

BPB Complaint No. C2-01287

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

Jason Feaver, Licensed Building Practitioner
No. BP 120762

**FINAL DECISION OF THE BUILDING PRACTITIONERS' BOARD IN RESPECT OF
PENALTY, COSTS AND PUBLICATION OF NAME**

Introduction

- [1] This decision arises out of a decision by the Building Practitioners Board ("the Board") where the Board found that the Respondent had carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act).
- [2] The Respondent is a Licensed Building Practitioner with a Roofing (Profiled Metal Roofing or Wall Cladding) Licence issued 23 August 2012.
- [3] The Board considered the complaint under the provisions of Part 4 of the Act, the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Regulations) and the Board's Complaints Procedures.
- [4] The Board heard the complaint on 20 July 2016 in Christchurch. The Board Members present for the hearing were:
- | | | |
|--|----------------|-------------------|
| | Chris Preston | Chair (Presiding) |
| | Mel Orange | Board Member |
| | Robin Dunlop | Board Member |
| | Dianne Johnson | Board Member |
- [5] The Board's substantive decision was issued on 11 August 2016. In it the Board outlined the principles on which its decisions on penalty, costs and publication were 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 30 August 2016 the Board received the Respondent's submissions. It has considered those and made the following final decision.

Penalty

- [7] The Board's initial view was that a fine of \$2,000 was the appropriate penalty for the disciplinary offence.

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- [8] The Respondent has submitted that the combination of his being willing to remediate, his cooperation with the instigation, the notation of the matter in the Register and the impact the complaint has had on him is sufficient penalty.
- [9] The Board has already taken the matters as regards willingness to remediate into consideration.
- [10] Cooperation in the investigation goes to costs and has been accounted for in the Board's costs decision.
- [11] The notation of the matter in the Register is a statutory requirement over which the Board has no discretion. Every licensed person who is disciplined has a note placed on the Register. This is not seen as a punishment but as a way in which consumers can be informed.
- [12] The Board notes the personal impact. This is a matter that goes to mitigation and in recognition of it the Board has reduced the fine.
- [13] The Board's decision is that a fine of \$1,500 is appropriate.

Costs

- [14] The Board's initial view was that \$1,000 in costs was appropriate.
- [15] Having considered the submissions received the Board has decided to uphold its initial view. As noted above, the Board has already applied a discount for the Respondent's cooperation. The Respondent should note that the accepted level of contribution is 50% of the actual costs of the investigation and hearing and at \$1,000 the costs are well under 25% of the costs of the hearing alone.

Publication of Name

- [16] The Board's initial view was there were no good reasons to further publish the matter.
- [17] The Respondent has submitted that the Board's decision should not be noted in the Register. This has been discussed above. The Board does not have a discretion in this respect.

Board's Decision

- [18] 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 pay \$1,500.

Costs: Pursuant to s 318(4) of the Act, the Respondent is ordered to pay costs of \$1,000 (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.

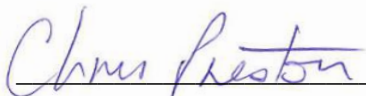
In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the register and the Respondent being named in this decision.

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Right of Appeal

[19] The Respondent has a right to appeal the Board decisions under s 330(2) of the Actⁱ.

Signed and dated this 6th day of October 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.