

Before the Building Practitioners Board

	BPB Complaint No. C2-01743
Licensed Building Practitioner:	Mark Ross (the Respondent)
Licence Number:	BP 119059
Licence(s) Held:	Carpentry

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner

Under section 315 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	On the Papers
Hearing Date:	14 March 2018
Decision Date:	9 April 2018

Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
David Fabish, LBP, Carpentry Site AOP 2
Catherine Taylor, Lay Member
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.

Board Decision:

The Respondent **has not** committed a disciplinary offence.

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Introduction

- [1] The hearing resulted from a Complaint into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) 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*² and in New Zealand in *Dentice v Valuers Registration Board*³.
- [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*⁴ 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.

Evidence

- [5] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. Under section 322 of the Act the Board has

¹ The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

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

³ [1992] 1 NZLR 720 at p 724

⁴ [2016] HZHC 2276 at para 164

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

- [6] The matter the Board resolved to investigate at a hearing was the alleged failure by the Respondent to obtain a building consent for site work for a portable dwelling that was to be situated at [Omitted].
- [7] The matter was set down to be heard as an in person hearing. Prior to the matter being heard further submissions and evidence were received from the Respondent. The further submissions included copies of contractual documentation for the sale of the portable building. The contractual documentation and other additional information provided stipulated that the Respondent and his business took no responsibility for any building work that might have been required on site. The agreement was for delivery to site and risk passed on delivery. The specifications contained no details nor amounts for any site work. The only additional item, over and above offsite construction, provided for was cartage.
- [8] The Respondent also denied making any statements as regards onsite building consents and has provided a pro-forma notice that all site works and permits are for the client to attend to. The Respondent stated this was provided to the Complainant.

Board's Conclusion and Reasoning

- [9] The Board has decided that the Respondent **has not** carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act) and should not be disciplined.
- [10] Section 40 of the Act states that building work must not be carried out except in accordance with a building consent. Section 41 of Act provides for limited exceptions from the requirement for a building consent and in particular it states a building consent is not required for any building work described in Schedule 1 of the Act. The onus is on the person carrying out the building work to show that one of the exemptions applies.
- [11] The Board has found in previous decisions⁶ that a licensed building practitioner who commences or undertakes building work without a building consent, when one was required, can be found to have been negligent under section 317(1)(b) of the Act. Full reasoning was provided by the Board in decision C2-01068⁷.
- [12] The case before the Board is somewhat different in that a building was constructed off site under a building consent and then delivered to site. From that point on it contractually became the responsibility of the owner to determine what was required on site to take receipt of the building and to do whatever was required to ensure that, if it was to be made permanent, the correct consents were obtained.

⁶ Refer for example to Board Decision C1030 dated 21 July 2014

⁷ Board Decision C2-01068 dated 31 August 2015

- [13] On this basis the Board has decided that the Respondent did not have an onsite responsibility to ensure a building consent was in place for the building.

Signed and dated this 9th day of April 2018



Richard Merrifield
Presiding Member