

Before the Building Practitioners Board

	BPB Complaint No. CB25842
Licensed Building Practitioner:	David Dawson (the Respondent)
Licence Number:	BP 118670
Licence(s) Held:	Design AoP 2

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:	2 November 2022
Substantive Decision Date:	22 February 2023
Penalty Decision Date:	26 April 2023

Board Members Present

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr D Fabish, LBP, Carpentry and Site AoP 2
Mrs J Clark, Barrister and Solicitor, Legal Member

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 disciplinary offences under sections 317(1)(b) and (i) of the Act.

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Summary of the Board’s Penalty Decision

- [1] The Respondent has carried out building work in a negligent manner and has conducted himself in a manner that brings or is likely to bring the regime under this Act for licensed building practitioners into disrepute. The Respondent is fined \$3,000 and ordered to pay costs of \$3,500. The decision will be recorded in the Register of Licensed Building Practitioners for a period of three years.

The Charges

- [2] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had committed the following disciplinary offences:
- (a) carried out building work in a negligent manner (section 317(1)(b) of the Act); and
 - (b) conducted himself in a manner that brings or is likely to bring the regime under this Act for licensed building practitioners into disrepute (section 317(1)(i) of the Act).
- [3] 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.
- [4] 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.
- [5] On 4 April 2023, the Board received submissions from Counsel on behalf of the Respondent on penalty and costs. No submissions on the publication order were made. The Board has considered them and made the following decisions.

Penalty

- [6] The Board’s initial view was that a fine of \$3,500 was the appropriate penalty for the disciplinary offence.

- [7] Having considered the submissions received, the Board has decided to modify its initial view.
- [8] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined in the substantive decision prior to it considering any aggravating and/or mitigating factors present.¹
- [9] The Board's starting point for the penalty was a fine of \$3,500, which is consistent with penalties imposed by the Board for similar matters. The Board found in its substantive decision that there were no mitigating or aggravating factors and, therefore, no adjustment to the starting point was necessary.
- [10] The submission made by Counsel for the Respondent raises two new matters. It is submitted that the Respondent has changed his work practice since the conduct which gave rise to the complaint. He is now in a collegial environment and has the benefit of internal support. The submission also noted the Respondent's cooperation with the disciplinary process.
- [11] The Board considers these to be mitigating factors and, on that basis, has modified its penalty to a fine of \$3,000.

Costs

- [12] The Board's initial view was that \$3,500 in costs was appropriate.
- [13] Having considered the submissions received, the Board has decided to uphold its initial view.
- [14] Counsel for the Respondent submitted that the allegation of disreputable conduct at a Council meeting "*could only be challenged at the hearing, where it was not supported*".
- [15] It is submitted that the Respondent incurred costs to defend this allegation, and on the basis that it was not pursued, this should merit a discount in the costs award against the Respondent.
- [16] The Board agrees that this aspect of the disrepute allegations was not pursued at the hearing after Mr [OMITTED]'s evidence was given. However, it was not until the hearing that this point was reached.
- [17] The Courts² have the discretion to reduce costs where a party has failed on an issue, and the cost to the other party is significantly increased, and where a party has unnecessarily contributed to the time of expense of a matter. Neither of these grounds are established in this instance. The Board, therefore, does not consider that any further discount in the costs award is warranted. Substantial discounts were already applied in the substantive decision.

¹ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

² High Court Rules 14.7

Publication of Name

- [18] The Board's initial view was that there were no good reasons to further publish the matter.
- [19] No submissions on publication were made by the Respondent's Counsel, and as such the Board has decided to uphold its initial view.

Section 318 Order

- [20] 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 \$3,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,500 (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, 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.

- [21] 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

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

Signed and dated this 1st day of May 2023



Mr M Orange
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:*

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- (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.*