

**BPB Complaint No. C2-01387**

**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**

Joseph Heslop, Licensed Building Practitioner  
No. BP 104196

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

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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 carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act).
- [2] 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.
- [3] The Board heard the complaint on 29 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     |
- [4] The Board's substantive decision was issued on 19 May 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.
- [5] On 31 May 2017 the Board received the Respondent's submissions by way of his legal counsel.
- [6] The Board notes that the submissions received did not deal with the Board's indicative penalty, costs and publication orders. Rather they amounted to a statement that the Board was wrong in finding that the Respondent had been negligent. The submission stated:

*Our instructions are to appeal the decision to the District Court unless the Board confirms that the decision will be withdrawn for the reasons outlined above. If that was accepted by the Board then costs would not be sought.*

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- [7] The Board cannot withdraw its decision. The appropriate course of action for a licensed building practitioner who does to agree with the Board's decision is for them to appeal it under section 330 of the Act.
- [8] Given the submissions received and the position taken by the Respondent the Board has decided to affirm its initial view of penalty, costs and publication.

### Board's Decision

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

**Penalty:** Pursuant to s 318(1)(d) of the Building Act 2004, the Respondent is censured.

**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

- [10] The Respondent has a right to appeal the Board decisions under s 330(2) of the Act<sup>i</sup>.

Signed and dated this 6 day of June 17



**Chris Preston**  
Presiding Member

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#### <sup>i</sup> **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.