Before the Building Practitioners Board

	BPB Complaint No. CB25532
Licensed Building Practitioner:	Paul Emirali (the Respondent)
Licence Number:	BP 115910
Licence(s) Held:	Carpentry, Design AOP 1, Site AOP 1

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	Auckland
Hearing Type:	In Person
Hearing Date:	3 February 2021
Decision Date:	1 March 2021

Board Members Present:

Mr. C Preston, Chair (Presiding)
Mr. D Fabish, LBP, Carpentry and Site AOP 2
Mr. R Dunlop, Retired Professional Engineer
Mr. B Monteith, LBP, Carpentry and Site AOP 2

Appearances:

Mr D Webster, Websterlaw Limited, Counsel for the Respondent

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)(i) of the Act.

Contents

Summary of the Board's Decision

[1] The Respondent failed to provide a record of work on completion of restricted building work. a charge of disrepute was not upheld. The Respondent is fined $1,000 and ordered to pay costs of $3,000.

The Hearing

[2] The Board, on receiving a Registrar's Report in respect of the matter, reviewed the file and decided to deal with it by way of a Draft Decision. The Respondent attempted to make a submission on the Draft Decision. It was sent to an incorrect email address and, as such, was not received. The Board's Draft Decision was, on the basis that no response was received, made final. The Board was subsequently made aware of the submission that the Respondent had attempted to make. It decided that it would recall its decision and reconsider the matter, and it called for additional submissions.

[3] The Respondent made a submission on 5 November 2020. The Complainant made a submission on 6 November. The Board considered those submissions and decided that a hearing was required. The Draft Decision, including the Board's indicative position on penalty, costs and publication, was set aside.

The Charges

[4] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations[1] to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:

(a) 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); and

(b) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act), IN THAT, he may, without the right to do so, have altered and presented an invoice for payment.

[5] The change under section 317(1)(i) of the Act arose as a result of the additional allegations made by the Complainant post the issue of the Draft Decision.

Function of Disciplinary Action

[6] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*[2] and in New Zealand in *Dentice v Valuers Registration Board*[3]*.*

[7] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board,*[4] Collins J. noted that:

> *"… the disciplinary process does not exist to appease those who are dissatisfied … . The disciplinary process … exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community."*

[8] In a similar vein, the Board's investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint's Regulations focuses on serious conduct that warrants investigation and, if upheld, disciplinary action. Focusing on serious

[1] The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.
[2] *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.
[3] [1992] 1 NZLR 720 at p 724
[4] [2016] HZHC 2276 at para 164

conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons[5]:

> *… the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.*

[9] Finally, the Board can only inquire into "the conduct of a licensed building practitioner" with respect to the grounds for discipline set out in section 317 of the Act. Those grounds do not include contractual breaches other than when the conduct reaches the high threshold for consideration under section 317(1)(i) of the Act, which deals with disrepute.

[10] The above commentary on the limitations of the disciplinary process is important to note as, on the basis of it, the Board's inquiries, and this decision, focus on and deal with the serious conduct complained about.

Inquiry Process

[11] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. Rather the Board sets the charges, and it decides what evidence is required at a hearing to assist it in its investigations. In this respect, the Board reviews the available evidence when considering the Registrar's Report and determines the witnesses that it believes will assist at a hearing. The hearing itself is not a review of all of the available evidence. Rather it is an opportunity for the Board to seek clarification and explore certain aspects of the charges in greater depth.

[12] Whilst a complainant may not be required to give evidence at a hearing, they are welcome to attend and, if a complainant does attend, the Board provides them with an opportunity to participate in the proceedings.

Evidence

[13] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed[6]. Under section 322 of the Act, the Board has relaxed rules of evidence that allow it to receive evidence that may not be admissible in a court of law.

[14] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision-maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.

[5] *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

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

[15] In addition to the documentary evidence before the Board it heard evidence at the hearing from:

Paul Emirali	Respondent
[Omitted]	Witness, [Omitted], Licensed Building Practitioner, Carpentry, [Omitted]

[16] The Board also summonsed the Complainant, [Omitted]. [Omitted] was excused from appearing as a witness by the Presiding Member in a Board Minute issued on 1 February 2021.

[17] Counsel for the Respondent presented an opening submission and evidence in respect to the alleged invoice tampering.

Record of Work

[18] The Complainant alleged the Respondent was engaged to carry out building work on a renovation of an existing dwelling and the construction of a sleep-out under a building consent. The building work included restricted building work for which a record of work must be provided on completion. The Respondent's building work started in April 2016 and came to an end in or about August 2017 as a result of a commercial dispute and the termination of the contract for the build. A record of work dated 26 March 2019 was provided to the owner's lawyers on 29 March 2019 and to the territorial authority on 15 January 2020.

[19] Following the termination, a commercial dispute arose. The Complainant stated that as part of an adjudication settlement, it was agreed that the Respondent would provide all the information necessary to obtain a code compliance certificate but that the Respondent refused to do so. The Complainant stated that the Respondent maintained that he was not legally obliged to provide one. A Complaint was made on 15 June 2020.

[20] The Respondent replied to the complaint stating that following termination of the contract and a dispute resolution process, he had organised for his lawyers to provide a record of work to the owner's lawyers. He stated he was not aware of the obligation to also provide a record of work to the territorial authority. The Respondent noted that a code compliance certificate had been issued. He was, therefore, unsure of the reason why the complaint had been made.

[21] In a subsequent response, the Respondent stated that his record of work was not required prior to 2019 as it had not been requested and an application for a code of compliance certificate had not been made.

[22] At the hearing, Mr Webster provided a lengthy submission in regards to the provision of the record of work. His submissions are addressed in the Board's reasons for its decision.

Disrepute

[23] As noted, during a submissions process, the Complainant raised an allegation that the Respondent had furnished fraudulent invoices. Central to this was an allegation that the Respondent had altered and submitted invoices from [Omitted].

[24] At the hearing, Counsel made submissions and provided exhibits pertaining to invoicing. In this submissions, Counsel noted:

> *30. The reason that these invoices were altered was that the original contract that governed these works, appended marked "A" to these submissions, described the labour charges differently to the way the [Omitted] invoices were drawn.*
>
> *34. The reason the designations were changed was so as to not cause confusion when the [Omitted]invoices were supplied to the complainant. As it turns out it had the opposite effect. The usefulness of the [Omitted] invoices was only to support the time charged to the Respondent by [Omitted] as requested by the complainant. As can be seen in every instance of the altered invoices, the time component is the same. The changes were in relation to the description and the hourly rate, in one description. I do note here that the hourly rate change had no effect as the rates were not charged as per the [Omitted] invoices but on the Respondent's invoice.*
>
> *36. The alterations made by the Respondent had no effect at all on the amount charged to the owner. The [Omitted] invoices were not included in the "cost plus" part of the contract as the labour rates were separately quoted in the 6 line contract.*

Board's Conclusion and Reasoning

[25] The Board has decided that the Respondent **has** 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) and **should** be disciplined.

[26] The Board has also decided that the Respondent **has not** conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).

[27] The reasons for the Board's decisions follow.

Record of Work

[28] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work[7].

[29] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had "good reason" for not providing a record of work on "completion" of the restricted building work.

[30] The submissions received from the Respondent's Legal Counsel focused on completion. In summary, Counsel submitted that completion had not occurred as all of the building elements had not been completed when the contract was terminated in August 2017, but that completion did occur when a Council final inspection was carried out on 2 July 2019, and a Code of Compliance Certificate was sought in January 2020. Counsel submitted that the District Court decisions in *Ali v Kumar* [2017] NZDC 23582 and *Bell v Lu and MBIE* [2017] NZDC 23847 applied. In *Ali v Kumar* the Court stated that there was a requirement under section 87 of the Act for an owner to notify the building consent authority if a practitioner ceases to be engaged and another licensed building practitioner is appointed. In *Bell v Lu* the Court decided that section 87 was a precondition to the requirement to provide a record of work and that, as it had not been complied with, a record of work was not due.

[31] The District Court decisions in *Ali v Kumar* and *Bell v Lu* were overturned by the High Court in *Ministry of Business Innovation and Employment v Bell* [2018] NZHC 1662. In that case, Justice Muir stated:

> *[47] I accept, therefore, MBIE's submission that one of the central purposes of the Act was to increase regulation on building work so as to provide local authorities and present and future owners with assurance that the building work was completed to required standards. As MBIE submits, if the s 88 obligation is conditional on a discharge of that under s 87, the result will be fewer records of work being filed. This would not be consistent with the purpose of the Act. As Judge Gibson himself recognised, the record of work "is useful historical knowledge for owners both present and future, and for other parties who may come to be involved in cases alleging defective building practice". And it could indeed be even more important if the owner has not complied with their obligations under s 87. Further it serves as protection for the innocent licenced building practitioner if a dispute arises over who did what work on a site where sequential builders have been employed.*

[7] Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

> *[48] For these reasons, I consider the purposes of the legislation consistent with the plain meaning I have adopted.*
>
> *[50] For the foregoing reasons, I respectfully disagree with the conclusions of the District Court in Ali v Kumar and in the decision under appeal insofar as they engage the issued I have discussed. In my view the only relevant precondition to the obligations of a licenced building practitioner under s 88 is that he/she has completed their work.*

[32] Counsel accepted that the decisions in *Ali v Kumar* and *Bell v Lu* had been overturned, but submitted:

> *16. It is accepted that the High Court decision by Justice Muir that overturned Gibson J's decision is current law. However, this Board must put this case into the context of the timeline. The Bell decision of the High Court was delivered on 6 July 2018 which reversed the previous law, arrived at in Harrison J's decision in Ali v. Kumar (24 October 2017) and followed by the District Court in the decision of Gibson J in Bell v. Lu & MBIE (13 November 2017).*

[33] Counsel traversed the dates and the context of the matter, noting the August 2017 termination and a protracted payment dispute, including a Construction Contracts Act process under which a decision favouring the Respondent was issued on 1 March 2019. Counsel submitted that the Construction Contracts Act process, combined with normal workloads, was "all-consuming" but that when it was completed a record of work was provided within a reasonable time thereafter. Counsel submitted:

> *19. In summary, the High Court Bell case was not decided when the Respondent's contract was terminated and so should not be a consideration that the Board should take into account. Following Ali v. Kumar and the District Court Decision in Bell v. MBIE, the Respondent's legal obligation to provide the record of works had not arisen because the precondition of the owner needing to give notice to Council of the new practitioner had not been given.*

[34] The Board doubts that the Respondent was acting on this basis or with an awareness of the District Court decisions. There was certainly no indication of that in the initial responses to the complaint. Even if that was the case, the reliance would have come to an end in July 2018 when the High Court decision in *Ministry of Business Innovation and Employment v Bell* that the District Court decisions were wrong was made. Notwithstanding the record of work was not provided until March 2019. Given those factors the Board does not accept that completion had not occurred until just prior to the record of work being provided in March 2019.

[35] Counsel also submitted:

> *20. In any event, the record of work was provided to the owner and the owner's lawyers;*
>
> *a. Prior to any request being made.*
>
> *b. In March 2019 prior to the completion of the work in July 2019,*
>
> *c. Prior to the application for a Code Compliance Certificate (January 2020).*

[36] The issue of completion has been dealt with. The Respondent's work was complete in August 2017 when the contract was terminated. He would not be returning and would not be completing any further work. A record of work was due and, even if he was relying on District Court decisions that one was not required if a section 87 notice had not been filed, that position came to an end when the related decisions were overturned by the Hight Court.

[37] Turning to requests and code compliance certificates, neither is a precondition for the provision of a record of work. As noted in *Ministry of Business Innovation and Employment v Bell* the only precondition is that the work has been completed.

[38] Records of work do not need to be requested. A record of work is a statutory document. The requirement is on the licensed building practitioner to provide a record of work, not on the owner or territorial authority to demand one.

[39] A record of work is often requested when a code compliance certificate is sought. In this respect, a Determination under the Act[8] noted that a building consent authority can ask for a record of work; not having one is not a reason to refuse to issue a code compliance certificate because records of work having nothing to do with compliance. The determination commented at [4.3.3]:

> *[T]he record of work simply records the name of the LBP who carried out or supervised the restricted building work and thus supports the licensing and restricted building work provisions of the Act that aim to ensure construction work that is critical to the integrity of a residential building is only carried out or supervised by people who have been independently assessed as competent to carry out that work. The record of work has nothing to do with the code-compliance of the work and whether the work that has been carried out complies with the building consent.*

[40] The Board also noted that it was not until a payment dispute had been resolved that a record of work was provided. The Board finds it was more likely that the record of work was withheld whilst a commercial dispute was resolved.

[8] BD23.14 Regarding the authority's exercise of its powers of decision in respect of a refusal to amend a building consent for Restricted Building Work carried out to a relocated house MBIEBH Determination 2013/030, 28 May 2013

[41] It does not matter, however, what the reason for a record of work being withheld was, unless that reason amounts to a "good reason". Payments disputes and using records of work as leverage are not good reasons.

Disrepute

[42] The disrepute disciplinary provision in the Act is similar to legislation in other occupations, including medical professionals, teachers, lawyers and conveyancers, chartered accountants, financial advisors, veterinarians and real estate agents. The Board considered the disrepute provisions in Board Decision C2-01111[9] and discussed the legal principles that apply.

[43] The Act does not provide guidance as to what is "disrepute". The Oxford Dictionary defines disrepute as "the state of being held in low esteem by the public"[10] , and the courts have consistency applied an objective test when considering such conduct. In *W v Auckland Standards Committee 3 of the New Zealand Law Society*[11] *,* the Court of Appeal held that:

> *the issue of whether conduct was of such a degree that it tended to bring the profession into disrepute must be determined objectively, taking into account the context in which the relevant conduct occurred. The subjective views of the practitioner, or other parties involved, were irrelevant*.[12]

[44] As to what conduct will or will not be considered to bring the regime into disrepute it will be for the Board to determine on the facts of each case. The Board will, however, be guided by finding in other occupational regimes. In this respect, it is noted disrepute was upheld in circumstances involving:

- criminal convictions[13];
- honest mistakes without deliberate wrongdoing[14];
- provision of false undertakings[15]; and
- conduct resulting in an unethical financial gain[16].

[45] The present matter focused on a possible unethical financial gain.

[46] The Respondent put forward that the alterations made to invoices were not material, were in line with the contract and that there was no unethical financial gain. Counsel submitted:

---

[9] Board decision dated 2 July 2015.
[10] Online edition, compilation of latest editions of *Oxford Dictionary of English, New Oxford American Dictionary, Oxford Thesaurus of English and Oxford American Writer's Thesaurus,* search settings UK English, accessed 12/05/15
[11] [2012] NZCA 401
[12] [2012] NZAR 1071 page 1072
[13] *Davidson v Auckland Standards Committee* No 3 [2013] NZAR 1519
[14] *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401
[15] *Slack, Re* [2012] NZLCDT 40
[16] *Collie v Nursing Council of New Zealand* [2000] NZAR 7

> *40. It is submitted that the alterations were not material and had no consequential effect. It is arguable that the Respondent had the right to make the alteration to the description so as to align the designation of the charge with the rate in the contract.*

[47] Counsel also made submissions as regards the disciplinary threshold for disrepute matters and the Respondent's conduct in this matter:

> *46. In this case it is submitted that the behaviour while accepted as poor, and pointless, was not in the category of one of the "most serious" but rather a minor matter .*

[48] The Board agrees. Whilst the conduct was not exemplary, it did not reach the threshold. In this respect, the Board notes that when the disciplinary provision was introduced to Parliament, the accompanying Cabinet paper noted:

> *This power would only be exercised in the most serious of cases of poor behaviour, such as repetitive or fraudulent behaviour, rather than for minor matters.*

[49] The present matter was not one that would be categorised as being in the most serious cases of a poor behaviour. Accordingly, the Board finds that the Respondent has not breached section 317(1)(i) of the Act.

Penalty, Costs and Publication

[50] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act[i], consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

[51] The Board heard evidence during the hearing relevant to penalty, costs and publication. Counsel has also made submissions as regards these matters. As such, the Board has decided to make the appropriate orders.

Penalty

[52] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*[17] commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

> *[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.*

[17] HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

[53] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*[18] the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act, they do have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.

[54] Counsel submitted:

> *If the complaint is upheld, the penalty should be minor, reflecting the low level of seriousness of the offending.*

[55] Record of work matters are at the lower end of the disciplinary scale. The Board's normal starting point for a failure to provide a record of work is a fine of $1,500, an amount which it considers will deter others from such behaviour. There are no aggravating nor mitigating factors present. Notwithstanding the Board notes that the offending occurred in 2016. It is appropriate that the level of the fine reflect fines that were imposed in 2016. On that basis the fine will be set at $1,000.

Costs

[56] Under section 318(4) the Board may require the Respondent "to pay the costs and expenses of, and incidental to, the inquiry by the Board."

[57] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case[19].

[58] In *Collie v Nursing Council of New Zealand*[20] where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

> *But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*

[59] As above Counsel submitted:

> *If the complaint is upheld, the costs should be minimal, reflecting the low level of seriousness of the allegations and the mitigating factors as are set out in these submissions.*

[18] 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288
[19] *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee,* HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.
[20] [2001] NZAR 74

[60] The Respondent requested and was granted a hearing. He has been partially successful in his defence. The Board's normally scale of costs for a hearing of this type is $3,500. The Board has, given the circumstances, decided to reduce the costs order to $3,000.

Publication

[61] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act[21]. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:

> *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.*

[62] As a general principle, such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.

[63] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990[22]. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction[23]. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive[24]. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*[25].

[64] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest[26]. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.

[65] Based on the above, the Board will not order further publication.

[21] Refer sections 298, 299 and 301 of the Act
[22] Section 14 of the Act
[23] Refer sections 200 and 202 of the Criminal Procedure Act
[24] *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350
[25] ibid
[26] Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Section 318 Order

[66] 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 $3,000 (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.

[67] 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

[68] The right to appeal Board decisions is provided for in section 330(2) of the Act[ii].

Signed and dated this 9th day of March 2021

Mr C Preston
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.