Before the Building Practitioners Board

	BPB Complaint No. 26920
Licensed Building Practitioner:	Fei Liu (the Respondent)
Licence Number:	BP 125098
Licence(s) Held:	Roofing – metal tile roof, roof membrane, profiled metal roof and/or wall cladding, shingle or slate roof Carpentry Bricklaying and Blocklaying – structural masonry

---

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 Type:	On the Papers
Hearing and Draft Decision Date:	15 April 2026
Final Decision Date:	12 November 2026

Board Members Present:

Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2 (Presiding)
Mr G Pearson, Barrister and Solicitor, Legal Member
Ms S Chetwin CNZM, Barrister and Solicitor, Professional Director
Mr C Lang, Building Surveyor and Quantity Surveyor
Mr S Hammond, LBP, Carpentry, Regulatory Consultant

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.

Draft Disciplinary Finding:

The Respondent **has** committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

The Respondent is fined $1,000 and ordered to pay costs of $700. A record of the disciplinary offending will be recorded on the Public Register for 3 years.

Contents

Summary of the Board's Decision 3
The Charges 3
Decision Process 4
Evidence 4
Failure to Provide a Record of Work 4
Did the Respondent carry out or supervise restricted building work 4
Has the Respondent provided a record of work 5
Was there a good reason 5
Further Evidence and Submissions Received 6
Board Final Decision 6
Penalty, Costs and Publication 6
Penalty 6
Costs 8
Publication 8
Section 318 Order 9
Right of Appeal 9

Summary of the Board's Decision

[1] The Respondent failed to provide a record of work on completion of restricted building work. He is fined $1,000 and ordered to pay costs of $700. The disciplinary finding will be recorded on the Public Register for a 3 years.

The Charges

[2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.[1]

[3] In this matter, the disciplinary charges the Board resolved to further investigate[2] were that the Respondent may, in relation to building work at lots [OMITTED], have failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised (as the case may be) to provide the persons specified in section 88(2)

[1] Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.
[2] The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

with a record of work, on completion of the restricted building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act.

Decision Process

[4] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers necessary prior to it making a decision.

[5] Ordinarily, the Board makes a decision after holding a hearing.[3] The Board may, however, depart from its normal procedures if it considers that doing so would achieve the purposes of the Act and it is not contrary to the interests of natural justice.[4]

[6] In this instance, the Board decided a formal hearing was unnecessary. The Board considered there was sufficient evidence before it to allow it to make a decision on the papers. There may, however, have been further evidence in relation to the matter the Board was not aware of. To that end, the Board issued a Draft Decision. The Respondent was then provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a Final Decision. If the Respondent requested an in-person hearing, or the Board directed that one was required, this decision would be set aside, and a hearing scheduled.

Evidence

[7] The Board must be satisfied on the balance of probabilities the alleged disciplinary offences have been committed.[5] Under section 322 of the Act, the Board has relaxed rules of evidence, which allow it to receive evidence that may not be admissible in a court of law.

Failure to Provide a Record of Work

[8] There is a statutory requirement under section 88(1) of the Building Act 2004 for a Licensed Building Practitioner (LBP) to provide a record of work to the Owner and the Territorial Authority (Council) on completion of restricted building work[6] unless there is a good reason for it not to be provided.[7]

<u>Did the Respondent carry out or supervise restricted building work</u>

[9] The Respondent was engaged to carry out and/or supervise building work on 2 new residential dwellings. The building consent for the dwellings included the construction of 5 bedrooms, 5 ensuites, a living room, dining room, kitchen, toilet, laundry and internal access single garages. His work included foundations, framing, membrane decks, roofing and cladding, which is restricted building work because it

[3] Regulation 10 of the Complaints Regulations.
[4] Under Clause 27 of Schedule 3 the Board may regulate its own procedure and it has summary jurisdiction, which allows for a degree of flexibility in how it deals with matters: *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955
[5] *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1
[6] Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011
[7] Section 317(1)(da)(ii) of the Act

forms part of the primary structure and/or external moisture management system of a residential dwelling.[8]

[10] The Respondent, through his company Sky Roofing and Construction, was contracted to complete the work. Evidence provided to the Board showed a contract between the Complainant and the Respondent was signed on 1 April 2022. The Council building consent file also showed inspection reports which identified the Respondent as the person on site and as the LBP responsible for the work.

Was the restricted building work complete

[11] The work was undertaken between 1 April 2022 and 27 September 2024. Evidence from the Complainant and confirmed from the Council files showed lot 1 passed its final inspection on 24 September 2024 and lot 2 passed its final inspection on 27 September 2024, marking the completion date.

[12] The September 2024 date was when the Respondent's restricted building work came to a close and, under the Act, he was required to provide his record of work to the Owner and the Council.

Has the Respondent provided a record of work

[13] The Respondent did not provide a record of work despite the Complainant's requests. In submissions, the Complainant said the Respondent consistently declined to provide the record of work.

> *On March 12th 2025, I made a proactive attempt to resolve this matter by reaching out to the LBP through WeChat. Unfortunately, their response was unequivocal, they would not furnish the required documentation, citing incomplete settlement of the contract payment as their primary reason for withholding these materials.*

[14] A further contact on 17 August 2025 received no response.

[15] The Council records showed at that time his record of work had not been filed.

Was there a good reason

[16] In a telephone interview with a Ministry of Business, Innovation and Employment investigator, the Respondent was recorded saying:

> *…the owner didn't follow the payment schedule in the contract and owes $170,000.*
>
> And
>
> *…she needs to finish payment then we start applying for CCC.*

[17] The investigator sought further information from the Respondent but no response was received.

[18] The correspondence shows the record of work may have been withheld for payment and/or contractual reasons, neither of which are good reasons. The Board has

[8] Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

repeatedly stated a record of work is a statutory requirement, not a negotiable term of a contract. The requirement for it is not affected by the terms of a contract, or by contractual disputes. LBPs should be aware of their obligations to provide them and their provision should be a matter of routine.

[19] The Board also noted records of work were not a quality assessment. They are simply a record of the fact that certain work has been carried out and by whom.

[20] On this basis, the Board concluded there was no good reason for failing to supply the record of work when the restricted building work came to an end in September 2024.

Further Evidence and Submissions Received

[21] The Board issued a Draft Decision on 15 April 2026 to the Respondent and the Complainant. The Respondent was invited to provide further evidence and/or submit a written submission to the Board's findings by no later than the close of business on 28 May 2026.

[22] The Respondent's legal counsel emailed the Board on 28 May 2026 confirming the Respondent had provided his record of work to the Auckland Council and to the Home Owner that day. Counsel also noted payment of the fine and costs would be made shortly.

[23] The Board took the further evidence and submissions into account when making this Final Decision.

Board Final Decision

[24] The Respondent **did** fail to provide a record of work when it was due. He belatedly provided it to the Home Owner and the Council after this complaint was lodged.

[25] The matter was dealt with on the papers. The Board made an indicative order in its Draft Decision. That order allowed the Respondent an opportunity to provide a record of work before it made a final decision. He has now provided one and on that basis, the penalty is reduced by $500 to a fine of $1,000.

Penalty, Costs and Publication

[26] Having found that one or more of the grounds in section 317 applied, 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.

<u>Penalty</u>

[27] The Board has the discretion to impose a range of penalties.[ii] Exercising that discretion and determining the appropriate penalty requires the Board to balance various factors, including the seriousness of the conduct and any mitigating or

aggravating factors present.[9] It is not a formulaic exercise, but there are established underlying principles the Board should take into consideration. They include:[10]

(a) protection of the public and consideration of the purposes of the Act;[11]

(b) deterring the Respondent and other Licensed Building Practitioners from similar offending;[12]

(c) setting and enforcing a high standard of conduct for the industry;[13]

(d) penalising wrongdoing;[14] and

(e) rehabilitation (where appropriate).[15]

[28] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases[16] and applying the least restrictive penalty available for the particular offending.[17] In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty [18] that is consistent with other penalties imposed by the Board for comparable offending.[19]

[29] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.[20]

[30] 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 were no aggravating or mitigating factors present. As such, the Board saw no reason to depart from the starting point.

[31] As discussed above, the Board has said repeatedly contractual disputes are not a reason that can be used for the failure to supply a record of work.

[32] The Board allowed the Respondent an opportunity to provide a record of work before it made a final decision on the appropriate penalty. If one was provided to

[9] Ellis v Auckland Standards Committee 5 [2019] NZHC 1384 at [21]; cited with approval in National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins [2022] NZHC 1709 at [48]
[10] Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]
[11] Section 3 Building Act
[12] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354
[13] *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724
[14] *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27
[15] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457
[16] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354
[17] *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818
[18] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354
[19] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354
[20] 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.

both the Owner and the Council as per the requirements of section 88(1) of the Act, it would be taken into consideration as a mitigating factor, and the penalty reduced by $500 to a fine of $1,000.

Costs

[33] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other LBPs should not be left to carry the financial burden of an investigation and hearing.[21]

[34] The courts have indicated 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.[22] The starting point can then be adjusted up or down, depending on the particular circumstances of each case.[23]

[35] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was simple. Adjustments are then made.

[36] Based on the above, the Board's costs order was that the Respondent pay $700 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a simple matter that has been dealt with by way of a Draft Decision. It is significantly less than 50% of the actual costs.

Publication

[37] As a consequence of its decision, the Respondent's name and the disciplinary outcomes would be recorded in the Public Register maintained as part of the LBP scheme as is required by the Act,[24] and he would be named in this decision, which would be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.

[38] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.[25] Further, as a general principle, publication 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, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.[26]

[39] Based on the above, the Board did not order any publication over and above the record on the Register, the Respondent being named in this decision, and the

[21] *Collie v Nursing Council of New Zealand* [2001] NZAR 74

[22] *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

[23] *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.

[24] Refer sections 298, 299 and 301 of the Act

[25] Section 14 of the Act

[26] Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business, Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

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

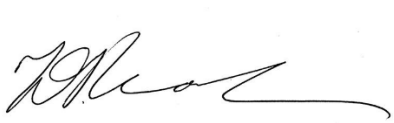
Penalty:	**Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a penalty of $1,000.**
Costs:	**Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $700 (GST included) towards the costs of, and incidental to, the inquiry of the Board.**
Publication:	**The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(1)(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.**

[41] The Respondent should note the Board may, under section 319 of the Act, suspend or cancel an LBP's licence if fines or costs imposed as a result of disciplinary action are not paid.

Right of Appeal

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

Signed and dated this 12th day of November 2026.



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 318 Disciplinary Penalties***

(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 1 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.

[iii] ***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.