

Before the Building Practitioners Board

	BPB Complaint No. CB26074
Licensed Building Practitioner:	Richard Dalkie (the Respondent)
Licence Number:	BP116962
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	Christchurch
Hearing Type:	In Person
Hearing and Decision Date:	4 April 2023
Board Members Present:	
	Mr M Orange, Chair, Barrister (Presiding)
	Mrs F Pearson-Green, LBP, Design AoP 2
	Mr G Anderson, LBP, Carpentry and Site 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.

Disciplinary Finding:

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

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Summary

- [1] A complaint was made about building work that was carried out without a building consent. The Respondent was identified as a Licensed Building Practitioner who was involved with the work. To make a finding, the Board has to establish that, on the balance of probabilities, the Respondent carried out or supervised the building work complained about. The evidence before the Board, however, did not establish an evidentiary link between the Respondent and the matters under investigation. Accordingly, the Board decided that the Respondent had not committed a disciplinary offence.

The Charges

- [2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.¹
- [3] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at [OMITTED], Christchurch, have carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act.
- [4] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(b) of the Act, the Board would be inquiring into:
- (a) whether the Respondent carried out or supervised building work that required a building consent without first ensuring that one was in place; and
 - (b) the issues raised in an engineering assessment carried out by [OMITTED], Structural Engineer, as specified in an email dated 23 May 2022 (page 31, document 2.1.19 of the Board's files).

¹ 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. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

² The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

Evidence

- [5] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed³. 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.
- [6] The Complainant contracted [OMITTED] to carry out kitchen renovations. She met with the principal of [OMITTED], [OMITTED], who had been recommended to her. The proposed work was discussed. It included removing walls and making an open kitchen and living area. The Complainant asked if a building consent was required. At the hearing, the Complaint gave evidence that she asked Mr [OMITTED] if a consent was required, and he responded by laughing and saying they could just blame it on EQC. The Complainant handed up a notebook that she had kept during the project. It recorded a site visit on 30 November 2015 and stated:
- ... I asked him if I needed a permit he laughed and said "oh we will blame it on EQC" I don't now if I should be aleamed with this statement ...*
- [7] The work was not related to EQC repairs. It was structural work that did not come within the Schedule 1 Building Act exemptions. A building consent was required.
- [8] Mr [OMITTED] was summoned to the hearing. He did not appear and claimed he had not received the Board's summons. It was sent to an address he had previously corresponded with the Board on. The Board will make further inquiries with respect to a failure to appear when lawfully summoned.
- [9] No plans were developed or provided for the renovation. A number of licensed staff were used by [OMITTED], along with un-qualified and temporary staff. Mr [OMITTED], as part of the Board's earlier investigations, was not able to identify the staff that he had employed at the time, notwithstanding being provided with his invoicing records. The Respondent was an employee of [OMITTED]. There was no clear evidence as regards who was providing oversight and direction of the build, except for Mr [OMITTED].
- [10] Demolition commenced. The Complainant was not sure if the Respondent was involved. The Respondent stated he was not. The build progressed with a wall being removed and a structural beam being installed to carry the load of the wall that was removed. An engineer later identified, as part of a Certificate of Acceptance process, that the beam was probably acceptable but that additional bracing and cross-beam was required. The Certificate of Acceptance process was necessary because of the failure to obtain a building consent for the building work.

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [11] The Respondent recalled being involved in the installation of an extractor fan on an exterior wall. He could not recall being involved in the structural work. The Complainant's records noted the Respondent being at the site at various times but it did not identify what work was carried out. Mr [OMITTED], the Complainant's partner, assisted with the installation of the beam. He could not recall if the Respondent carried out or supervised that work.

Board's Decision

- [12] The Respondent has not committed a disciplinary offence. The decision is made on the basis that there is insufficient evidence to establish a link between him and the matters complained about. In this respect, as noted, the Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed. The relevant authority is *Z v Dental Complaints Assessment Committee*,⁴ where Justice McGrath in the Supreme Court of New Zealand noted that the standard has to be applied flexibly and that strong evidence is required where the allegations are serious.
- [13] In this matter, the Board decided that the evidence before it was insufficient to establish that, on the balance of probabilities, the Respondent was involved in the building work complained about to an extent where the Board could make a disciplinary finding.
- [14] The Board does, however, caution the Respondent that, as a Licensed Building Practitioner, he should always ensure that a building consent is in place or, if one has not been obtained, that appropriate inquiries have been made to establish that an exemption applies.

Signed and dated this 19th day of April 2023



M Orange
Presiding Member

⁴ [2009] 1 NZLR 1