

Before the Building Practitioners Board

	BPB Complaint No. CB25056
Licensed Building Practitioner:	Jeremy Evans (the Respondent)
Licence Number:	BP 106895
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Complaint
Hearing Location	Napier
Hearing Type:	In Person
Hearing Date:	16 July 2019
Substantive Decision Date:	8 August 2019
Penalty Decision Date:	11 October 2019
Board Members Present:	
	Chris Preston (Presiding)
	Mel Orange, Legal Member
	Robin Dunlop, Retired Professional Engineer
	Bob Monteith, 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.

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Introduction

- [1] 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).
- [2] 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.
- [3] 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.
- [4] On 29 August 2019, the Board received the Respondent's submissions. It has considered them and made the following decisions.

Penalty

- [5] The Board's initial view was that a \$1,500 fine was the appropriate penalty for the disciplinary offence.
- [6] The Respondent has submitted:

I feel that disciplinary action would be unjust as I tried to make contact with the owners in regards to finishing the work on their property to make it council compliant and to provide the record of work required. I made it clear that I would provide my record of work on the final completion as stipulated by the Building Act 2004. In doing so I believed providing this information sooner would suggest that I had completed the work when in fact I had not.

I never stated that I would not complete the work or provide a written record of work -There were steps that were required to be completed by the owner for me to do so.

- [7] The Respondent provided a copy of an email he sent as support for his submission. That email was already in the evidence before the Board¹. It had been taken into account by the Board when it made its decision. The Board noted, in its substantive decision:

[40] In most situations issues with the provision of a record of work do not arise. The work progresses and records of work are provided in a timely fashion. That did not occur. An intervening dispute disrupted the normal course of events. The Respondent submits that the restricted work is not complete and as such a record of work is not due.

[41] The Board does not accept that submission. It finds that completion occurred when the Respondent abandoned the contract which was when he stopped communicating with the Complainant about the disputed matters. Whilst there may have been restricted building work that needed to be completed the Board could not ascertain any actual intention to return and complete it. No steps have been taken to resolve the dispute and the Respondent has no plan to take such steps.

- [8] The email provided was sent on 6 September 2018. The Complainant corresponded with the Respondent on 23 September 2018 and again on 12 October 2018 when a record of work was requested. The Respondent did not reply. A complaint was made in November 2018. As at the date of the hearing a record of work had not been provided. No steps had been taken by the Respondent in the period between October 2018 and the hearing. As such the Board does not accept that there was an intention to return and finish the restricted building work.

- [9] On the basis of the above the Board has decided to uphold its penalty decision.

Costs

- [10] The Board's initial view was that \$2,000 in costs was appropriate. The reasons for the amount were provided in the substantive decision. There are no reasons to vary this amount.

Publication of Name

- [11] The Board's initial view was there were no good reasons to further publish the matter. This remains the case.

¹ A copy of the email was provided by the Complainant and was at page 31 of the document bundle that was before the Board.

Section 318 Order

[12] 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 \$1,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,000 (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(1)(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.

Right of Appeal

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

Signed and dated this 11th day of October 2019


Chris 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:

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- (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.