

**BPB Complaint No. C2-01409**

**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**

Grant Tromp, Licensed Building Practitioner  
No. BP 103547

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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:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act); and
  - (b) breached s 314B(b) of the Act (s 317(1)(h) of the Act).
- [2] The Respondent is a Licensed Building Practitioner (LBP) with a Carpentry Licence issued 4 March 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 26 October 2016 in Whangarei. The Board Members present for the hearing were:
- |                    |              |
|--------------------|--------------|
| Richard Merrifield | Deputy Chair |
| Brian Nightingale  | Board Member |
| Dianne Johnson     | Board Member |
| Bob Monteith       | Board Member |
- [5] The Board's substantive decision was issued on 30 November 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 21 December 2016 the Board received the Respondent's submissions. It has considered those and made the following final decision.

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**Penalty**

- [7] The Board's initial view was that cancellation of the Respondent's licence was appropriate and that the Respondent not be able to apply to be relicensed for a period of three months. The Board made the following comments in its substantive decision as to why it considered a penalty of this nature was required:
- [66] *The matters before the Board were serious and it is necessary to send a signal to the industry that the type of conduct seen is not acceptable especially as it relates to working outside of a person's competence. The regime is in place to ensure the safety of buildings and people who use them. By working outside of his competence the Respondent has put these objectives at risk.*
- [67] *Given the above factors the Board considers cancellation of the Respondent's licence is necessary. In cancelling the Board needs to consider the period of cancellation. In this instance a relatively short period of three months is considered to be adequate noting that the Respondent will have to once again demonstrate his competence to become relicensed at the end of the cancellation period.*
- [8] The Respondent has submitted that the penalty is harsh and will impact on his ability to work and meet his financial obligations. He has stated that he is, notwithstanding the Board's findings, a competent licensed person and he has provided references in support of this submission.
- [9] The Respondent has also submitted that the Complainant's should share some of the responsibility for what occurred as regards not obtaining building consents and the non-compliant work. In respect of not obtaining a building consent though the Respondent should note that he has not been found to have committed a disciplinary offence in relation to that charge. The Act may stipulate that the owner has certain responsibilities but the Board's focus is the licensed building practitioner's conduct and their responsibilities under the Act which includes ensuring building work that requires a building consent is consented before it is commenced.
- [10] The Respondent has also noted that he had prepared for the hearing but did not consider he was able to adequately defend himself on the day. He accepts he has a limited knowledge of the building code and will have to upskill.
- [11] Finally the Respondent notes the work completed is safe and as it is his first infraction with the Board the overall penalty is disproportionate with his conduct.
- [12] Having considered the submissions received the Board has decided to modify its initial view. The Board still considers a cancellation is required for the reasons set out in its substantive decision but it will reduce the period under which he may not apply to be relicensed to one month.
- [13] By reducing the above period the impact on the Respondent's livelihood will be reduced. The Respondent should note that with the cancellation of his licence he will still be able to carry out non restricted building work and will be able to carry out restricted building work provided he does so under the supervision of a licensed person.

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**Costs**

- [14] The Board's initial view was that \$2,000 in costs was appropriate. The Respondent has mistakenly termed this amount as a fine. It is not. It is a contribution to the costs incurred in the investigation and hearing of the complaint and is significantly less than the 50% level of costs the Court's consider to be appropriate. The Board sees no reason to revise its initial view.

**Publication of Name**

- [15] The Board's initial view was there were good reasons to further publish the matter and the reasons were set out in the substantive decision noting:
- [78] The matters before the Board were serious and the Board considers further publication is necessary to give effect to the Board's orders and to ensure the industry as a whole learns from the matter. The Board will publish the matter in Code Words and on its website and in such other publications as it thinks is necessary. The Respondent will be named in the publication.*
- [16] The Respondent has submitted that publication will adversely impact his reputation and the combined effect of cancellation and publication makes the overall penalty harsh.
- [17] Penalty and publication are separate matters although the Board notes publication may have a detrimental effect on a respondent. What is important is that the Board consider the matters set out in paragraphs [75] to [77] of its substantive decision. In this case it has and it considers there were good reasons to further publicise. As such its initial view to further publicise is upheld.

**Board's Decision**

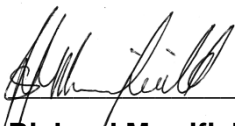
- [18] For the reasons set out above, the Board directs that:
- Penalty:** Pursuant to s 318(1)(a)(i) of the Act, the Respondent's license is cancelled and pursuant to s 318(1)(a)(ii) the Respondent may not reapply to be relicensed before the expiry of a period of one (1) month.
- Costs:** Pursuant to 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, except for the note in the register and the Respondent being named in this decision.

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**Right of Appeal**

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

Signed and dated this 30<sup>th</sup> day of January 2017



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**Richard Merrifield**  
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.