

**BPB Complaint No. C2-01447**

**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**

Xiao Du, Licensed Building Practitioner No. BP 120460

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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) has 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 10 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 2 February 2017 in Auckland. The Board Members present for the hearing were:
- |                    |              |   |
|--------------------|--------------|---|
| Richard Merrifield | Deputy Chair | Licensed in Carpentry and Site Area of Practice 2 |
| Mel Orange         | Board Member | Legal Member appointed under s 345(3) of the Act  |
| Robin Dunlop       | Board Member | Retired Professional Engineer                     |
| Catherine Taylor   | Board Member | Layperson   |

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- [5] The Board's substantive decision was issued on 21 February 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 6 March 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. The Respondent has reiterated that he provided a record of work to the site manager on completion and again at the end of the hearing. This has already been taken into account as part of the Board's consideration of penalty which was reduced from \$2,000 to \$1,500.
- [8] Having considered the submissions received the Board has decided to uphold its initial view.

### **Costs**

- [9] The Board's initial view was that \$2,000 was appropriate. Having considered the submissions received the Board has decided to uphold its initial view.

### **Publication of Name**

- [10] The Board's initial view was there were no good reasons to further publish the matter. This remains the case.

### **Board's Decision**

- [11] 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 \$1,500.

**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.

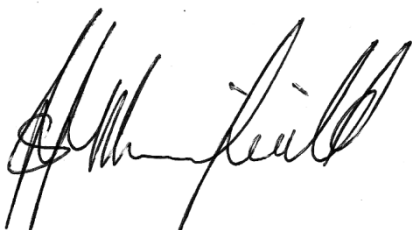
In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the register and the Respondent being named in this decision.

### **Right of Appeal**

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

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Signed and dated this 14<sup>th</sup> day of March 2017

A handwritten signature in black ink, appearing to read 'Richard Merrifield', written in a cursive style.

**Richard Merrifield**  
Presiding Member

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***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.*