

**BPB Complaint No. C2-01304**

**IN THE MATTER OF**

Under the Building Act 2004 (the Act)

An inquiry by the Building Practitioners' Board  
under section 315 of the Act

**AGAINST**

Thomas Clegg, Licensed Building Practitioner  
No. BP 115256

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**DECISION OF THE BUILDING PRACTITIONERS' BOARD**

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**Introduction**

- [1] This decision arises out of a decision by the Building Practitioners Board ("the Board") where the Board found that the Respondent had:
- (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) breached s 314B of the Act (s 317(1)(h) of the Act);
  - (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] The Respondent is a Licensed Building Practitioner with a Design Licence (area of Practice 2) issued 17 May 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:
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|--------------------|--------------------------|
| Richard Merrifield | Deputy Chair (Presiding) |
| Mel Orange         | Board Member             |
| Robin Dunlop       | Board Member             |
| Dianne Johnson     | Board Member             |
| Catherine Taylor   | Board Member             |
- [5] The Board's substantive decision was issued on 17 August 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] The Respondent sought and was granted a time extension to file his submissions.

- [7] On 12 September 2016 the Board received the Respondent's submissions. The submissions received noted that the Respondent wanted to appeal the Board's decision. An appeal can only be made with regard to the Board taking an action under s 318 of the Act which it had not done when it issued its substantive decision. If an appeal is lodged it must be made to the District Court, not to the Board.
- [8] The Board, through the Registrar, contacted the Respondent to ascertain whether he wanted the Board to take his appeal submissions as submissions as regards penalty, costs and publication. On 27 September 2016 the Respondent advised, by email, that the submissions could be considered as mitigation submissions.
- [9] The Board has accordingly considered them and made the following final decision.

### Penalty

- [10] The Board's initial view was that cancellation was the appropriate penalty for the disciplinary offences and that the Respondent not be able to apply to be relicensed for a period of six months.
- [11] Having considered the submissions received the Board has decided to uphold its initial view that cancellation is required but it has reduced the period of cancellation to three (3) months.
- [12] The Board set out the principles on which its penalty decision would be made in its substantive decision. In that decision the Board also noted:
- [67] *The Board considers the disciplinary offending in this matter to be serious and that there is a very real risk in allowing the Respondent to continue to work as a licensed building practitioner. He has been found, in relation to the inquiry, to have not only been negligent but also incompetent in respect of:*
- (a) *the preliminary investigation and research he undertook with regard to the Council restrictions and notices on the subdivision;*
  - (b) *his undertaking testing to determine the soil bearing capacity;*
  - (c) *the completeness of the land contour analysis and the consequences on the design in relation to the height of the building above ground level;*
  - (d) *dimensioning the building on the site so that the set out position could be determined; and*
  - (e) *in his understanding of the regulatory regime and his belief that he could amend acceptable solutions without demonstrating how compliance with the Building Code would be met.*
- [68] *The Respondent has also undertaken work including design work that was of outside his area of expertise and amending the design of another more qualified professional and has brought the regime into disrepute which again is a very serious matter and has worked outside of his area of competence.*
- [69] *In all the circumstances of the case the Board considers the cancellation of the Respondent's licence is warranted and the Board orders that he not be able to reapply for a licence for a period of not less than six months. The Board orders this as the Respondent will, if he reapplies for a licence after the expiry of the six months, be given the opportunity to demonstrate his competence.*

- [70] *The Respondent has submitted two examples of his current work. A review shows the documents show an ability to work with computer software and consideration of various elements such as Building Consent Authority zoning rules, site contours and ground conditions and the need to refer separate engineering design drawings. The drawings provided, however, are lacking in construction and product installation detail and would require more work before they would be ready for submission for a building consent. Accordingly the documentation submitted does not dissuade the Board from its position that cancellation is warranted.*
- [71] *The Board notes that the Respondent will be able to work under supervision in the intervening period and suggests that he uses this time to upskill under the tutelage of an experienced practitioner.*
- [13] The Respondent's submissions included plans and specifications for a Christchurch property, further reference to plans and specifications submitted at the substantive hearing, references from other trade persons and general submissions as regards the Board's decision noting upskilling the Respondent has undertaken and changes to his practice. The submissions also included details such as the impact suspension would have on the Respondent. Insofar as the submissions relate to mitigation, as opposed to disagreement with the Board's decision, they have been taken into consideration.
- [14] The Board's decision as regards penalty is based on:
- (a) the seriousness of the disciplinary offences found to have been committed;
  - (b) the need to send a message of general deterrence as per *High Court in Patel v Complaints Assessment Committee*<sup>1</sup> with regard to the altering of a document and working outside of his competence; and
  - (c) the Board's continued reservations as to the Respondent's competence and the need to protect the public. The work submitted with the appeal, whilst consented, was still not considered by the Board to be of a high standard and was largely generic in nature.
- [15] In cancelling the Respondent's licence he will be required to establish his competence when he reapplies. In doing so a thorough assessment of his competence will be carried out so that the public can have confidence, should he reobtain his licence, in his abilities.
- [16] The Respondent should note that the Board considered the disrepute finding alone warranted cancellation of the licence as a matter of deterrence to others.
- [17] The Respondent should also note that the Board has reduced the period of the cancellation from six months to three on the basis of the mitigation provided.

### **Costs**

- [18] The Board's initial view was that \$2,000 was appropriate. The Respondent in his submissions has confused this with a fine and penalty. It is not. It is a contribution toward the Board's costs of, and incidental to, the hearing and is less than 25% of the costs of a hearing.

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<sup>1</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

- [19] Given the accepted level of costs is in the order of 50% of actual, the Board does not consider the sum is excessive and as such it upholds its initial view.

### **Publication of Name**

- [20] The Board's initial view was there were good reasons to publish the matter further.
- [21] The Board considered, as a result of the cancellation of the Respondent's licence and the seriousness of the matters, that further publication was required noting that publication is also important to ensure other licensed building practitioners learn from the matter. The Board noted that the Respondent would not be named in the further publication.
- [22] No direct submissions were made as regards publication. The Board upholds its initial view.

### **Penalty, Costs and Publication Decision**

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

**Penalty:** Pursuant to s 318(1)(a)(i) of the Building Act 2004, the Respondent's licence is cancelled and under s 318(1)(a)(ii) the Respondent may not apply to be relicensed until the expiry of a period of three (3) months.

**Costs:** Pursuant to s 318(4) of the Act, the Respondent is ordered to pay costs of \$2,000 (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 be action taken to publicly notify the Board's action, in addition to the note in the register and the Respondent being named in this decision, by way of publication in Code Words and on the Board's website. The Respondent will not be named in the publication.

### **Right of Appeal**

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

Signed and dated this 11<sup>th</sup> day of October 2016



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**Richard Merrifield**  
Presiding Member

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<sup>i</sup> **Section 330 Right of appeal**

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- (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.*