

## Before the Building Practitioners Board

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|                                 | BPB Complaint No. CB25845  |
| Licensed Building Practitioner: | Yury Gritchin (the Respondent)                                       |
| Licence Number:                 | BP 118918  |
| Licence(s) Held:                | Roofing – Roof Membrane, Shingle or Slate<br>Roof, Torch on Membrane |

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### Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

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| Complaint or Board Inquiry | Complaint  |
| Hearing Location           | Auckland   |
| Hearing Type:              | In Person  |
| Hearing and Decision Date: | 31 August 2022                                   |
| Board Members Present:     |  |
|                            | Mr M Orange, Deputy Chair, Barrister (Presiding) |
|                            | Mr D Fabish, LBP, Carpentry and Site AOP 2       |
|                            | Ms K Reynolds, Construction Manager              |
|                            | Mr G Anderson, 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.

#### Disciplinary Finding:

The Respondent **has not** committed a disciplinary offence.

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### Summary of the Board's Decision

- [1] The Respondent has not committed a disciplinary offence. There was insufficient evidence for the Board to make a finding that the Respondent had carried out any restricted building work.

### The Board

- [2] The Board is a statutory body established under the Building Act.<sup>1</sup> Its functions include receiving, investigating, and hearing complaints about, and to inquire into the conduct of, and discipline, licensed building practitioners in accordance with subpart 2 of the Act. It does not have any power to deal with or resolve disputes.

### The Hearing

- [3] 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.
- [4] The Respondent disputed the findings in the Draft Decision and sought a hearing. The Draft Decision was set aside, and a hearing was scheduled.

### The Charges

- [5] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations<sup>2</sup> to hold a hearing in relation to building work at [OMITTED], Auckland. The alleged disciplinary offence the Board resolved to investigate were that the Respondent 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

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<sup>1</sup> Section 341 of the Act.

<sup>2</sup> The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act).

### 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*<sup>3</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>4</sup>.

[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*,<sup>5</sup> 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 conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons<sup>6</sup>:

*... 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.

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<sup>3</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>4</sup> [1992] 1 NZLR 720 at p 724

<sup>5</sup> [2016] HZHC 2276 at para 164

<sup>6</sup> *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

### **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.

### **Evidence**

- [12] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>7</sup>. 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.
- [13] 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.
- [14] In addition to the documentary evidence before the Board heard evidence at the hearing from the Respondent, and from [OMITTED], an office administrator from the Respondent's employer.
- [15] The Complainant was summoned but failed to attend. He was contacted to ascertain if he would attend. He stated he was plastering and would not be attending.
- [16] The complaint alleged that the Respondent had carried out restricted building work on a residential dwelling under a building consent between 10 April 2013 and about 29 November 2013. The alleged work was membrane waterproofing of a lower roof deck. The Complainant noted that a record of work had not been provided by the Respondent for his restricted building work. The Territorial Authority file did not contain a record of work from the Respondent.
- [17] The evidence provided with the complaint to substantiate that the Respondent was the licensed building practitioner who had carried out the membrane work was a Producer Statement (PS3), which noted Yury Gritchin as the author. It contained his Licensed Building Practitioner number (BP118918). It was signed and dated 29 November 2013. It was issued from a company that the Respondent no longer works for. The Complainant did not provide any other means of identifying the Respondent as a Licensed Building Practitioner who had carried out or supervised restricted building work.

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<sup>7</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [18] The Respondent stated that he had no knowledge of the property or the work and that it was not his signature on the PS3. He produced his driver's licence as evidence of his signature. The signature was markedly different to that which was on the PS3.

**Board's Conclusion and Reasoning**

- [19] The Board has decided that the Respondent **has not** 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 not** be disciplined.
- [20] The Board made its finding on the basis that there was insufficient evidence that the Respondent had carried out or supervised any restricted building work. In essence, the only evidence that identified the Respondent was a PS3 that was in his name, but the Board was satisfied that it was not his signature on it. Furthermore, the Board accepted the Respondent's evidence that he had not carried out or supervised any restricted building work on the building in question.

Signed and dated this 12<sup>th</sup> day of September 2022

A handwritten signature in black ink, appearing to be 'M J Orange', written in a cursive style with a long horizontal stroke extending to the right.

**M J Orange**  
Presiding Member