

## Before the Building Practitioners Board

	BPB Complaint No. 26503
Licensed Building Practitioner:	Benjamin Jones (the Respondent)
Licence Number:	BP 129447
Licence(s) Held:	Carpentry

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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 Date:	23 January 2025
Decision Date:	6 March 2025

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2  
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor

#### 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** committed a disciplinary offence under section 317(1)(i) of the Act.

The Respondent is fined \$3,500 and ordered to pay costs of \$3,100. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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## Summary of the Board’s Decision

- [1] A complaint was made about the failure to undertake building work after a substantial deposit had been paid. The evidence established that the Respondent obtained the deposit without a genuine intention to carry out the work. The Board decided that he had obtained an unethical gain and that he had brought the licensing regime into disrepute.
- [2] The Respondent does not hold a practice licence. As such, the Board was limited in its penalty options to a fine. It decided a fine of \$3,500 was appropriate and that the Respondent would be ordered to pay costs of \$3,100. The Board also decided that it would, in addition to recording the matter on the Public Register, publish its decision in Code Words.

## 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.<sup>1</sup>

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<sup>1</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. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

- [4] In this matter, the disciplinary charge the Board resolved to further investigate<sup>2</sup> was whether the Respondent may have conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute contrary to section 317(1)(i) of the Act.

### **Background to the Decision**

- [5] The Board<sup>3</sup> 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.
- [6] A Notice of Proceeding was issued on 23 October 2024 detailing the charges the Board would investigate at a hearing. A prehearing conference was scheduled for 19 November 2024. The Respondent was informed of the conference and emailed stating he would attend. He did not. The matter was set down for a hearing, and a Notice of Hearing was issued on 11 December 2024.
- [7] The notices were sent to email addresses the Respondent had previously responded to in relation to the matter. On the day of the hearing, the summoned witness appeared. The Respondent did not. The Case Officer attempted to contact the Respondent. An application for an adjournment had not been made. Nevertheless, the Board considered whether, in the interests of natural justice, one should be granted.
- [8] The Board noted the expense that had been incurred in convening the hearing and the Respondent's failure to engage in the process. Notwithstanding, the Board was concerned that if it continued the hearing, natural justice principles, and in particular the Respondent's right to appear, be heard and challenge the evidence, may be put at risk.
- [9] The Board decided that it would proceed with the hearing but that it would adopt a procedure that would still afford the Respondent his natural justice rights. The procedure adopted was as follows:
- (a) the Board would receive the evidence of the witness that was present and would then adjourn the hearing;
  - (b) a transcript of the evidence received would be produced and provided to the Respondent together with a further copy of the hearing file and additional evidence submitted by the Complainant; and
  - (c) a direction would be issued that the Respondent is to advise, no later than 10 working days after the transcript is issued to him, whether he requires that

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<sup>2</sup> 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.

<sup>3</sup> The Board is a statutory body established under section 341 of the Act.<sup>3</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 resume to him to cross-examine any of the witnesses and/or to call or give evidence in his defence.

- [10] A Board Minute was issued outlining the above, and the Respondent was directed to advise the Board Officer no later than 10 working days after a transcript and further evidence are issued to him if he requires a resumption of the hearing. He was also informed that if he did not give notice, then the Board would meet and make a decision on the basis of the evidence before it, including any further evidence or submissions provided by the Respondent.
- [11] The Respondent has not responded to the Board's notice. Accordingly, the Board has made a decision.

### **Evidence**

- [12] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offence has been committed<sup>4</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.

### **Disrepute**

- [13] Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public. Examples include:
- criminal convictions<sup>5</sup>;
  - honest mistakes without deliberate wrongdoing<sup>6</sup>;
  - provision of false undertakings<sup>7</sup>; and
  - conduct resulting in an unethical financial gain<sup>8</sup>.
- [14] The Courts have consistently applied an objective test when considering such conduct.<sup>9</sup> The subjective views of the practitioner or other parties involved are irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.<sup>10</sup>
- [15] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,<sup>11</sup> that the Respondent has brought the regime into disrepute and that the conduct was sufficiently serious enough for the Board to make a disciplinary finding.<sup>12</sup>

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<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

<sup>5</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>6</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>7</sup> *Slack, Re* [2012] NZLCDT 40

<sup>8</sup> *Collie v Nursing Council of New Zealand* [2000] NZAR 7

<sup>9</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>10</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>11</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 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.

<sup>12</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

The conduct complained about

- [16] In April 2022, the Respondent entered into a contract to provide building services with the Complainant by way of his company Jonesy Construction Limited. The correspondence between the Complainant and the Respondent shows that the Respondent pressured the Complainant to pay a deposit so that the building work could be started. For example, on 21 March 2022, the Respondent wrote:

*Before we move forward are you in a position to make the deposit of at least 35K towards the contract?*

- [17] Then, on 3 April 2022, the Respondent wrote:

*I will issue 35k invoice which needs to be paid before we can get started any further, the deposit is higher than this but I will allow the 35k to be paid first and the remaining to be paid when you have the loan or funds available.*

- [18] The deposit was paid on 5 April 2022, and the contract was signed on 6 April 2022. The Respondent then became difficult to contact and stated that he was unwell because of Coronavirus and that he would update the Complainant about progress once he was well.

- [19] At the hearing, the Complainants outlined that the Respondent had informed them that he would have design documentation developed for them and that the Respondent would arrange a Master Builders Guarantee for their build. A Master Builders guarantee was not arranged.

- [20] The Complainants stated that they were provided with some concept drawings but that they were not sufficient to obtain lending or to allow them to proceed with the build.

- [21] On 11 May 2022, Jonesy Construction Limited was placed into liquidation. The First Liquidator's Report notes:

*The Director has advised that throughout 2019 and 2020, the Company was undertaking work for a developer who faced financial difficulty, resulting in substantial losses to the Company, however, it was anticipated that these losses would be recouped from future work and contracts.*

And

*Following an assessment of the business' financial position, advice and the inability for the Director to continue working in the business due to health issues, it was decided that the Company should be placed into liquidation to prevent further losses to creditors.*

- [22] The Fourth Liquidator's Report notes six secured creditors filed claims totalling \$765,922, that \$1,722,418 of claims had been made by trade creditors, \$5,211,275 of claims by homeowners and that there were \$64,919 of unsecured claims from employees.

- [23] The above indicates that when the Respondent took the deposit, he was aware that his company was in financial difficulty.
- [24] After the company was placed in liquidation, the Complainant was not able to contact the Respondent. The Complainants have not received any repayments from the Respondent, his company or the liquidator.
- [25] The conduct complained about falls into the category of an unethical financial gain. In short, the Respondent has taken funds knowing that he was in financial difficulty and that he would not be able to fulfil the contract that he had entered into. In those circumstances, the Board finds that the conduct is disreputable. It is conduct that would lower the reputation of Licensed Building Practitioners in the eyes of the public.

#### The Respondent's Response

- [26] The Respondent did provide written submissions in response to the Board's Draft decision. With respect to the company's financial position:

*May 13th, 2021, the company's financial position was assessed and discussed with the company accountant, a letter confirming the company's financial position was "much improved" from previous losses and that the company was on the right track. A copy of email statement from company accountant attached.*

*The company continued trading successfully with continued improvement and had a clear forecast of projected works and contracts.*

- [27] The correspondence from the accountant that was provided did note an improvement but also noted "increased term debt" losses that had been carried forward and need to reduce operating expenses
- [28] The Respondent outlined his circumstances leading up to the liquidation and noted:

*There is clear evidence that this was not a pressured situation, I was not actively 'aware' of any significant financial difficulty, there was intent to provide continued services and intention to fulfil the contract, the Complainant was made clearly aware of the company process and the company had already invested significant time and cost without request for payment.*

- [29] With regard to the payment of a deposit, the Respondent set out the reasons why deposits were sought from clients. He stated:

*In any dealings with the Complainant, I had clear intent of proceeding with a design and build package, first contact from the Complainant was September 24th, 2021, and a request for any deposit was not issued until the 4th April 2022.*

*Over 70 emails were exchanged between the company and the Complainant from 24/09/2021 and 13/04/2022.*

- [30] The Respondent stated he had spent many hours on the project in meetings, site visits and tours of other homes with the Complainants.
- [31] Countering this, was evidence submitted by the Complainants after the hearing. They stated:

*..., prior to entering into the contract, I repeatedly informed been that my bank required an approved loan, which depended on receiving the design within two weeks of our agreement. I have attached proof of these conversations and email exchanges in my previous submission. Ben provided assurances multiple times that he would forward the draft design to his architect, promising to act immediately. However, as subsequently came to light that he never fulfilled this commitment.*

- [32] The emails showed that a designer had not been instructed.

Was the conduct serious enough

- [33] The Board's position was that the conduct was serious. It was premeditated and deliberate in that the correspondence between him and the Complainant showed that he was applying pressure to obtain payment of the deposit and that once he was paid, he disengaged.

- [34] The Respondent submitted that the deposit was obtained as per normal business practices and that there was no undue pressure. He submitted:

*Any perceived disengagement following the deposit payment was not intentional but rather the result of unexpected health issues, which severely impacted my ability to continue working at the time.*

*Considering these points, I respectfully submit that the Board's characterization of my conduct as premeditated and deliberate is not fully supported by the facts. My actions were consistent with standard company practices, and any disruption in communication or project management was due to unforeseen personal health challenges, not an intent to disengage after receiving the deposit.*

- [35] The Respondent provided copies of email exchanges.
- [36] The Board has taken the Respondent's response to the Draft Decision into consideration.
- [37] The Respondent was the sole shareholder and director of Jonesy Construction. It is not credible that he was not aware of the company's financial position. If he had been unaware, he would, given the size of the company's failure, have been in dereliction of his duties as a director.
- [38] The Board does not accept that the Respondent had spent the amount of time or resources on the as he claimed. The evidence points towards him doing the bare

minimum and providing false assurances regarding design documentation so that a deposit could be obtained.

- [39] The key to this matter is the timing of the deposit payment in relation to the liquidation. The deposit was obtained on 5 April 2022, and the company went into liquidation on 11 May 2022, just over one month later. The Board's view is that the Respondent knew or should have known that the company was not in a position to be able to fulfil its obligations under the contract. In those circumstances, the Respondent should not have sought the deposit.
- [40] Given the false assurances given and the state of the company when the deposit was sought, the Board finds that the Respondent's conduct was designed to obtain an unethical financial gain

### **Board's Decision**

- [41] The Respondent **has** brought the regime into disrepute.

### **Penalty, Costs and Publication**

- [42] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [43] The matter was dealt with at a hearing that the Respondent did not attend. The Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

### Penalty

- [44] The Board has the discretion to impose a range of penalties.<sup>ii</sup> Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.<sup>13</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>14</sup>
- (a) protection of the public and consideration of the purposes of the Act;<sup>15</sup>
  - (b) deterring other Licensed Building Practitioners from similar offending;<sup>16</sup>
  - (c) setting and enforcing a high standard of conduct for the industry;<sup>17</sup>

<sup>13</sup> *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

<sup>14</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>15</sup> Section 3 Building Act

<sup>16</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>17</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724



- (d) penalising wrongdoing;<sup>18</sup> and
- (e) rehabilitation (where appropriate).<sup>19</sup>

- [45] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases<sup>20</sup> and applying the least restrictive penalty available for the particular offending.<sup>21</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>22</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>23</sup>
- [46] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.<sup>24</sup>
- [47] The Respondent was disciplined by the Board in 2023 in relation to two complaints. The conduct investigated in those matters was that the Respondent had brought the regime into disrepute. Conduct also related to the period just prior to the liquidation of his company. The Board found that he had brought the regime into disrepute, and it cancelled his licence. The Respondent does not currently hold a practising licence. In order to obtain one, he will have to apply and meet licensing requirements.
- [48] Because the Respondent does not hold a licence, the Board cannot consider cancellation or suspension as a penalty. In effect, the Board's penalty options are limited to the imposition of a fine. It is to be noted, however, that if the Board imposes a fine, the Respondent will not be able to be re-licensed until such time as that fine is paid. On that basis, the Board has decided that a fine is the appropriate form of penalty. In terms of a starting point, the Board considers that the sum of \$3,500 is appropriate and consistent with other fines imposed by the Board for similar offences. There are no mitigating factors. As such, the fine will not be adjusted.

### Costs

- [49] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.<sup>25</sup>

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<sup>18</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>19</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

<sup>20</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>21</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>22</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>23</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>24</sup> In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

<sup>25</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

- [50] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings<sup>26</sup>. The starting point can then be adjusted up or down, depending on the particular circumstances of each case<sup>27</sup>.
- [51] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was moderately complex. Adjustments are then made.
- [52] A hearing has been held. The Board's scale costs for a half-day hearing is \$3,100, and that is the amount the Respondent is to pay toward the costs of and incidental to the Board's inquiry. It is significantly less than 50% of actual costs.

#### Publication

- [53] 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 Act,<sup>28</sup> and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [54] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>29</sup> Further, as a general principle, publication 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, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.<sup>30</sup>
- [55] Based on the above, a summary of the decision will be published. The Respondent will be named in that publication.

#### **Section 318 Order**

- [56] For the reasons set out above, the Board directs that:

<b>Penalty:</b>	<b>Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$3,500.</b>
<b>Costs:</b>	<b>Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,150 (GST included) towards the costs of, and incidental to, the inquiry of the Board.</b>

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<sup>26</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>27</sup> *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.

<sup>28</sup> Refer sections 298, 299 and 301 of the Act

<sup>29</sup> Section 14 of the Act

<sup>30</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

**Publication:** The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(l)(iii) of the Act.

**In terms of section 318(5) of the Act, the Respondent will be named in this decision, which will be published on the Board's website, and he will be named in a Code Words article.**

- [57] 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.

#### **Submissions on Penalty, Costs and Publication**

- [58] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **Thursday 8<sup>th</sup> of May 2025**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

#### **Right of Appeal**

- [59] The right to appeal Board decisions is provided for in section 330(2) of the Act<sup>iii</sup>.

Signed and dated this 14<sup>th</sup> day of April 2025



**Mr M Orange**  
Presiding Member

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#### **<sup>i</sup> 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:*

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- (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 318 Disciplinary Penalties**

- (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 1 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.*

## **iii 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—*

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- (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.*