

BPB Complaint No. C2-01360

IN THE MATTER OF

AGAINST

Under the Building Act 2004 (the Act)

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

John Warriner, Licensed Building Practitioner
No. BP 105534

**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) and should be disciplined.
- [2] The Respondent is a Licensed Building Practitioner with Carpentry and Site Licences issued 1 February 2011.
- [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 28 March 2017 in Christchurch. The Board Members present for the hearing were:
- | | |
|--------------------|------------------|
| Chris Preston | Chair(Presiding) |
| Richard Merrifield | Deputy Chair |
| Mel Orange | Board Member |
| Robin Dunlop | Board Member |
- [5] The Board's substantive decision was issued on 13 April 2017. 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 30 April 2017 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 \$1,500 was the appropriate penalty for the disciplinary offence. In its substantive decision the Board noted:

- [62] Whilst the Respondent has been found to have been negligent the Board considers the negligence to have been at the lower end of the negligence scale. In considering the conduct and similar offending by other licensed building practitioners the Board considers a starting point of a fine of \$2,000 to be appropriate. This takes into account the fact that he has been found to have been negligent in respect of not obtaining a building consent and in carrying out the building work. Taking into account the mitigation heard, the Board has reduced the fine to \$1,500.
- [8] The Respondent's submission as regards penalty deals, in the main, with reasons why the Respondent disagrees with the Board's decision. In this respect the Respondent is reminded that he has a right of appeal to the District Court. In seeking submissions from the Respondent on penalty, costs and publication the Board is not looking to re-litigate the matter. To the extent that the submissions are relevant to mitigation they have been taken into consideration.
- [9] Having considered the submissions received the Board has decided to uphold its initial view. A reduction in the penalty has already been given to recognise mitigating circumstances and the fine imposed is at the lower end of the scale given the maximum fine the Board can order is \$10,000.

Costs

- [10] The Board's initial view was that \$1,000 in costs was appropriate.
- [11] The Respondent has submitted that there was an element of ulterior motive in the complaint having been made and that costs should be waived. Whilst there may or may not have been an ulterior motive in bringing the complaint the disciplinary regime does not deal with disputes but with the conduct of a licensed building practitioner. The Respondent has been found to have committed a disciplinary offence and as such the costs of the proceedings should not be left to the industry to bear.
- [12] The amount of costs indicated are minimal when the actual costs of the investigation and hearing are considered. Given this and the above the Board does not consider there are any reasons to change its initial view of the amount of costs ordered.

Publication of Name

- [13] The Board's initial view was there no good reasons to further publish the matter and this remains the case.

Board's Decision

- [14] 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 \$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.

Right of Appeal

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

Signed and dated this 16th day of May 2017



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.*