

## Before the Building Practitioners Board

	BPB Complaint No. C2-01603
Licensed Building Practitioner:	Tuipine Ulugia (the Respondent)
Licence Number:	BP 118097
Licence(s) Held:	Carpentry and Site AOP 1

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### Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

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Complaint or Board Inquiry:	Complaint
Hearing Location:	Auckland
Hearing Type:	In Person
Hearing Date:	16 November 2017
Decision Date:	8 December 2017
Board Members Present:	Chris Preston (Presiding) Richard Merrifield Robin Dunlop Bob Monteith

#### Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

#### Board Decision:

The Respondent **has not** committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

## Contents

Introduction.....	2
Function of Disciplinary Action .....	2
Background to the Inquiry .....	3
Evidence.....	3
Board's Conclusion and Reasoning.....	3

## Introduction

- [1] The hearing resulted from a Board Inquiry into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations<sup>1</sup> to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offence the Board resolved to investigate were that the Respondent 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).

## Function of Disciplinary Action

- [2] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*<sup>2</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>3</sup>.
- [3] Disciplinary action under the Act is not designed to redress issues or disputes between a Complainant and a Respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*<sup>4</sup> Collins J. noted that:
- “... the disciplinary process does not exist to appease those who are dissatisfied ... . The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”
- [4] The Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. It does not have any jurisdiction over contractual matters.

<sup>1</sup> The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

<sup>2</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>3</sup> [1992] 1 NZLR 720 at p 724

<sup>4</sup> [2016] HZHC 2276 at para 164

### Background to the Inquiry

- [5] A complaint was received from [Omitted], dated 3 January 2017, in regards the non-provision of a Record of Work (ROW) in respect of restricted building work carried out at [Omitted].
- [6] On the 21 April 2017 the complainant sought to withdraw the complaint.
- [7] On 6 July 2017 the Board resolved to initiate an inquiry and asked the Registrar to provide a report.
- [8] On 6 September 2017 the Board resolved to hear the complaint.

### Evidence

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>5</sup>. Under section 322 of the Act the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.
- [10] At 9.30am on the day of the hearing the Complainant arrived at the venue having been given the incorrect time for the hearing. The Board asked him, under oath, if he had in fact seen the Respondent at any time on the job. He said no. That he had obtained the Respondent's name from the records held by the Auckland City Council.
- [11] Based on the answer provided, the Board made the decision that the Complainant did not have to return for the hearing scheduled at 2.30pm that day.
- [12] Evidence was then heard from the Respondent who claimed that he had not carried out any Restricted Building Work at [Omitted] and had set up a meeting with the owner of the property and the project manager for the work.
- [13] The Project manager had provided the Auckland City Council with the Respondent's LBP number and this was the reason why the Respondent had a complaint laid against him.
- [14] The Respondent was not aware that the project manager had used his LBP number and had taken steps to alert him that this was not acceptable.
- [15] The Respondent then claimed that in an effort to help the home owner, he produced a ROW but accepted that this was wrong.

### Board's Conclusion and Reasoning

- [16] The Board has decided that the Respondent **has not** 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

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<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act) and should not be disciplined.

- [17] In this instance, the Respondent was not required to provide a ROW as he had not undertaken any RBW on the property but had provided a ROW in an attempt to help the home owner. He accepted this was wrong and the Board made it clear at the hearing that it was inappropriate thing to do and reminded the Respondent of his obligations under the Building ACT.
- [18] No further action will be taken.

Signed and dated this 8<sup>TH</sup> day of December 2017

A handwritten signature in black ink that reads "Chris Preston". The signature is written in a cursive, flowing style.

**Chris Preston**  
Presiding Member