

Before the Building Practitioners Board
At [omitted]

BPB Complaint No. C2-01169

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. [omitted]

DECISION OF THE BUILDING PRACTITIONERS' BOARD

1 Introduction

- 1.1 [The Complainant] lodged a complaint with the Building Practitioners' Board (the Board) on 23 March 2015 in respect of [the Respondent], Licensed Building Practitioner.
- 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) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be), to provide a certificate of work about any plans and specifications required to accompany the building consent application (s 317(1)(da)(i) of the Act); and
 - (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out 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).
- 1.3 The Respondent is a Licensed Building Practitioner with a Carpentry Licence issued 11 May 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:
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|--------------------|-----------------|
| Chris Preston | Chairman |
| Richard Merrifield | Deputy Chairman |

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Brian Nightingale	Board Member
Mel Orange	Board Member
Robin Dunlop	Board Member
Dianne Johnson	Board Member
Catherine Taylor	Board Member
Bob Monteith	Board Member

- 1.6 The matter was considered by the Board in [omitted] on 12 October 2015 in accordance with the Act, the Regulations and the Board's Complaints Procedures.
- 1.7 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 24 July 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 13 August 2015 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 restricted work as required by s 88(1) of the Building Act (s 317(1)(da)(ii) of the Act).
- 2.4 On 10 September 2015 by email the Respondent consented to the hearing proceeding on the basis of the papers before the Board.

3 The Hearing

- 3.1 The hearing commenced at 4.15 p.m. and the documentation before the Board was admitted into evidence.

4 Substance of the Complaint

- 4.1 The allegation was that the Respondent had failed to provide a record of work to the owner in a timely manner following the completion of restricted building work.

5 Evidence

- 5.1 The Respondent undertook building work at the site from July 2014. On or about 10 November 2014 his involvement ceased when he walked off the job. The record of work was not completed until 16 March 2015, some four months later.
- 5.2 The Respondent submitted that he supplied the record of work within two weeks of being contacted by the owner and the code of compliance was issued another two weeks thereafter. As such, he did not consider he had held up the issue of the latter.

6 Board's Conclusion and Reasoning

- 6.1 There is a statutory requirement under s 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the building consent authority on completion of restricted building work.

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- 6.2 Failing to provide a record of work is a ground for discipline under s 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.
- 6.3 It was accepted by the Respondent that his involvement at the site ended in November. At this point in time, the record of work was due and it should have been provided within a reasonable time thereafter.
- 6.4 The Board does not consider a delay of four months to be reasonable and it notes the trigger for a record of work is not a request by the home owner but completion of restricted building work. As such the home owner not making a request for a record of work until April 2015 is not a good reason under the Act. The record must be provided irrespective of requests for it.
- 6.5 As a licensed person the Respondent should be aware of his obligations including those relating to the provision of records of work. The Board has previously held that a Record of Work is a statutory requirement, not a negotiable term of a contract¹. The requirement for it is not affected by the terms of a contract, nor by a contract dispute. Accordingly, this of itself is not a good reason and the Board finds in this particular case that it was not a good reason to withhold.

7 Board Decision

- 7.1 The Board has decided that Respondent has 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 be disciplined.

8 Disciplinary Penalties, Publication and Costs

- 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 Act¹. 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 inquiry and 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.
- 8.2 The Board’s Complaints Procedures allow the Board to either set out the Board’s decision on disciplinary penalty, publication and costs or to invite the Respondent to make written submissions on those matters.
- 8.3 As part of the materials provided to the Board for the Hearing the Respondent provided information relevant to penalty, publication and costs and the Board has taken these into consideration.
- 8.4 The Board notes that since the inception of the Licensed Building Practitioner scheme an extensive education programme has been undertaken to inform licensed persons of their obligation to provide records of work. Initially the Board took a lenient view given the general misunderstandings and lack of knowledge that existed. The time has come, however, for the leniency to cease. There has been sufficient opportunity for practitioners to familiarise themselves with the Act’s provisions.
- 8.5 In all the circumstances of the case the Board considers a fine of \$1,000 to be the appropriate penalty.

¹ *Licensed Building Practitioners Board Case Decision C1100 3 June 2014*

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- 8.6 The Board notes that the Respondent has been cooperative in regard to the Board's inquiry including allowing the matter to be dealt with on the papers.
- 8.7 Under all the circumstances, the Board has reduced the order for costs and the sum of \$500 is considered to be a reasonable amount toward the costs of and incidental to the Board's inquiry.
- 8.8 For the reasons set out above, the Board directs that:
- Penalty:** Pursuant to s 318(1)(f) of the Building Act 2004, the Respondent is ordered to a fine of \$1,000.
- Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$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(1)(iii) of the Act.
- In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the register.

9 Right of Appeal

- 9.1 The Respondent has a right to appeal the Board decisions under s 330(2) of the Actⁱⁱ.

Signed and dated this 22nd day of October 2015



Chris Preston
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:

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- (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.