

Before the Building Practitioners Board

	BPB Inquiry No. 25928
Licensed Building Practitioner:	Stephen Hoeata (the Respondent)
Licence Number:	BP 117394
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	Board Inquiry
Hearing Type:	In Person by Audio Visual Link
Hearing and Decision Date:	8 September 2022

Board Members Present:

Mr M Orange, Deputy Chair, Barrister (Presiding)
Mr D Fabish, LBP, Carpentry and Site AoP 2
Mrs F 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.

Disciplinary Finding:

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

Contents

Summary of the Board’s Decision	2
The Board	2
The Hearing	2
The Charges	2
Function of Disciplinary Action	3
Inquiry Process	3
Evidence	3
Board’s Conclusion and Reasoning	4

Summary of the Board’s Decision

- [1] The Respondent has not committed a disciplinary offence. The Board found that the Respondent was not aware that the building contract that the restricted building work related to had come to an end and that deemed completion had occurred.

The Board

- [2] The Board is a statutory body established under the Building Act.¹ 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 Board Inquiry into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations² to hold a hearing in relation to building work at [OMITTED], Auckland. The alleged disciplinary offences 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

¹ Section 341 of the Act.

² 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*³ and in New Zealand in *Dentice v Valuers Registration Board*⁴.

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.

Evidence

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged 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.
- [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 the Respondent. A witness was also summoned but failed to attend.
- [12] The Respondent was engaged as a contracted project manager to assist with an alteration and addition to a residential dwelling. The building work was carried out under a building consent, and it included restricted building work. As such, there was

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

⁴ [1992] 1 NZLR 720 at p 724

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

a requirement for a record of work to be provided by each and every Licensed Building Practitioner who carried out or supervised restricted building work.

- [13] The Respondent described his role as organising and overseeing. He was not engaged on a full-time basis. There were a number of other Licensed Building Practitioners on-site who were carrying out work. There were also non-licensed persons who were being supervised. The Respondent accepted that he had carried out some restricted building work and that he had, at times, supervised others.
- [14] The Respondent described the project as a stop-and-start affair. He noted that, at times, as a result of financial constraints, the project would be put on hold. At those times, he would wait until he was informed that the project was starting again. He took his instructions, in this respect, from [OMITTED], the owner of the building company contracted to complete the build.
- [15] The Respondent's last involvement in the build was in November 2020. He was ordered from the site, and other Licensed Building Practitioners then took the build through to a closed-in stage to protect the dwelling from the elements until such time as it started again. The Respondent stated that he was, from then on, waiting to hear when the project would restart.
- [16] The building work did not recommence with Mr [OMITTED]'s company. A commercial dispute resulted in his contract coming to an end. A complaint was made to the Board about an alleged failure to provide a record of work. The complaint documentation identified the Respondent as another Licensed Building Practitioner who may have carried out or supervised restricted building work. It was on that basis that a Board Inquiry was initiated.
- [17] The Respondent stated that he was not aware of the bundling contract coming to an end until the Board informed him of an Inquiry into his conduct with respect to a failure to provide a record of work. Further, he stated that on being informed of this, he promptly submitted a record of work.

Board's Conclusion and Reasoning

- [18] 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.
- [19] 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 work⁶.

⁶ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

- [20] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.
- [21] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner-builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work, even if they are working on the same restricted building work element.
- [22] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states “on completion of the restricted building work ...”. As was noted by Justice Muir in *Ministry of Business Innovation and Employment v Bell*⁷ “... the only relevant precondition to the obligations of a licenced building practitioner under s 88 is that he/she has completed their work”.
- [23] As to when completion will have occurred is a question of fact in each case. Ordinarily, this is when the consented building work has been finished. At times, however, completion can occur when an engagement to carry out restricted building work comes to an end, such as when there is a commercial dispute. That is what occurred in the present case. The full contract was not carried out, and completion, from the perspective of record of work obligations, occurred. The Respondent, however, was not aware of the building contract had come to an end. When he was informed, he provided a record of work. On that basis, the Board found that the Respondent had not delayed the provision of his record of work and that he had not committed a disciplinary offence.
- [24] The Respondent should note, however, that the requirement is on the licensed building practitioner to provide a record of work, not on the owner or territorial authority to demand one. He is required to act of his own accord and not wait for others to remind him of his obligations. In situations where he might not return to compete restricted building work or is unsure if he will, then it would be advisable to provide a record of work for what he has competed up to that point in time. There is no restriction on the number of records of work that can be provided. If he was to return and carry out or supervise further restricted building work, he could then provide another record of work.

⁷ [2018] NZHC 1662 at para 50

- [25] The Respondent is also reminded that the record of work is to be provided to the owner and the Territorial Authority, not the main contractor. Or, if the main contractor demands one, it is advisable to also provide it to the owner and to the Territorial Authority so as to avoid being caught in payment disputes where documentation might be being withheld.

Signed and dated this 5th day of October 2022

A handwritten signature in black ink, consisting of a large, stylized 'M' with a horizontal line extending to the right and a vertical line extending downwards from the center of the 'M'.

Mr M Orange
Presiding Member