

BPB Complaint No. C2-01469

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

Paul Jefferson, Licensed Building Practitioner
No. BP 115946

**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 Roofing Licence (metal tile roof, profiled metal roof and/or roof cladding, roof membrane) issued 3 July 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 24 November 2016. The Board Members present for the hearing were:
- | | |
|--------------------|---------------------------------|
| Chris Preston | Chair(Presiding) |
| Richard Merrifield | Deputy Chair – Presiding Member |
| Mel Orange | Board Member |
| Robin Dunlop | Board Member |
| Dianne Johnson | Board Member |
- [5] The Board's substantive decision was issued on 20 December 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 20 January 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 coming to its initial view the Board noted that the Respondent had not responded to the complaint and that this was an aggravating factor. He has now taken the opportunity to provide some background information as well as submissions on penalty.

[8] The Respondent claims there was a delay in his receiving the complaint papers and that communications were sent to an inactive email address. In this respect the Respondent should note the Register of Licensed Building Practitioners must contain certain information including under s 301(1)(d) and "address for communications under this Act". Under s 302 the licensed building practitioner must keep their details up to date:

302 Obligation to notify Registrar of change in circumstances

- (1) *Each [person applying to become licensed], and each licensed building practitioner, must give written notice to the Registrar of any change in circumstances within 10 working days after the change.*
- (2) *Change of circumstances—*
 - (a) *means any change in the information that the person has provided to the Registrar under this subpart; and*
 - (b) *includes any change that may be prescribed (if any).*

[9] The address used for the notices was that contained in the Register and as the Registrar had not been advised, as far as the Board is aware, of any updated details provided by the Respondent under s 302 of the Act.

[10] The Act also provides for the service of notices in s 394. It provides that:

394 Service of notices

- (1) *Any notice or other document required to be served on, or given to, any person under this Act is sufficiently served if it is—*
 - (a) *delivered personally to the person; or*
 - (b) *delivered to the person at the person's usual or last known place of residence or business; or*
 - (c) *sent by fax or email to the person's fax number or email address; or*
 - (d) *posted in a letter addressed to the person at the person's usual or last known place of residence or business.*
- (5) *A notice or other document sent by post to a person in accordance with subsection (1)(d) must be treated as having been received by that person at the time at which the letter would have been delivered in the ordinary course of post.*

[11] Over and above this the Board notes the documentation in relation to the complaint was served in person on the Respondent at the address in the Register on 22 August 2016. The person serving the documents noted that the Respondent identified himself and accepted service.

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- [12] Given the above the Board finds that the required notices under the Regulations have been provided to the Respondent, that the complaint was brought to his attention and that he was given adequate opportunity to respond to it.
- [13] Notwithstanding this the Board now has before it details pertinent to penalty, costs and publication and notes that the submissions provided would not, had they been submitted at the time of the substantive decision being made on having committed a disciplinary offence, have changed that decision.
- [14] The Respondent has submitted issues surrounding the liquidation of AJ Roofing and instructions received from the liquidator created confusion as regards the provision of documentation. As stated above this is not a reason for not providing it but it does go to mitigation.
- [15] Having considered the submissions received the Board has decided to review its initial view and to reduce the fine to \$1,000. This reduced fine recognises the possible reasons put forward as to why the Respondent may not have cooperated in the investigation of the complaint. The fine also recognises the seriousness of the offending which is at the lower end of the overall scale¹.

Costs

- [16] The Board's initial view was that \$500 was appropriate. This amount was a reduced sum given the matter was heard on the papers and was consistent with the level of costs the Board imposes when dealing with such matters in that way. As such the Board upholds its initial view.

Publication of Name

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

Board's Decision

- [18] 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 \$1,000.

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

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

¹ Refer *Lochhead v Ministry of Business Innovation and Employment* 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288, Judge Ingram paragraphs [34] and [35].

Signed and dated this 14th day of February 2017



Chris Preston
Presiding Member

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.*