

Before the Building Practitioners Board

	BPB Complaint No. CB25206
Licensed Building Practitioner:	Adwait Haldankar (the Respondent)
Licence Number:	BP 119512
Licence(s) Held:	Design 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:	28 January 2020
Decision Date:	5 March 2020

Board Members Present:

Richard Merrifield, LBP, Carpentry and Site AOP 2 (Presiding)
Mel Orange, Legal Member
David Fabish, LBP, Carpentry and Site AOP 2
Faye Pearson-Green, LBP Design 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.

Board Decision:

The Respondent **has** committed disciplinary offences under section 317(1)(b) and 317(1)(h) of the Act.

Contents

Introduction	2
Function of Disciplinary Action	2
Inquiry Process	3
Evidence	4
Board’s Conclusion and Reasoning	6
Negligence and/or Incompetence – Design Work.....	6
Outside of Competence.....	10
Penalty, Costs and Publication	11
Penalty.....	11
Costs.....	12
Publication.....	13
Section 318 Order	14
Right of Appeal	14

Introduction

- [1] The hearing resulted from a complaint into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at 52A Rambler Crescent, Beach Haven, Auckland. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act); and
 - (b) breached section 314B of the Act (s 317(1)(h) of the Act).

Function of Disciplinary Action

- [2] 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.

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

- [3] 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.”

- [4] 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 persons⁵:

... 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.

- [5] 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.

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

Inquiry Process

- [7] 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.

- [8] 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.

⁴ [2016] HZHC 2276 at para 164

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

Evidence

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁶. 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.
- [10] 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.
- [11] In addition to the documentary evidence before the Board heard evidence at the hearing from:
- | | |
|------------------|-------------|
| Adwait Haldankar | Respondent |
| [Omitted] | Complainant |
| [Omitted] | Complainant |
| [Omitted] | Witness |
| [Omitted] | Witness |
- [12] The Respondent supervised the development and submission of a building consent design and specification for a renovation to a residential dwelling. The design work was restricted building work that had to be carried out or supervised by a licensed building practitioner holding the appropriate Design Licence.
- [13] The background to the complaint was that the Complainants, the owners of the dwelling to be renovated, contacted a business who carried out design work seeking to engage them to provide services. They were advised that it would be six months before the work could be undertaken. They enquired with the person they spoke to if there was anyone they could be referred to to do the work. They were given *[Omitted]* name, an employee at the business.
- [14] *[Omitted]* carried out the design work. As he was not a licensed building practitioner, and was not carrying out the work under the direction of his employer, he did so under the supervision of the Respondent. The Certificate of Design accompanying the building consent application was submitted in the Respondent's name, with his signature and building practitioner licence number. The business name, address and phone number of the building consent application were those of *[Omitted]*.
- [15] The Complainants alleged that the Respondent had been negligent in his supervision of the design. They claimed errors in the design caused issues with the build. The errors noted included incorrect measurements of the existing dwelling, undersized lintels, doors and windows drawn incorrectly and in wrong locations, and general

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

errors which mean the building work could not be carried out as specified in the consented design and specification.

- [16] It was not until the issues arose with the design during the build that the Complainants became aware that the Respondent was supervising *[Omitted]*. They were, until then, operating under the understanding that *[Omitted]* was licensed.
- [17] The Respondent's initial response to the complaint was to imply that the design had been checked by a friend of the Complainants and that any issues with it were his responsibility and/or that the Complainant should have checked *[Omitted]* licensing status. He also indicated that suppliers such as *[Omitted]* should have checked weathertightness details. He stated he had confidence in *[Omitted]* work as they had previously worked together. The Board also heard evidence at the hearing that the Respondent often supervised *[Omitted]* who carried out design work outside of his employment and that the Respondent also worked part time with a design business that used his licence for its designs as well as doing his own design work. The Respondent and *[Omitted]* had a commercial arrangement for the provision of supervision. *[Omitted]* also employed a draughtsperson to assist him with this project under his supervision. The draughtsperson completed approximately 30% of his work.
- [18] At the hearing the Respondent accepted that there were issues with the design and specification that was developed under his supervision. He noted that he would not normally have undertaken work on a plaster dwelling or a dwelling with internal gutters as they were risky, and he had limited experience with such design work. It was the first alteration and re-clad project that he had completed by himself outside of his employment. The Board heard evidence that *[Omitted]* also had limited experience with such work. The design submitted contained both plaster and internal gutters.
- [19] The Respondent also accepted that he did not thoroughly check *[Omitted]* work prior to it being submitted under his licence for a building consent. He did not go to site during the design process. The first time he went to site was when issues arose with the build. He stated that he trusted and relied on *[Omitted]* to have done the design work correctly and that if there were issues, they would have been brought to his attention by *[Omitted]*. His evidence was that *[Omitted]* generally works without contact with the Respondent unless there are concerns that need his attention. He accepted that if he had carried out thorough checks then the issues may well have been identified and rectified prior to the design being submitted for a building consent.
- [20] *[Omitted]* confirmed the details as regards the supervision and commercial relationship between him and the Respondent.
- [21] *[Omitted]*, the licensed building practitioner engaged by the Complainants to project manage the build confirmed the issues with the design work and the impact it had on the build. In particular he noted that the elevations were not correct, there were

issues with the connections between existing and new building elements and that they had to seek the advice of an independent architect to resolve them. He noted that it took three thorough reviews by him of the plans to identify all of the issues in them.

- [22] The Board reviewed the design and specification and considered that, as submitted, it was not adequate and that a building consent based on it should not have been granted.

Board's Conclusion and Reasoning

- [23] The Board has decided that the Respondent **has**:

- (a) carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act); and
 - (b) breached section 314B(b) of the Act (s 317(1)(h) of the Act);
- and should be disciplined.

- [24] The reasons for the Board's decisions as follows.

Negligence and/or Incompetence – Design Work

- [25] The Board's considerations as regards negligence are in respect of the Respondent's design work.

- [26] Under the definitions in the Building Act design work forms part of the wider definition of building work and as such, in respect of section 317(1)(b) it comes within the Board's jurisdiction. In this respect the definition of building work in section 7 of the Act states that it "includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act". The Building (Design Work Declared to be Building Work) Order 2007 declared:

3 Design work declared to be building work

- (1) *Design work of the specified kind is building work for the purposes of Part 4 of the Building Act 2004.*
- (2) *Design work of the specified kind means design work (relating to building work) for, or in connection with, the construction or alteration of a building.*

- [27] Part 4 of the Act relates to the regulation of building practitioners. The combined effect of the two declarations is that design work applies to building work in general and to restricted building work for the purposes of the licensing regime.

- [28] The actual finding of negligence relates to the Respondent's supervision of non-licensed persons.

- [29] Negligence is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into, in this case a licensed building practitioner with a design licence. This is described as the *Bolam*⁷ test of negligence which has been adopted by the New Zealand Courts⁸.
- [30] The New Zealand Courts have stated that assessment of negligence in a disciplinary context is a two-stage test⁹. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [31] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act¹⁰. The test is an objective one and in this respect it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹¹.
- [32] The Board notes that the purposes of the Act are:

3 Purposes

This Act has the following purposes:

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
- (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) *people who use a building can escape from the building if it is on fire; and*
 - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁹ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹⁰ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

¹¹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

[33] The Board also notes the provisions of section 14D of the Act which states:

14D Responsibilities of designer

- (1) *In subsection (2), designer means a person who prepares plans and specifications for building work or who gives advice on the compliance of building work with the building code.*
- (2) *A designer is responsible for ensuring that the plans and specifications or the advice in question are sufficient to result in the building work complying with the building code, if the building work were properly completed in accordance with those plans and specifications or that advice.*

[34] Supervise is defined in section 7¹² of the Act. The definition states:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

- (a) *is performed competently; and*
- (b) *complies with the building consent under which it is carried out.*

[35] In C2-01143 the Board discussed the levels of supervision it considers will be necessary to fulfil a licensed building practitioner's obligations noting that the level of supervision required will depend on a number of circumstances including:

- (a) the type and complexity of the building work to be supervised;
- (b) the experience of the person being supervised;
- (c) the supervisor's experience in working with the person being supervised and their confidence in their abilities;
- (d) the number of persons or projects being supervised; and
- (e) the geographic spread of the work being supervised.

[36] The Board also needs to consider whether the work met the requirements of the building code and if not the level of non-compliance.

[37] Supervision in the context of the Building Act has not yet been considered by the courts. It has, however, been considered in relation to Electricity Act 1992¹³. The

¹² Section 7:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

- (a) *is performed competently; and*
- (b) *complies with the building consent under which it is carried out.*

definition of supervision in that Act is consistent with the definition in the Building Act and as such the comments of the court are instructive. In the case Judge Tompkins stated at paragraph 24:

“As is made apparent by the definition of "supervision" in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.”

- [38] The Respondent accepted that there were design issues and that he had not thoroughly checked *[Omitted]* design work. The requirements outlined in *Gallagher* have not been met. There was no actual knowledge of the work being undertaken till issues arose and no acceptable checks were undertaken to make sure that the requirements of the Building Code were correctly reflected in the design. Moreover the type and complexity of the design work was not within the Respondent’s competency, nor the competency or experience of the person being supervised and whilst the Respondent had some experience in working with *[Omitted]* and some confidence in his abilities he did not as regards the type of design work undertaken.
- [39] The Board also notes that the Respondent was, at the time, supervising a high number of projects and it has reservations about how adequate that overall supervision is.
- [40] Given the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.
- [41] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹⁴ the Court’s noted, as regards the threshold for disciplinary matters, that:

[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

- [42] The Board considers that the conduct was serious. The Respondent, in effect, allowed his licence details to be used without actually supervising. He has shown

¹³ *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

¹⁴ [2001] NZAR 74

disregard for the licensing regime and the purposes of it. His actions have had ramifications on the building work that was being carried out.

- [43] Given the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

Outside of Competence

- [44] Section 314B(b) of the Act provides:

*A licensed building practitioner must—
(b) carry out or supervise building work only within his or her competence.*

- [45] In the context of the Act and the disciplinary charge under sections 317(1)(h) and 314B(b) a licensed building practitioner must only work within their individual competence. In this respect it should be noted that if they hold a class of licence for the building work, or design work in this case, that they are undertaking but are not able to successfully or efficiently complete the work then it may be that they are working outside of their competence.
- [46] Likewise if a licensed building practitioner undertakes work outside of their licence class¹⁵ or their Area of Practice (AOP) then they can be found to have worked outside of their competence if they do not have the requisite skill set, knowledge base or experience especially if the building work is noncompliant or is in some way deficient.
- [47] The Respondent has a Design AOP 1 Licence. That licence enables him to carry out design work with a risk matrix, under clause E2 of the Building Code of 12 or less¹⁶. The design that was completed had a risk matrix score greater than 12. As such it was outside of the Respondent's Area of Practice. He could neither carry out nor supervise such a design.
- [48] Moreover, the design involved design elements that the Respondent stated he was not comfortable with and that he normally avoided. That in itself is an indication that the design work was outside of the Respondent's competence. It follows that it was also outside of his competence to supervise.
- [49] Given the above factors the Board has decided that the Respondent has supervised design work outside of his competence and as such that he has committed a disciplinary offence under section 317(1)(h) of the Act.

¹⁵ Note that to carry out restricted building work outside of a licensed building practitioners licence class is a disciplinary offence under s 317(1)(c) of the Act.

¹⁶ The Risk Matrix is contained in E2/AS1

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 Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [51] The Respondent made submissions at the hearing as regards penalty, costs and publication. The Board heard that the Respondent was impacted by a high workflow and that the complaint had impacted him and his workflows since. He stated that he has learnt from the events, he now thoroughly checks all documents and that he would no longer take on work of the type that was involved in the complaint.

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.

- [53] Deterrence was also noted in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*¹⁸. The High Court when discussing penalty stated:

[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner's conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner's offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner's decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.

- [54] Cancellation of a license is the equivalent of striking off within the licensed building practitioner regime.

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

¹⁸ [2012] NZAR 481

- [55] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁹ 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 have the advantage of simplicity and transparency. The court recommended adopting a starting point for penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [56] The Respondent has committed two disciplinary offences. The Board, does however, note the commonality in the disciplinary offending. As such it will treat them as a single offence.
- [57] The offending has been aggravated by the Respondent not taking responsibility for the design failings that were made under his supervision. The Board also considers that the Respondent has shown a flagrant disregard for the licensing regime. He has not taken his responsibilities as a supervisor seriously and appears to be more focused on profiting off his licence than ensuring the designs that are done in his name are done to an acceptable standard.
- [58] The Respondent's initial approach to the investigation is also an aggravating feature in that he tried to blame others rather than taking responsibility.
- [59] Taking all of the above factors into account the Board considered cancelling the Respondent's licence.
- [60] The licensing regime exists to ensure the public can have confidence in those who carry out design work, which is integral to the safe and healthy functioning of a home.
- [61] The Board did note that the Respondent states he has changed the way he operates. It hopes that this is the case and, on the basis of it, the Board has decided not to cancel the Respondent's licence. It will, however, impose a severe fine. The amount is set at \$5,000 an amount that the Board considers reflects the offending and which will also deter other designers from such conduct.

Costs

- [62] 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."
- [63] 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 case²⁰.

¹⁹ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

²⁰ *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.

[64] In *Collie v Nursing Council of New Zealand*²¹ 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.

[65] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$3,000 toward the costs of and incidental to the Board's inquiry.

Publication

[66] 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 Act²². 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.

[67] 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.

[68] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²³. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁴. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁵. 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*²⁶.

[69] 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 interest²⁷. 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.

[70] Based on the above the Board will order further publication.

²¹ [2001] NZAR 74

²² Refer sections 298, 299 and 301 of the Act

²³ Section 14 of the Act

²⁴ Refer sections 200 and 202 of the Criminal Procedure Act

²⁵ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁶ *ibid*

²⁷ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Section 318 Order

[71] 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 \$5,000.

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(1)(iii) of the Act.

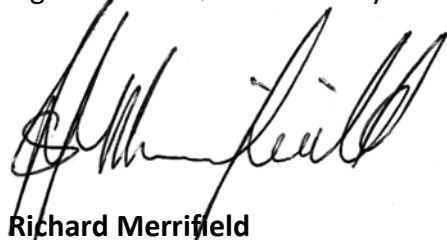
In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the Register and the Respondent being named in this decision.

[72] 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

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

Signed and dated this 5th day of March 2020



Richard Merrifield
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.