. He questioned the Board's findings. In this respect, the Board notes that it has held a hearing, heard evidence and made a decision on the complaint made. It reminds the Respondent that he can appeal the Board's decision if he disagrees with it.
- [10] The Board does not, having reviewed the submissions, see any reason to depart from its initial view. No additional mitigation has been put forward. The Respondent has not addressed the matters and concerns raised by the Board as regards Penalty in its Substantive Decision. A suspension is still warranted to not only punish the Respondent but to deter others from such conduct.

Costs

- [11] The Board's initial view was that \$3,500 in costs was appropriate. The reasons why were set out in the Substantive Decision. The amount is confirmed.

Publication of Name

- [12] The Board's initial view was there were good reasons to further publish the matter. This remains the case. Publication will ensure the public and other Licensed Building Practitioners are informed of the disciplinary proceedings and that the latter can learn from it.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(b) of the Act, the Respondent's licence is suspended for a period of six [6] months and the Registrar is directed to record the suspension in the of Licensed Building Practitioners.

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(I)(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.

- [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 Actⁱⁱ.

Signed and dated this 25th day of February 2021



Mr M Orange
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.*