

Before the Building Practitioners Board

	BPB Complaint No. CB25434
Licensed Building Practitioner:	Laercio Heiderich (the Respondent)
Licence Number:	BP 114920
Licence(s) Held:	Carpentry

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	Board Inquiry
Hearing Location	Auckland
Hearing Type:	In Person
Hearing and Decision Date:	8 July 2020

Board Members Present:

Chris Preston, Chair (Presiding)
Mel Orange, Deputy Chair, Legal Member
Bob Monteith, LBP, Carpentry and Site AOP 2
Rob Shao, LBP, Carpentry and Site AOP 1

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 not** committed a disciplinary offence.

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Introduction

- [1] The hearing resulted from a Board Inquiry 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 *[Omitted]* 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) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) 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.
- [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 are not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary

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

⁴ [2016] HZHC 2276 at para 164

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 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.

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.

Consolidation

- [9] The Board may, under Regulation 13, consolidate two or more complaints into one hearing but only if the complaints are, in the opinion of the Board, about substantially the same subject matter and the complainant and the licensed building practitioner in respect of each complaint agree to the consolidation.
- [10] The Board sought agreement for consolidation of this matter with complaint number CB25069. The consent of all those involved was forthcoming. The two matters were consolidated.

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

Evidence

- [11] 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.
- [12] 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.
- [13] In addition to the documentary evidence before the Board heard evidence at the hearing from witnesses who attended the hearing.
- [14] The Board Inquiry arose as a result of a hearing into the conduct of *[Omitted]*. That matter (CB25069) was initially heard on 3 September 2019. It was adjourned, part heard, to allow the Board to make further inquiries. Those inquiries arose as a result of evidence heard at the adjourned hearing, which identified other licensed building practitioners who may have carried out or supervised the building work being investigated. The Respondent was one of those persons.
- [15] The CB25069 complaint related to failed inspections and a Notice to Fix being issued in respect of an alteration and extension of an existing residential dwelling under a building consent. An inspection on 5 November 2018 noted the following issues:

Existing weather boards have been removed, as per Councils instruction.

Cavity wrap used is a mixture of Thermakraft 220 and Watergate Plus. Plans specify Watergate. The following items have been found to be non compliant

Building Wrap is very damaged as a result of removing weather boards. It has also been exposed to the weather for a long time and has deteriorated. All building wrap is to be removed.

Some Cavity battens have been replaced with ripped down plywood, of unknown treatment. Cavity battens must be compliant with NZBC B1, B2 & E2

If cavity battens are more than 450 mm apart, other forms of retaining them is required to reduce cavity being compromised as stipulated in the 4 "D" s of cavity requirements.

The new beam in the rafter area of the northern room on the second level requires assesment by a suitably qualified person, to ensure it is fit for purpose. A Minor Variation is required

Window support bars must be fixed with stainless steel screws at 300mm centres.

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

Complex critical junctions, such as deck to wall junctions require specific detailing review from the engaged designer for each area.

The blockwork at the front entrance on the southern side has not been inspected for suitable reinforcing. A Certificate of Acceptance (COA) is required for this work that has not been inspected.

New timber that is supported by the blockwork on the southern side is required to have a damp proof course between the block and timber.

Deck on south eastern side has fall towards the house. This differs from plans.

NOTE: # The scaffold around the building is not safe, and in some places is directly bearing upon the new deck membrane. The scaffold tag is not current. The builder is required to immediately contact the scaffold company and have it made compliant, with a current safety tag.

The site needs to tidy, so that inspectors can carry out inspection safely. There is a large amount of timber lying around with nails protruding from them.

Once building wrap is removed, a full framing inspection is required to ensure that no changes have been made from the consented plans.

Designer to visit site and assess each critical junction. Specific Flashing details are required for junctions around deck areas and other complex areas.

Photo provided of scaffold staff on site by end of day 24th october

Due to the unsafe state of the scaffold, Council was unable to view top level. Therefore, this list is not exhaustive, and will require further assessment.

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Today's inspection is supposed to be a framing inspection. Builder not ready as he has re wrapped the building.

A full framing inspection is required before any further inspections. This includes all new roofing, trusses and purlins and rafters.

Timber consultant to visit site to assess timber. An assessment of the frame saver application is also required. Ensure his full notes are kept on site

Suitably qualified engineer to visit site to assess framing and unauthorised work. Ensure their notes are kept on site. All wall and roof bracing to be reassessed ALL saddle flashings to comply with E2 in regard to installation ALL plumbing and electrical work to be completed before next inspection ALL bracing to be recalculated When ready, book a double time slot with Council for a framing inspection.

Result Fail

[16] A Notice to Fix was issued on 12 November 2018:

1. *A blockwork structure has been constructed outside the front entry on the lower level that has no recorded inspections of any reinforcing steel within it.*
2. *Steel posts with corrosion evident was to be assessed by an engineer. There is no record of this occurring.*
3. *Two coats of frame saver is required to be applied to all exiting external wall framing. This was not completed, as described in previous inspection notes.*
4. *Threshold heights to decks was mentioned in numerous inspection notes, yet there is no evidence that they comply with the Building Code.*
5. *Wall bracing is required to be re-calculated by an engineer.*
6. *Roof framing that has been installed does not comply with the Building Code, nor the consented plans.*

This list is not exhaustive.

[17] The Respondent was identified as being present at the following inspections:

Date	Event	LBP Noted on File	LBP Noted as Attending
17 October 2018	IME – Site Meeting	Nil	Laercio Heiderich
5 November 2018 (noted above)	ICA Cavity Wrap	Laercio Heiderich	Laercio Heiderich

[18] At the hearing, the Respondent confirmed his role on the project as a labour only contractor in the early stages of the build. He stated he carried out some foundation work at the rear of the property and some cladding work. His involvement came to an end as a result of the management style of the owner of the dwelling for whom he was working.

[19] The Respondent was asked to return to the site at a later stage of the build by the homeowner. He attended a site meeting on 17 October 2018 with the Council. He stated the reason for the attendance was to review the work undertaken prior to his engagement. He stated that part of his engagement was to carry out remedial work on work that had been completed prior to his arrival. He gave evidence that he was not responsible for the building work noted in the failed inspection of 5 November 2018. The Board heard evidence from other witnesses present at the hearing as regards who did carry out that work. The evidence supported the Respondent's evidence that he had not carried out the work in question.

Board's Conclusion and Reasoning

[20] The Board has decided that the Respondent **has not**:

- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act);

and **should not** be disciplined.

[21] The Board made its decision on the basis that it was satisfied, on the balance of probabilities, that the Respondent was not involved in the building work identified in the failed inspection or the Notice to Fix.

Signed and dated this 23rd day of July 2020

A handwritten signature in cursive script that reads "Chris Preston".

Chris Preston
Presiding Member