

Before the Building Practitioners Board
At Auckland

BPB Complaint No. C2-01384

Under the Building Act 2004 (the Act)

IN THE MATTER OF

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

AGAINST

Lalit Singh, Licensed Building Practitioner No.
BP 118531

**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 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 22 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 5 October 2016 in Auckland. The Board Members present for the hearing were:
- | | |
|-------------------|-------------------|
| 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 14 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 9 November 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 \$1,000 was the appropriate penalty for the disciplinary offence.

- [8] The Respondent's submissions outlined matters that related to why the record of work was not provided at the time. Contrary to the evidence he provided prior to the hearing that he was withholding due to non-payment he has now stated the reason he has not provided it was because he had concerns about taking responsibility for the work of a third party.
- [9] The Respondent should note that a record of work is not a statement as to compliance or quality of the work. It is simply a record of who did what restricted building work or who supervised it.
- [10] In this respect it must also be borne in mind that a record of work can capture not only what has been done but also what has not been done by the licensed building practitioner. By providing adequate detail within the record of work LBP's can afford themselves a degree of protection against future liability by limiting the record to only that which they have completed.
- [11] The Respondent's reasons still do not constitute a good reason under s 317(1)(da)(ii) of the Act. Moreover there are no good reasons why the Respondent cannot provide a record of work for the restricted building work he has done or supervised.
- [12] The Board also notes that the Respondent has not understood the Board's directions as regards penalty, costs and publication. The Board gave the Respondent an opportunity to avoid a suspension of his licence by providing the record of work. In this respect the Board accepts that the Respondent may have been confused as to what was being sought from him. As such he will be given a final opportunity to provide a record of work to avoid suspension.
- [13] If the Respondent provides a record of work within 10 working days of the issue of this penalty decision then the penalty will be a fine of \$1,000. If he does not then the penalty will be suspension of his licence for a period of three months. No further submissions will be received on penalty.
- [14] The Respondent should note that a suspension will mean he will not be able to carry out or supervise restricted building work during the period of his suspension.
- [15] The Respondent needs to take responsibility for his obligations as a Licensed Building Practitioner. The record of work provisions are in the Act for a reason and failing to abide by them has the potential to create future issues and problems for the owner and subsequent owners and for the territorial authority. By continuing to refuse to issue a record of work the Respondent has elevated the seriousness of the disciplinary offending and it is for this reason that the harsher penalty will be imposed if a record of work is not provided as outlined above.

Costs

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

Publication of Name

- [18] The Board's initial view was there were no good reasons to further publish the matter.
- [19] Having considered the submissions received the Board has decided to uphold its initial view.

Board's Decision

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

- Penalty:** If the Respondent provides a record of work to the owner and the territorial authority by 8 December 2016 the Respondent will, pursuant to s 318(1)(f) of the Building Act 2004, be ordered to pay a fine of \$1,000;
- If the Respondent fails to provide a record of work to the owner and the territorial authority by 8 December 2016 then the Respondent's licence will be suspended for a period of three (3) months from the date of this order pursuant to s 318(1)(b) of the Act
- 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

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

Signed and dated this 24th day of November 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.