

Before the Building Practitioners Board

	BPB Complaint No. CB26088
Licensed Building Practitioner:	Tamati Hawea (the Respondent)
Licence Number:	BP119709
Licence(s) Held:	Carpentry and 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	By audio visual link
Hearing Type:	In Person
Hearing and Decision Date:	13 June 2023
Board Members Present:	
	Mr M Orange, Chair, Barrister (Presiding)
	Mr D Fabish, LBP, Carpentry and Site AoP 2
	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.

Contents

Summary	2
The Charges	2
Evidence	3
Did the Respondent carry out or supervise restricted building work?.....	3
Was the restricted building work complete?.....	3
Has the Respondent provided a record of work?.....	3
Did the Respondent fail to provide a record of work?	4

Summary

- [1] A record of work must be provided to both the owner and the Territorial Authority on completion of restricted building work. In this matter, the Respondent gave evidence that he had left a record of work on-site in 2018 when his restricted building work came to an end. In 2022, when a Code Compliance Certificate was sought, the building consent file did not contain a record of work from the Respondent.
- [2] To make a finding that the Respondent had not provided his record of work, it had to be satisfied that, on the balance of probabilities, that he had not provided it in the manner he claimed. Given the evidence received, the Board decided that it could not be established that he had not provided a record.

The Charges

- [3] 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
- [4] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at [OMITTED], Auckland, 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) with a record of work, on completion of the restricted building work at in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act.

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.

- [5] The Board³ initially dealt with the complaint by way of a Draft Decision. The Respondent disputed the findings. The Draft Decision was set aside, and a hearing was scheduled.

Evidence

- [6] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. 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.
- [7] 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 work⁵ unless there is a good reason for it not to be provided.⁶

Did the Respondent carry out or supervise restricted building work?

- [8] The Respondent was engaged to carry out building work on an alteration to an existing dwelling under a building consent. The building work included restricted building work, and the Respondent accepted that he had supervised the restricted building work.

Was the restricted building work complete?

- [9] The building consent was issued in July 2016, and the Respondent's building work in relation to it was carried out from October 2016 until 2018, when the Respondent ceased to work on the build.
- [10] At the hearing, the Board heard evidence that the Respondent took the build to the stage where the cladding was to be installed and that another contractor completed the cladding. The subsequent contractor was the Complainant in this matter.
- [11] The Respondent accepted that his restricted building work had been completed when the subsequent contractor took over.

Has the Respondent provided a record of work?

- [12] The Complainant alleged that the Respondent had not provided a record of work when his involvement in the build came to an end.
- [13] The Respondent provided an oral response to the complaint in August 2022. He stated that he may have given his record of work to his employee project manager.

³ The Board is a statutory body established under section 341 of the Act.³ 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.

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁵ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

⁶ Section 317(1)(da)(ii) of the Act

He also noted that his company, Premier Renovations Limited, had gone into liquidation in 2019 and that all contracts were signed over to the liquidator.

- [14] The Respondent noted that he did not know who the Complainant was and that if he was provided with further information, he would provide a record of work.
- [15] In November 2022, a written response was provided. In the written response, he stated that he could not recall if he did a record of work and that when he was asked for one in 2022, he had asked for details on the job, which had not been provided.
- [16] The building consent file was obtained from the Territorial Authority. It did not contain a record of work from the Respondent.
- [17] At the hearing, the Respondent gave evidence that when he left the job, he left a completed record of work in the Building Consent file that was on site. The Complainant confirmed that there was a file on site. He stated that he had not noticed a record of work from the Respondent in the file but stated that he had not specifically looked for one. The Respondent stated he could not provide a copy of the work record due to the liquidation, which resulted in the business files being taken into the liquidator's possession.
- [18] When the consented work was complete, and a Code Compliance Certificate was sought in mid-2022, the Complainant stated that a record of work was not located from the Respondent and that he contacted the Respondent to obtain one. The Complainant confirmed that the Respondent sought further information about the job so that a record of work could be completed. The Respondent stated he sought further information because he no longer had access to his records due to the liquidation of his business, and it was one of many jobs he had going at the time and was some time ago, so he could not recall the specific details. The Respondent and Complainant disagreed on whether further information sought was provided.

Did the Respondent fail to provide a record of work?

- [19] The Board decided that there was insufficient evidence to establish, on the balance of probabilities, that the Respondent had not provided a record of work.
- [20] The Respondent's evidence was that he left one in the Council file on site in 2018. If that was the case, then he would have satisfied the requirements to provide one to the owner and the Territorial Authority. The Respondent was not able to provide any corroborating evidence because of the liquidation of his business. Countering the Respondent's claim, the Complainant stated that there was no record of work on the file some four years later when a Code Compliance Certificate was sought.
- [21] The Board considered that if a record of work had been provided by the Respondent in 2018, then there was a possibility that it could have been lost from the file at some time over the ensuing four years.

- [22] The Board was left in a position where there was evidence that a record of work had been left in a Budling Consent file, but no record of work was on that file when it was needed for a Code Compliance Certificate.
- [23] As noted, the Board must be satisfied that, on the balance of probabilities, a record of work was not provided. Given the evidence before it, the Board has determined that it cannot establish, to the required standard, that he did not.
- [24] The Board does recommend that, in the future, the Respondent provides his record of work directly to the Territorial Authority so that there is no risk of it not being provided at a later date. In this respect, in Board decision *Hanif* [2019] BPB 25132, the Board decided that the provisions of section 88(1) of the Act had been satisfied when a record of work was provided to the territorial authority but not the owner in a timely manner.

Signed and dated this 27th day of June 2023

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

M Orange
Presiding Member