

Before the Building Practitioners Board

	BPB Complaint No. C2-01728
Licensed Building Practitioner:	Phillip Rongonui (the Respondent)
Licence Number:	BP 101499
Licence(s) Held:	Roofing AOP Metal Tile Roof

Penalty Decision of the Board under section 318 of the Building Act 2004

Complaint or Board Inquiry	Inquiry
Hearing Location	Christchurch
Hearing Type:	On the Papers
Hearing Date:	23 January 2018
Substantive Decision Date:	26 February 2018
Penalty Decision Date:	28 March 2018
Board Members Present:	
	Chris Preston (Presiding)
	Mel Orange, Legal Member
	Brian Nightingale, Registered Quantity Surveyor and Registered Construction Manager
	Catherine Taylor
	Faye Pearson-Green, LBP Design AOP 2

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.

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Introduction

- [1] This penalty decision arises out of the Board’s substantive decision in which it 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] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Act¹, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [3] In its substantive decision the Board set out its indicative position as regards penalty, costs and publication and invited the Respondent to make written submissions on those matters.
- [4] On 16 March 2018, the Board received the Respondent’s submissions. It has considered them and made the following decisions.

Penalty

- [5] The Board’s initial view was that a fine of \$1,500 was the appropriate penalty for the disciplinary offence.
- [6] The Respondent has asked the Board to reconsider the penalty imposed. He notes that the offending was administrative in nature and that the record of work had been provided to the main contractor. The main contractor did not, in turn, provide the record of work to the owner as a result of a commercial dispute. The Respondent has stated that he had been assured he need not concern himself with the issue.
- [7] The Respondent did not provide a response to the complaint and as such the matters outlined above were not before the Board at the time it made its decision.
- [8] Whilst the Board appreciates the circumstances the Respondent found himself in the legislative provisions in section 88 of the Act are clear. It is the licensed building practitioner’s obligation to provide the record of work to the owner and the territorial authority. The Respondent did not do this. He provided the record of work

to a main contractor and left its provision to the intended recipients to them. This may have been a practical way of dealing with the record of work but it does run the risk that, for commercial reasons, it will not be passed on as has occurred here. The Respondent, as a licensed person, should have been of his obligations to provide the record of work directly to the owner and the territorial authority and should not have simply relied on others.

[9] The Respondent has acknowledged that he should have done more at the time and the Board is confident that he has learnt from the matter.

[10] In all the circumstances and having considered the submissions received the Board has decided to modify its initial view. The penalty will be reduced to a fine of \$1,000.

Costs

[11] The Board's initial view was that \$500 in costs was appropriate. The amount is a reduced sum and it was set on the basis that the matter was dealt with on the papers. Further reductions are not warranted.

Publication of Name

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

Section 318 Order

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

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$1,000.

Costs: Pursuant to section 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 section 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.

[14] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel a licensed building practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid.

Right of Appeal

[15] The right to appeal Board decisions is provided for in s 330(2) of the Actⁱⁱ.

Signed and dated this 28th day of March 2018


Chris Preston
Presiding Member

ⁱ Section 318 of the Act

- (1) *In any case to which section 317 applies, the Board may*
- (a) *do both of the following things:*
 - (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
 - (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (d) *order that the person be censured:*
 - (e) *order that the person undertake training specified in the order:*
 - (f) *order that the person pay a fine not exceeding \$10,000.*
- (2) *The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
- (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
- (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit."*

ⁱⁱ 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.*