

Before the Building Practitioners Board

	BPB Complaint No. CB24639
Licensed Building Practitioner:	Joseph Jacob (the Respondent)
Licence Number:	BP 111788
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	7 August 2019
Substantive Decision Date:	15 August 2019
Penalty Decision Date:	17 October 2019

Board Members Present:

Mel Orange, Legal Member (Presiding)
David Fabish, LBP, Carpentry Site AOP 2
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.

Contents

Introduction.....	2
Penalty.....	2
Costs.....	3
Publication of Name.....	4
Section 318 Order.....	4
Right of Appeal.....	4

Introduction

- [1] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) 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 5 September 2019, 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 2,500 was the appropriate penalty for the disciplinary offence.
- [6] The Respondent has submitted that the Board’s decision was “unfair and unjust”. In this respect the Respondent is reminded to his right to appeal the Board’s decision. In calling for penalty submissions the Board was not inviting the Respondent to relitigate the matter. It is noted that the bulk of the submissions made fall into that category.
- [7] The Respondent has also raised that he considers that he is taking the blame for others. Whilst the Respondent may not have been the only person that contributed to the compliance issues he is a licensed building practitioner and the objectives of the licensing regime is to improve standards and compliance and to impose responsibility on those integral to building. The following was stated as the intention when the legislation bring about licensing was introduced¹:

¹ Hansard volume 669: Page 16053

The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes prides in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.

We cannot make regulation more efficient without first getting accountability clear, and both depend on people having the necessary skills and knowledge. The Building Act 2004 will be amended to make it clearer that the buck stops with the people doing the work.

- [8] The Respondent also submitted that:

The changes did not affect the well-being of the people who use the building

The changes not prevent people to escape from the building if it is on fire

The changes did not affect the work from complies with the building code

- [9] Whilst escape from fire may not have been impeded the Board does not agree with the other submissions. There were aspects that were not in accordance with the building code and the unapproved changes may have long term implications. In particular, the creation of a non-complying internal gutter could lead to weathertightness issues which could impact on the well being of occupants.
- [10] Finally, the Respondent has brought his costs and losses in relation to the matter to the Board's attention as well as some detail as to his financial position including debts to the Inland Revenue Department. These are relevant factors for the Board to consider. That said the Board did discount the fine from a starting point of \$3,000 and this was in relation to contractual issues noted.
- [11] The Board has further considered the level of the discount on the basis of the additional submissions received. It is not convinced that any further reduction is warranted. The reasons set out in the Board's substantive decision as regards penalty are still relevant and applicable. The Respondent should note, however, that he can seek to enter into a payment arrangement if his constrained financial situation means he will have difficulty paying the fine and costs.
- [12] In summary, having considered the submissions received the Board has decided to uphold its initial view.

Costs

- [13] The Board's initial view was that \$2,000 in costs was appropriate. This remains the case and it should be noted that the amount is significantly less than 50% of actual costs.

Publication of Name

- [14] The Board's initial view was there were no good reasons to further publish the matter. The Board's decision is affirmed.

Section 318 Order

- [15] 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 \$2,500.

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.

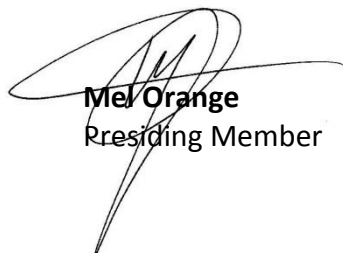
In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the Register and the Respondent being named in this decision.

- [16] 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

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

Signed and dated this 17th day of October 2019



Mel Orange
Residing 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:

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- (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.