

BPB Complaint No. C2-01339

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

Stephen Waghorn, Licensed Building Practitioner No. BP 103906

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:
- (a) supervised building work in a negligent or incompetent manner (s 317(1)(b) of the Act);
 - (b) supervised building work that does not comply with a building consent (s 317(1)(d) 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 (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);

and should be disciplined.

- [2] The Respondent is a Licensed Building Practitioner with a Carpentry Licence issued 22 December 2010.
- [3] The Board considered the complaint in Christchurch on 23 August 2016 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:

Richard Merrifield	Deputy Chair
Brian Nightingale	Board Member
Mel Orange	Board Member
Dianne Johnson	Board Member

- [5] The Board's substantive decision was issued on 11 October 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 12 October 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 \$2,500 was the appropriate penalty for the disciplinary offence.
- [8] The Respondent has submitted that the fine was excessive and that he had already suffered financially and health wise. These and other matters raised in the submission have already been taken into consideration by the Board.
- [9] The Respondent also submitted that he now employs a managing director to oversee that all works carried out are to Building Code and Council-approved plans and he is now doing weekly inspections with that person.
- [10] The Board notes this change of practice and considers it is something that can be taken into consideration. It considers a reduction in the fine is warranted.
- [11] The fine is set at \$2,000.

Costs

- [12] The Board's initial view was that \$1,500 was appropriate.
- [13] Having considered the submissions received, the Board has decided to uphold its initial view.

Publication of Name

- [14] The Board's initial view was there were no good reasons to further publish the matter.
- [15] Having considered the submissions received the Board has decided to uphold its initial view.
- [16] The Board notes the Respondent has made submissions as regards the effect the publication on the Register may have on him and his business. The Respondent should note that the Board has no jurisdiction as regards the disciplinary outcome being recorded on the Register as this is a mandatory requirement under s 301 of the Act.

Board's Decision

- [17] 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 a fine of \$2,000.
- Costs:** Pursuant to s 318(4) of the Act, the Respondent is ordered to pay costs of \$1,500 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

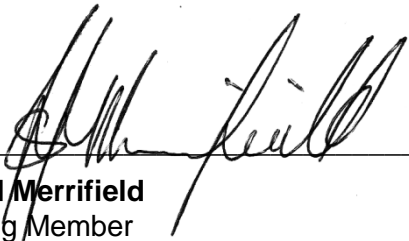
Publication: The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with s 301(1)(iii) of the Act.

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 and him being named in this decision.

Right of Appeal

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

Signed and dated this 9th day of November 2016



Richard Merrifield
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.