

Before the Building Practitioners Board
At [omitted]

BPB Complaint No. C2-01090

IN THE MATTER OF

Under the Building Act 2004 (the Act)
A complaint to the Building Practitioners'
Board under section 315

AGAINST

[The Respondent], Licensed Building
Practitioner No. BP [omitted]

DECISION OF THE BUILDING PRACTITIONERS' BOARD

1 Introduction

- 1.1 [Omitted] (the Complainant) lodged a complaint with the Building Practitioners' Board (the Board) on 7 April 2015 in respect of [omitted], Licensed Building Practitioner (the Respondent).
- 1.2 The complaint alleged the Respondent has, in relation to building work in respect of [omitted] failed, without good reason, to provide a record of work, on completion of the restricted building work as required by 88(1) of the Act (s.317(1)(da)(ii) of the Act).
- 1.3 The Respondent is a Licensed Building Practitioner with a Foundations (Concrete or Timber Pile) issued 9 April 2013.
- 1.4 The Board has considered the complaint under the provisions of Part 4 of the Act and the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Regulations).
- 1.5 The following Board Members were present at the hearing:
- | | |
|--------------------|-----------------|
| Chris Preston | Deputy Chairman |
| Mel Orange | Board Member |
| Richard Merrifield | Board Member |
| Catherine Taylor | Board Member |
- 1.6 The matter was considered by the Board in Wellington on 7 April 2015 in accordance with the Act, the Regulations and the Board's Complaints Procedures.
- 1.7 The following other persons were also present during the course of the hearing:
- | | |
|---------------|----------------------------|
| Greg Gimblett | Registrar's Representative |
| Gemma Lawson | Board Secretary |
| [Omitted] | Respondent (by phone) |

Members of the public were not present.

- 1.8 No Board Members declared any conflicts of interest in relation to the matters under consideration.

2 Board Procedure

- 2.1 The “form of complaint” provided by the Complainant satisfied the requirements of regulations 5(a) to (d) of the Regulations.
- 2.2 On 7 August 2014 the Registrar of the Board prepared a report in accordance with regulations 7 and 8 of the Regulations. The purpose of the report is to assist the Board to decide whether or not it wishes to proceed with the complaint.
- 2.3 On 9 September 2014 the Board considered the Registrar’s report and in accordance with Regulation 10 it resolved to proceed with the complaint that the Respondent failed, without good reason, to provide a record of work, on completion of the restricted building work as required by 88(1) of the Act.
- 2.4 On 25 March 2015 the Respondent was sent a letter outlining the hearing procedures in place of a pre-hearing conference.

3 The Hearing

- 3.1 The hearing commenced at 2 p.m.
- 3.2 At the hearing the Board was assisted in the presentation of the case by the Registrar’s Representative.
- 3.3 The Respondent was sworn in, his evidence was presented by phone and he answered questions from the Board.

4 Substance of the Complaint

- 4.1 The complaint alleges that the Respondent failed, without good reason, to complete and provide a record of work.

5 Evidence

- 5.1 The Respondent was engaged by the Complainant to undertake foundation work for a house relocation in June and July 2014. A contractual dispute arose on or about 2 July 2014 between the parties and the Complainant alleges the Respondent then refused to provide a record of work.
- 5.2 In an email dated 3 July 2014 the Respondent stated:
- “In regards to the memorandum I will not be sending memorandum until I have seen the finished piles as I need to see these before a sign off as supervisor and I wont be onsite until funds are cleared in full including extras as per our agreement.”*
- 5.3 The Respondent, at the hearing, stated the Complainant wanted him to sign off and take responsibility for the fixing of the house to the piles which he had not contracted to do. This work was being completed by the Complainant and he was not prepared to provide a record of work for that work unless he either did it. It was on this basis that he sent the email refusing to provide a record of work. He rejected the

proposition that it was because of payment issues. He submitted that in the email he was stating that if he was paid for extras, which would be for him fixing the house to the piles or inspecting it, then he would provide a record of work for both the piles and the fixing. If not, then he would provide a record of work for the piles only and he would do that irrespective of whether or not he was paid.

- 5.4 The Respondent further stated that an email sent by his wife on the 3rd of July stating payment was required prior to a record of work being provided was sent without his knowledge.
- 5.5 The Respondent provided a record of work on the 16th of July, some eight days after completion of the related restricted building work, to the [omitted]. It was for the piling work only. The Complainant was not provided with a record of work. The Respondent gave evidence that the Council had advised him to provide it directly to the Council as opposed to the Complainant due to other matters relating to the Complainant.
- 5.6 The Respondent submitted that the delay was not unreasonable.

6 Board's Conclusion and Reasoning

- 6.1 There is a statutory requirement under s 88(1) of the Building Act 2004 for a Respondent to provide a record of work to the owner and the building consent authority on completion of restricted building work.
- 6.2 In this instance a record of work was provided some eight days after the completion of the restricted building work to the Council only on the advice of the Council. It covered the work of the Respondent. The evidence as to whether the period of delay was as a result of a financial dispute or as a result of disagreement over the extent of the works that were to be signed off was unclear.
- 6.3 Regardless of whether the delay was to provide leverage or not the period was not unduly long.
- 6.4 On completion has to be interpreted with a degree of pragmatism. It is not realistic to expect a record of work to be provided contemporaneously with completion but it should be provided with a reasonable period of time taking into consideration the surrounding circumstances.
- 6.5 In this instance, on the facts presented, the Board finds that the time frame was not unreasonable.
- 6.6 The second factor to be considered is whether the Respondent has met his obligations by only providing the record of work to the Council. The Act states the record is to be provided to both the owner and the building consent authority. This is to ensure that interested parties have a record of who carried out restricted building work on the property.
- 6.7 The Respondent gave evidence that he relied on the advice of the Council that he should only provide the record to it as a result of other matters involving the Complainant. Given the Respondent relied on official advice and as the non-compliance is minor in nature in that the owner could have obtained a copy from the Council, the Board finds that the conduct does not warrant disciplinary action.

7 Board Decision

- 7.1 The Board has decided that the Respondent has not failed, without good reason, to provide a record of work on completion of restricted work as required by s 88(1) of the Building Act and should not be disciplined.

8 Right of Appeal

- 8.1 The right to appeal Board decisions is provided for in s 330(2) of the Act.

Signed and dated this day of 8 May 2015



Chris Preston
Presiding Member

Advice Note: Extract from the Building Act 2004:

S 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.

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.