

Before the Building Practitioners Board

	BPB Complaint No. CB24082
Licensed Building Practitioner:	Campbell Senior (the Respondent)
Licence Number:	BP 112492
Licence(s) Held:	Design AOP 2 and Site AOP 2

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

Complaint or Board Inquiry	Complaint
Hearing Location	Wellington
Hearing Type:	In Person
Hearing Date:	21 May 2019
Substantive Decision Date:	26 June 2019
First Penalty Decision Date:	7 August 2019
Final Penalty Decision Date:	19 August 2019

Board Members Present

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal 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.

[1] This decision follows a Penalty Decision issued by the Board on 7 August 2019. In it the Board noted:

[14] Finally, the Board does offer the Respondent the opportunity to clarify whether the intention was to seek a review of the Board's penalty decision prior to deciding whether to appeal or to simply advise of an intention to appeal. If it was the former, then:

- (a) the Respondent is given 5 working days from the issue of this decision to advise the Board;*
- (b) the Board's penalty decision will be stayed during the above period;*
- (c) if notice is given that the Respondent wishes the submissions to be taken into consideration then the Board will further consider the submission and will reissue its penalty decision;*
- (d) if no notice is given or the Respondent confirms an intention to appeal irrespective of the Board's penalty decision then this decision will stand.*

[2] Counsel for the Respondent advised on 7 August 2018 that the appeal had been filed and provided a copy of the appeal.

[3] The Board notes that the right of appeal arises from the Board taking action under section 318 of the Act and that, at the time the appeal was made, such action had not been finalised.

[4] In the correspondence of 7 August 2018 Counsel stated:

Although an appeal has been filed we are still seeking a review of the Board's penalty decision on the grounds in the submission filed while awaiting the outcome of the appeal. If the final penalties determined by the Board were to be significantly different my client may review its decision to continue with the appeal, accordingly we would appreciate the Board still reviewing our submissions we have filed and determining the penalties.

We also look forward to your decision regarding a stay of the Board's penalty decision until the appeal has been heard and decided.

[5] In submissions dated 17 July 2019 the Respondent's Counsel submitted that the Board's penalty decision was harsh in comparison to other penalty decisions of the Board. In particular Counsel submitted:

With respect the Board's findings seem to be comparable to the cases where penalties rather than suspension were applied.

[6] Counsel also provided background information on the Respondent and his business and details of changes that have since been made. She submitted:

The Board will be aware that the matters in relation to which Mr Senior has appeared before it related to a difficult period in 2017 when the Respondent

was dealing with two very challenging builds with difficult clients, and when the company was inundated with work. The Respondent has reflected substantially since then and has made significant changes to his staff and the company's practices to ensure that they comply. Mr Senior has now appointed LPB carpenters who are experienced in, and can sign off on, SIPs panels. No projects before or after that time have resulted in any proceedings or complaints to the Board.

- [7] A submission was also made that the penalty is excessive and that it will cause hardship to the Respondent and on those that he employs. It was noted that the Respondent is prepared to undertake further training and attend any courses which the Board would advise or require.
- [8] The Board has considered the submissions and has made the following decisions.

Penalty

- [9] The Board's initial view was that a nine-month suspension and a fine of \$3,500 were appropriate. The Board notes the changes to the Respondent's processes and his willingness to undergo training.
- [10] In its substantive decision the Board noted a failure to work within the regulatory framework. To this end it has decided that it will, on the basis of the submissions received, impose a training order.
- [11] The training the Respondent is to undertake is the Building Officials Institute of New Zealand TA002 Building Controls Course. The course covers the following:

This course will give participants the ability to navigate the legislation applicable to building compliance; Including the Building Act, NZ Building Code, Acceptable Solutions and Verification Methods, standards, and other documentation required to carry out the building control function. It will also provide an understanding of the BCA processes for enforcement and the forms prescribed by the Building Act.

- [12] The training is to be undertaken at the Respondent's own cost and it is to be completed within a nine-month period of this order. The Respondent is to provide acceptable evidence of the successful completion of the course to the Registrar of Licensed Building Practitioners within the specified time frame.
- [13] The Respondent should note that failure to complete the training as specified may result in his licence being suspended until the training is complete or a period of 12 months has lapsed.

Costs

- [14] The Board's initial view was that \$2,000 in costs was appropriate. This remains the case.

Publication of Name

- [15] The Board's initial view was there were good reasons to further publish the matter.

- [16] Having considered the submissions received the Board has decided to uphold its initial view. It is important that practitioners learn from the mistakes of others.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(e) of the Act, the Respondent is ordered to undertake and complete to the satisfaction of the Registrar the Building Officials Institute of New Zealand TA002 Building Controls Course within nine months of this order.

If the Respondent fails to complete the training specified in this order then pursuant to section 318(1)(b) of the Act, the Respondent's licence will be suspended until the earlier of the Respondent completing the training to the satisfaction of the Registrar or the expiry of a period of 12 months and the Registrar will be directed to record the suspension in the register of Licensed Building Practitioners.

Costs: Pursuant to section 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 section 301(1)(iii) of the Act.

In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision.

Stay of Order

- [18] The Respondent sought a stay of the indicative penalty decision pending an appeal. The penalty decision has been modified. A stay of the modified decision is not warranted.

Right of Appeal

- [19] Whilst the Respondent has already appealed the Board is required by regulation 15 of the Complaints Regulation to advise persons of the right of appeal in its decisions. As such for completeness sake the right to appeal Board decisions is provided for in section 330(2) of the Actⁱ.

Signed and dated this 19th day of August 2019



Richard Merrifield
Presiding Member

ⁱ **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.*