

Before the Building Practitioners Board

	BPB Complaint No. 26433
Licensed Building Practitioner:	Damian Mora (the Respondent)
Licence Number:	BP131062
Licence(s) Held:	Carpentry; Site AoP 2, Design AoP 2

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

Complaint or Board Inquiry	Complaint
Hearing Location	By Audio Visual Link
Hearing Type:	In Person
Hearing Date:	11 July 2024
Substantive Decision Date:	17 July 2024
Penalty Decision Date:	19 September 2024
Board Members:	
	Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2 (Presiding)
	Mrs J Clark, Barrister and Solicitor, Legal Member
	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** committed a disciplinary offence under section 317(1)(b) of the Act.

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Summary of the Board’s Penalty Decision

- [1] The Respondent had supervised building work in a negligent manner in respect of the waterproofing and drainage of the blockwork foundation external retaining wall at the 1400mm change in floor levels of the habitable space.
- [2] The Respondent is ordered to pay a fine of \$1,000 and costs of \$1,750. The decision will be recorded in the Register of Licensed Building Practitioners for a period of three years.

The Charges

- [3] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had supervised building work in a negligent manner, contrary to section 317(1)(b) of the Act.
- [4] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [5] In its substantive decision, the Board set out its indicative position regarding penalty, costs, and publication and invited the Respondent to make written submissions on those matters.
- [6] On 18 September 2024, the Board received the Respondent’s submissions on penalty. The Respondent did not make any submissions on the fine or costs orders. He did make submissions on the publication orders. The Board has considered the penalty submissions and made the following decisions.

Penalty

- [7] The Board’s initial view was that a fine of \$1,000 was the appropriate penalty for the disciplinary offence. The Respondent accepted the penalty order in his submission.
- [8] The Board, therefore, upholds its initial view.

Costs

- [9] The Board’s initial view was that \$1,750 in costs was appropriate. The Respondent accepted the costs order in his submission.
- [10] The Board, therefore, upholds its initial view.

Publication of Name

- [11] The Board's initial view was that there would be no publication over and above the record on the Register, the Respondent being named in the decision and the publication of the decision on the Board's website.
- [12] The Respondent asked for a review of the decision to "*publish my name on the public register as disciplinary action taken, proposed to stay publicly visible for a period of three years.*"
- [13] The Respondent submitted that "*the potential outcomes of listing my name on the public register is a disproportionate punishment to the 'error of judgment' observed during the design process.*" He pointed to the potential for the publication to be "*extremely detrimental to my business and reputation*". He also highlighted his co-operation throughout the complaint process and his history as a "*fully compliant and competent licensed building practitioner.*"
- [14] The Board is required by statute¹ to record in the register "*any action taken ...on a disciplinary matter*" for a period of three years. Accordingly, the Board has no discretion to amend the publication order in this regard.
- [15] The Board does have discretion under section 318(5) of the Act, as regards further publication. In this instance, it has ordered the Respondent be named and the decision published on the Board's website. This is standard practice for most disciplinary matters and is consistent with comparable offending.
- [16] The Board does not consider that the Respondent has made out sufficient grounds to change this approach in this case.
- [17] The Board upholds its initial view.

Section 318 Order

- [18] 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 \$1,750 (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(l)(iii) of the Act.

In terms of section 318(5) of the Act, the Respondent will be named in this decision, which will be published on the Board's website.

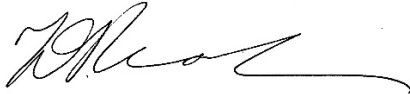
- [19] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel a licensed building practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid.

¹ Section 310(l)(iii) of the Act

Right of Appeal

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

Signed and dated this 11th day of October 2024.



Mrs F Pearson-Green
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.