

Before the Building Practitioners Board
At [omitted]

BPB Complaint No. C2-01177

IN THE MATTER OF

Under the Building Act 2004 (the Act)

A complaint to the Building Practitioners'
Board under section 315 of the Act

AGAINST

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

DECISION OF THE BUILDING PRACTITIONERS' BOARD

Introduction

- [1] This decision arises out of a decision by the Building Practitioners Board ("the Board") where the Board found that the Respondent had failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) 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).
- [2] The Respondent is a Licensed Building Practitioner with a Carpentry Licence issued 31 March 2012.
- [3] The Board considered the complaint under the provisions of Part 4 of the Act and the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Regulations).
- [4] The following Board Members were present at the hearing:
- | | |
|-------------------|-------------------|
| Chris Preston | Chair (Presiding) |
| Brian Nightingale | Board Member |
| Mel Orange | Board Member |
| Robin Dunlop | Board Member |
- [5] The Board's substantive decision was issued on 29 April 2016. In it the Board outlined the principles on which its decisions on penalty, costs and publication are based and gave its preliminary views in respect of the appropriate penalty. The Board invited the Respondent to make written submissions prior to confirming its position.
- [6] On 18 May 2016 the Board received the Respondent's submissions. It has considered those and made the following final decision.

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Penalty

- [7] The Board's initial view was that a fine of \$1,500 was the appropriate penalty for the disciplinary offence.
- [8] Having considered the submissions received the Board has decided to revise its initial view and reduce the fine to \$1,000.
- [9] The Respondent has submitted that he was unaware of his obligations as regards records of work, did not have any dishonest intentions and will struggle to pay a fine. For these reasons the Board has reduced the fine. The Respondent also made submissions with regard to the work "not being signed off" prior to a certificate of compliance being issued. Whilst this falls outside the complaint the Respondent should note that a record of work is not a statement as to compliance and is not required for the issue of a certificate of compliance.
- [10] The Respondent has also questioned why he was not given a warning by the Board rather than proceeding with the complaint. In this respect the Board must follow the procedures set out in the Act and the Regulations and must hold a hearing unless the matters in reg 9 of the Regulations apply, which they did not. There is no ability to deal with matters prior to a hearing by way of a warning.

Costs

- [11] The Board's initial view was that \$500 was appropriate. Having considered the submissions received the Board has decided to uphold its initial view noting that this is at the lower end of costs that the Board orders and the sum has already been reduced.

Publication of Name

- [12] The Board's initial view was there were no good reasons to further publish the matter. Having considered the submissions received the Board has decided to uphold its initial view.
- [13] The Board notes the Respondent has made submissions as regards publication. The Respondent should note that the Board is not ordering publication beyond that which is mandated by the Act. There is no discretion as regards a record of the disciplinary offence being made on the Register.

Board's Decision

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

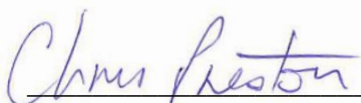
Penalty:	Pursuant to s 318(1)(f) of the Act, the Respondent is ordered to pay a fine of \$1,000.
Costs:	Pursuant to s 318(4) of the Act, the Respondent is ordered to pay costs of \$500 (GST included) towards the costs of, and incidental to, the inquiry of the Board.
Publication:	The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with s 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.

Right of Appeal

[15] The right to appeal Board decisions is provided for in s 330(2) of the Actⁱ.

Signed and dated this 10th day of June 2016



Chris Preston
Presiding Member

ⁱ **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.