

Before the Building Practitioners Board  
At [omitted]

**BPB Complaint No. C2-01149**

**IN THE MATTER OF**

Under the Building Act 2004 (the Act)

A complaint to the Building Practitioners' Board under section 315

**AGAINST**

[Omitted], Licensed Building Practitioner No. BP [omitted]

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**DECISION OF THE BUILDING PRACTITIONERS' BOARD**

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**1 Introduction**

- 1.1 [Omitted] (the Complainant) lodged a complaint with the Building Practitioners' Board (the Board) on 13 February 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]:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
  - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act); and
  - (c) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).
- 1.3 The Respondent is a Licensed Building Practitioner with a Carpentry and Site AOP 1 Licence issued 25 August 2012.
- 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:
- |                  |                      |
|------------------|----------------------|
| David Clark      | Chairman (Presiding) |
| Chris Preston    | Deputy Chairman      |
| Mel Orange       | Board Member         |
| Catherine Taylor | Board Member         |
- 1.6 The matter was considered by the Board in [omitted] on 16 September 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:

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Emma Light	Registrar's Representative
Sarah Romanos	Board Secretary
[Omitted]	Respondent
[Omitted]	Complainant
Jason Allen Jon Astwood	Special Advisers to the Board – by Skype (both standing in for Chris Nicholson)

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 the Regulations.
- 2.2 On 12 June 2015 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 1 July 2015 the Board considered the Registrar's report and in accordance with Regulation 10 it resolved to proceed with the complaint that the Respondent:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
  - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act); and
  - (c) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).
- 2.4 The Board requested a Special Adviser be appointed to prepare a report. Chris Nicholson's report dated 11 May 2015 was received and circulated to the Respondent and Complainant.
- 2.5 On 17 August 2015 at 10.00am a pre-hearing teleconference was convened by Chris Preston. The Respondent and Registrar's Representative were both present. The hearing procedures were explained and the Respondent's attendance at the substantive hearing was confirmed.

## **3 The Hearing**

- 3.1 The hearing commenced at 10.05am.
- 3.2 At the hearing the Board was assisted in the presentation of the case by the Registrar's Representative.
- 3.3 Persons giving evidence were sworn in, their evidence was presented and they answered questions from the Board.

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#### **4 Substance of the Complaint**

- 4.1 The Complainant alleged that the Respondent relocated a building measuring approximately 20 square metres, which had been his property for some time, and fixed it to new piles without a building consent. Associated plumbing, drainage and building work had also been undertaken.

#### **5 Evidence**

- 5.1 The Respondent is the owner/occupier of the property. His business is [omitted]. There are a number of relocated buildings stored on his property.
- 5.2 In response to a family emergency, the Respondent fixed to piles a building on blocks on his property measuring approximately 20 square metres to provide sleeping accommodation for a family member who was providing the family with support. Plumbing and drainage work had also been completed to make the building habitable.
- 5.3 The Respondent acknowledged that he knew that a building consent was required but his finances were tight at the time, his family were under pressure and the matter was urgent.
- 5.4 The fact that the fixing of the building to the piles and the associated plumbing and drainage work required a building consent was agreed by the Complainant and the Respondent after an inspection had been undertaken by the local building consent authority and a meeting between the parties.
- 5.5 The Complainant removed the building from the piles within 48 hours of being requested to do so and has been fined \$1,000 by the local building consent authority.
- 5.6 The Complainant advised that he will work with the local authority to reinstate the building when his finances permit.

#### **6 Board's Conclusion and Reasoning**

##### **Contrary to a Consent/Negligent and Incompetent**

- 6.1 The Board has, in previous decisions, including decision C1030<sup>1</sup>, found that a licensed building practitioner who commences or undertakes building work without a building consent, would, in such circumstances, be held to be both negligent and incompetent as well as in breach of s 317(1)(d).
- 6.2 In this matter, both parties have agreed that a building consent was required. The Board has formed the view that the Respondent has been both negligent and incompetent by commencing works without a building consent.
- 6.3 Under Section 40(1) of the Building Act, commencing building work on site without a building consent is a strict liability offence. The process of issuing a building consent and the subsequent inspections ensure independent verification that the Code has been complied with. In doing so the building consent process provides protection for owners of works and the public at large.

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<sup>1</sup> *Licensed Building Practitioner Board Decision C1030* 31 July 2014

### **Bringing the Regime into Disrepute**

- 6.4 The Board has considered this matter in C2-01111<sup>2</sup> and an extensive discussion of the Board's reasoning as to what amounts to disrepute is set out in that decision.
- 6.5 In this case, the Respondent responded to a family emergency and undertook building work that required a building consent. The Respondent acknowledged that the decision was risky and has learnt his lesson. He did not undertake the work for financial gain and the offence, whilst serious, does not meet the threshold for disrepute.

## **7 Board Decision**

- 7.1 The Board has determined that the Respondent has:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act); and
  - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act); and should be disciplined.
- 7.2 The Board has determined that the Respondent **has not** conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).

## **8 Disciplinary Penalties**

- 8.1 The grounds upon which a Licenced Building Practitioner may be disciplined are set out in s 317 of the Act. If one or more of the grounds in s 317 applies, then the Board may apply disciplinary penalties as set out in s 318 of the Act<sup>i</sup>.
- 8.2 The Board invites the Respondent to make written submissions on the matter of possible disciplinary penalties, up until close of business on 27 October 2015. Such submissions may include information on his personal and financial circumstances.

## **9 Costs**

- 9.1 Under s 318(4) of the Act, the Board has the power to order the Respondent to pay the reasonable costs and expenses of, and incidental to, the Board's the inquiry.
- 9.2 The Board, therefore, is prepared to receive written submissions from the Respondent on the matter of payment of costs up until close of business on 27 October 2015. Such submissions may include information on his personal and financial circumstances.

## **10 Publication of Name**

- 10.1 Pursuant to s 318(5) of the Act, the Board may publicly notify any disciplinary action taken against a Licensed Building Practitioner in any way it thinks fit.
- 10.2 The Board invites the Respondent to make written submissions on the matter of publication by 4 p.m. on 27 October 2015.

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<sup>2</sup> *Licensed Building Practitioner Board Decision C2-01111* 2 July 2015

## 11 Right of Appeal

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

Signed and dated this 6<sup>th</sup> day of October 2015




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**David Clark**  
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:*
  - (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."*

### <sup>ii</sup> **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*

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- (b) *within any further time that the appeal authority allows on application made before or after the period expires.*