

## Before the Building Practitioners Board

	BPB Complaint No. CB26184
Licensed Building Practitioner:	Michali Claudatos (the Respondent)
Licence Number:	BP 121998
Licence(s) Held:	Carpentry; Design AoP 1

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### Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

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Complaint or Board Inquiry	Complaint
Hearing Location	Napier
Hearing Type:	In Person
Hearing and Decision Date:	29 August 2023

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2  
Ms J Clark, Barrister and Solicitor, Legal Member  
Mr G Anderson, LBP, Carpentry and Site AoP 2  
Mr P Thompson, LBP, Carpentry, Quantity Surveyor

#### 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 not** committed a disciplinary offence under section 317(1)(i) of the Act.

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**Summary**

- [1] The Respondent was engaged to draw plans for properties at [OMITTED] (“Monowai property”) and [OMITTED] (“Taruna property”) for separate clients. At the time, he held a carpentry licence and was intending to apply for a design licence. His design work was being supervised by Mrs [OMITTED], a Licensed Building Practitioner with a Design AoP 2 licence.
- [2] The Complainant, a structural engineer, provided a producer statement, specifically a PS1 for a pillarless frame detail, to the Respondent for the purposes of the building consent application on the Taruna property.
- [3] The Complainant became aware that the producer statement for the Taruna property had been provided by the Respondent’s company to the Council in respect of a building consent request for further information process for the Monowai property. The Respondent acknowledged that this had happened and that the particulars, such as the address, had been altered on the original PS1 for Taruna so that the document could be used for the unrelated Monowai address. The Complainant had no knowledge of or involvement in the Monowai address.
- [4] The Board was required to consider the seriousness of the conduct alleged and whether it reached the threshold of bringing the Licensed Building Practitioners’ regime into disrepute.
- [5] The Board accepted the evidence of the Respondent’s wife that the act of altering the document and submitting it to the Council on the unrelated property was hers alone. The Board considered that the Respondent was wilfully blind as to his wife’s actions, but as the altering of the document was not done by him or under his direction, his lack of care and oversight in itself did not reach the seriousness threshold. On that basis, the Board did not uphold the disciplinary offence.

## The Charges

- [6] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.<sup>1</sup>
- [7] In this matter, the disciplinary charges the Board resolved to further investigate<sup>2</sup> were that the Respondent may, in relation to [OMITTED], have conducted himself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute contrary to section 317(1)(i) of the Act, in that, he may have provided a false or misleading producer statement for the purposes of obtaining a building consent.

## Evidence

- [8] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>3</sup>. 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.

## Disrepute

- [9] Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public. Examples include:
- criminal convictions<sup>4</sup>;
  - honest mistakes without deliberate wrongdoing<sup>5</sup>;
  - provision of false undertakings<sup>6</sup>; and
  - conduct resulting in an unethical financial gain<sup>7</sup>.
- [10] The Courts have consistently applied an objective test when considering such conduct.<sup>8</sup> The subjective views of the practitioner, or other parties involved, are irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.<sup>9</sup>

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<sup>1</sup> 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. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

<sup>2</sup> The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

<sup>4</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>5</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>6</sup> *Slack, Re* [2012] NZLCDT 40

<sup>7</sup> *Colliev Nursing Council of New Zealand* [2000] NZAR 7

<sup>8</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>9</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

- [11] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,<sup>10</sup> that the Respondent has brought the regime into disrepute and that the conduct was sufficiently serious enough for the Board to make a disciplinary finding.<sup>11</sup>

The conduct complained about

- [12] The Complainant was contacted by the Napier City Council about a producer statement construction review, PS 4, on the Monowai property file. The Complainant advised this producer statement was not generated from his office. The Complainant had previously supplied to the Respondent's company a producer statement (PS1) in respect of lintel fixings for the Taruna property.
- [13] The Respondent, in his written response to the complaint and at the hearing, acknowledged that the Producer Statement for the Monowai property was an altered document and that it was taken from the Taruna property file.
- [14] Mrs Claudatos gave evidence that she assisted in the office and had, on occasions, "cut and paste" specifications in order to answer Council Requests for Information (RFI). In this case, she said that she found the producer statement for the Taruna property saved on the computer, changed the address on it to that of the Monowai property and submitted it to the Council in response to its RFI. Mrs Claudatos assumed this "cut and paste" approach could be used and did not know that the producer statement was treated differently from the specifications. The Respondent said that this incident occurred in a particularly busy and stressful period for the company when he was predominately on building sites and was spending little time in the office.
- [15] The Respondent said that he was not aware of any issue until he received the complaint and then talked to his wife about the process she had used to submit the producer statement on the Monowai property. The Complainant, however, gave evidence that he had telephoned the Respondent a week before he submitted the complaint, and the Board accepted this evidence.
- [16] The Respondent stated that he did not look at the producer statement before it was submitted to the Council, that this was "bad supervision" and he had "screwed up". He further stated that it was not their intention to make a false statement, and he was sorry for the whole situation.

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<sup>10</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. 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.

<sup>11</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

Was the conduct serious enough?

- [17] The conduct of altering a document, in this case, a producer statement for the purposes of obtaining building consent, is conduct which is serious enough to amount to disreputable conduct. It is, therefore, a question of the degree of the Respondent's involvement in that action.
- [18] The action of altering the document was that of Mrs Claudatos and not the Respondent. The Respondent allowed this situation to arise through his lack of oversight of the RFI process following the submission of the building consent application. The Respondent was, in the Board's view, wilfully blind, but that level of carelessness does not amount to disreputable conduct. If he had been the author of the alteration, then there would have been no question that his behaviour as a Licensed Building Practitioner was disreputable.
- [19] Also, if the Respondent had, at the time, held a Design Licence and had the design work been carried out under his supervision as opposed to Mrs [OMITTED]'s, then the decision would also have been different.
- [20] The Respondent should note that the finding was a close run call. It is only because the producer statement was altered by Mrs Claudatos and not the Respondent and because he did not have any involvement in the alteration, that the decision has been made.
- [21] The Respondent should also note that if the disciplinary offence of a breach of the Code of Ethics (section 317(1)(g) of the Act) had been in force at the time of this incident, then the Respondent's conduct would have been investigated in relation to that offence and it may well have met the seriousness threshold.

Has the conduct brought the regime into disrepute?

- [22] As noted, the Respondent's conduct does not meet the seriousness threshold. As such, the Board finds that the conduct did not bring the regime into disrepute.

**Board's Supervision Comments**

- [23] The Board does, however, have serious concerns over the way the Respondent's business was operating at the time this incident occurred. His cavalier attitude to the RFIs and lack of supervision of his wife's responses to them is not condoned by the Board. In working, at that time, under the supervision of a licensed designer the Respondent had a responsibility to ensure all responses to requests for information from the Council and any amendments were being reviewed by the licensed designer. The Board heard from the Respondent that he had changed the way he ran his business, and the Board certainly hopes this is the case.
- [24] The Board was also concerned that the Design Practitioner who was supervising the Respondent took a hands-off approach to the design work once the building consent application had been made. Her supervision should have continued through to the

consent being granted, and she should have been supervising the RFI process and responses.

- [25] As stated above, the Respondent should note that if he had held a Design Licence at the time of this incident, then the Board would have been investigating whether his conduct was negligent under section 317(1)(b) of the Act, for the way in which he allowed important documents to be provided without his supervision.

Signed and dated this 20<sup>th</sup> day of September 2023

A handwritten signature in black ink, appearing to be 'M Orange', written in a cursive style.

**Mr M Orange**  
Presiding Member