

Before the Building Practitioners Board

	BPB Complaint No. CB25808
Licensed Building Practitioner:	Jordache Edser (the Respondent)
Licence Number:	BP 129563
Licence(s) Held:	Roofing – Metal Tile, Profiled Metal Roof and/or Cladding

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:	9 February 2022
Substantive Decision Date:	21 February 2022
Penalty Decision Date:	19 April 2022

Board Members Present:

Mr M Orange, Deputy Chair, Barrister (Presiding)
Mr D Fabish, LBP, Carpentry and Site AOP 2
Mrs F Pearson-Green, LBP, Design AOP 2
Mr R Shao, LBP, Carpentry and Site AOP 1
Ms K Reynolds, Construction Manager

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)(da(ii) of the Act.

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

Summary of the Board's Penalty Decision

- [1] The Respondent failed to provide a record of work on completion of restricted building work. He is fined \$1,500 and ordered to pay costs of \$1,000. The matter 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 failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) 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 1 April 2022, the Board received the Respondent's submissions. He stated:
- Please consider this email to be my submission of appeal against the decision of the board, in respect of the finding that I have committed a disciplinary offence under section 317(1)(da)(ii) of the Act.*
- [6] The Respondent went on to state the grounds for his appeal. He asked for detail on the appeal process.
- [7] The Board is not the appellate body. The right to appeal was set out in the Board's substantive decision. An appeal is to the District Court. This is set out in section 330(2) of the Actⁱⁱ.
- [8] There are resources on the Board's website that the Respondent can use to assist him in making an appeal, or he can contact the District Court.

Submissions

- [9] Notwithstanding his stated intention to appeal, the Respondent also submitted, as regards penalty, costs and publication. He protested that a hearing should not have been held and that the complaint was made out of spite. Those matters are issues that the Respondent can pursue on appeal. The Board's position is that the hearing was, under the legislative provisions it operates under, required and warranted.

[10] The Respondent also submitted.

In addition, with the recent disruptions in the construction industry due to Covid (specifically material deliveries, job delays and staff sickness), my business is seriously struggling to stay afloat. Having to pay a total of \$2,500.00 for not having issued a record of work when there was considerable confusion and uncertainty regarding what part of the job was deemed "completed", truly seems incredibly harsh and unjust.

[11] The indicated fine was \$1,500 and costs \$1,000. Whilst the Board appreciates the difficulties the Respondent is experiencing, he is in the same position as all other practitioners at this time, and his submission has not been substantiated with supporting evidence. Moreover, the level of penalty was set so as to deter others. The Board sees no reason to amend the indicative orders. Accordingly, the penalty costs and publication orders are affirmed as per the section 318 Order below.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(d) of the Building Act 2004, the Respondent is ordered to pay a fine of \$1,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,000 (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(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.

[13] 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.

Signed and dated this 6th day of May 2022


Mr M Orange
Presiding

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*

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- (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.*