

Before the Building Practitioners Board

	BPB Complaint No. 26584
Licensed Building Practitioner:	Jung Joon Park (the Respondent)
Licence Number:	BP 138932
Licence(s) Held:	Carpentry and Site AoP 2

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 Type:	On the Papers
Draft Decision Date	18 January 2025
Final Decision Date:	31 March 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr G Anderson, LBP, Carpentry and Site AoP 2
Mr C Lang, Building Surveyor and 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)(g) of the Act.

The Respondent is fined \$1,500 and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

Contents

Summary of the Board’s Final Decision	2
The Charges	3
Regulation 10 Decision	3
Regulation 9 Decisions.....	3
Complainant’s Regulation 9 Submissions	5
Draft Decision Process	5
Evidence	5
Background	6
Prescribed Disclosure Information and Checklist	6
Contract	6
Code of Ethics	6
The conduct under investigation	7
Was the conduct serious enough	7
Respondent’s submissions	8
Board Decision	8
Penalty, Costs and Publication	8
Penalty	8
Costs.....	10
Publication	10
Section 318 Order	11
Right of Appeal	11

Summary of the Board’s Final Decision

- [1] The Respondent was contracted to undertake building work for the Complainant. He did not, prior to building work being undertaken, provide prescribed disclosure information or a prescribed checklist, nor a written contract as per the requirements in Part 4A of the Building Act and the Building (Residential Consumer Rights and Remedies) Regulations 2014.
- [2] The Board found that the Respondent had breached clause 10 of the Code of Ethics for Licensed Building Practitioners (LBPs), which requires that LBPs comply with the Building Act and the Building (Residential Consumer Rights and Remedies) Regulations 2014. The Respondent is fined \$1,500 and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

The Charges

- [3] Under regulation 10 of the Complaints Regulations, the Board must, on receipt of the Registrar's Report, decide whether to proceed no further with the complaint because regulation 9 of the Complaints Regulations applies. Having received the report, the Board decided that regulation 9 applied to some but not to all of the allegations.

Regulation 10 Decision

- [4] The allegation that the Board resolved to further investigate¹ was whether the Respondent may have breached the Code of Ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act. The specific provisions of the Code the Board decided to investigate are:

10. You must comply with the law

- (1) *When you carry out or supervise building work, you must ensure that the building work complies with the following:*
- (a) *the Building Act 2004;*
 - (c) *the Building (Residential Consumer Rights and Remedies) Regulations 2014:*

- [5] The specific matters to be investigated under Principle 10 are the alleged failures to comply with:

- (a) section 362D of the Act and regulation 5 of the Building (Residential Consumer Rights and Remedies) Regulations 2014 (the Consumer Regulations) with respect to a failure to provide the prescribed disclosure information and checklist; and
- (b) section 362F of the Act and regulation 6 of the Consumer Regulations in respect of a failure to provide a written building contract.

- [6] The Complainant also alleged that the Respondent had carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act and had breached other clauses of the Code of Ethics. The Board decided it would not further investigate those matters on the basis that regulations 9(a) and (f)(ii) of the Complaints Regulations applied.

Regulation 9 Decisions

- [7] The building work complained about was carried out under Schedule 1 of the Building Act and did not require a building consent. As such, it was not restricted building work, as defined in the Act, and did not have to be carried out or supervised by a Licensed Building Practitioner (LBP). On that basis, regulation 9(a) of the Complaints Regulations applied to those allegations that related to restricted

¹ 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.

building work and to building consents because they did not come within the grounds for discipline.²

- [8] Turning to the remaining allegations, the Board decided that regulation 9(f)(ii) of the Complaints Regulations applied. It states:

Complaint not warranting further investigation

A complaint does not warrant further investigation if—

- (f) the investigation of it is—*
- (ii) unnecessary;*

- [9] The Respondent did not carry out any of the building work complained about. He acted as a project manager. The actual building work was subcontracted to others. Because the building work was not restricted building work, it did not have to be carried out or supervised by an LBP. That meant the Respondent was somewhat remote from the building work but not from the contractual relationship. Also, much of what was complained about was contractual in nature.

- [10] The disciplinary process is not designed to redress issues or disputes between contracting parties. In *McLanahan and Tan v The New Zealand Registered Architects Board*,³ 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.”

- [11] 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 persons⁴:

... 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.

- [12] On this basis, the Board has decided that whilst there was some evidence of building work that may not have been completed to an acceptable standard or of breaches to

² Regulation 9(a) provides:

Complaint not warranting further investigation

A complaint does not warrant further investigation if—

- (a) it does not come within the grounds for discipline;*

³ [2016] HZHC 2276 at para 164

⁴ *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

the Code of Ethics, the matters raised did not reach the seriousness threshold as outlined in the above court decisions.

- [13] It is on the basis of the above matters, and the facts as presented in the complaint and response that the Board has decided that it will not proceed with the allegations of negligence, incompetence or other ethical matters complained about.

Complainant's Regulation 9 Submissions

- [14] The Complainant filed submissions on the Board's regulation 9 decision after it had released the Draft Decision.
- [15] The Complainant took issue with the veracity of the Respondent's response to complaint and urged the Board to reconsider its regulation 9 decision. The Complainant provided additional evidence and submissions in support.
- [16] The Board has reviewed the submissions and evidence provided. It has not been swayed from its original decision. The regulation 9 decision stands.

Draft Decision Process

- [17] In this instance, the Board decided that a formal hearing was not necessary. The Board considered that there was sufficient evidence before it to allow it to make a decision on the papers. It noted, however, that there may have been further evidence in relation to the matter that the Board was not aware of. To that end, it issued a Draft Decision. The Respondent was provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. The Board further noted that if the Respondent requested an in-person hearing, then the Draft Decision would be set aside, and a hearing would be scheduled.

Evidence

- [18] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. 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.
- [19] The Respondent provided a written response to the complaint on 19 December 2024. The Respondent had been given until 22 August 2024 to provide his response and, at his request, extensions to 20 September 2024 and then 18 November 2024. A response was received on 13 November 2024, and the Board had met to consider the matter on 16 December 2024. On 19 December 2024, the Respondent provided a further response. The Board reviewed that response and took it into account when making its decision.

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

Background

Prescribed Disclosure Information and Checklist

- [20] Prior to the building work commencing, the Respondent did not comply with the provisions of section 362D of the Act or regulation 5 of the Building (Residential Consumer Rights and Remedies) Regulations 2014.
- [21] Section 362D requires a building contractor, which the Respondent was, to provide “prescribed disclosure information” and a “prescribed checklist” for building work that exceeds the prescribed minimum price. The prescribed minimum price is \$30,000 (GST inclusive). The Respondent’s quote and invoicing building work exceeded that amount by a long margin.
- [22] Regulation 5 of the regulations sets out what the “prescribed disclosure information” and a “prescribed checklist” are.
- [23] Overall, the statutory provisions are designed so that a consumer can make an informed choice before entering into a building contract.

Contract

- [24] The Respondent also failed to provide a building contract prior to undertaking the building work. Section 362F of the Act mandates a contract if the price for residential building work exceeds the prescribed minimum price. It also states that the residential building contract must be in writing, dated and comply with the regulations.⁶ Regulation 6 of the Consumer Regulations sets out the prescribed content for residential building contracts.

Code of Ethics

- [25] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.⁷ It was introduced in October 2021 and came into force on 25 October 2022. The obligations are new, but there was a transition period of one year to allow practitioners to become familiar with the new obligations. Whilst the Code of Ethics is new, ethics have been a part of other regulatory regimes⁸ for some time, and the Board has taken guidance from decisions made in other regimes.
- [26] The Code also differentiates between Licensed Building Practitioners who are in business and those who are employed in that some of the ethical obligations only apply to those who are in business. In this matter, the Respondent was in business.
- [27] The disciplinary provision in the Act simply states, “has breached the code of ethics”. Most disciplinary regimes frame the charge as some form of malpractice or misconduct, and the Board has considered the allegations within such a framework and with reference to superior court decisions. Within this context, in *Dentice v*

⁶ Building (Residential Consumer Rights and Remedies) Regulations 2014

⁷ Building (Code of Ethics for Licensed Building Practitioners) Order 2021

⁸ Lawyers, Engineers, Architects and Accountants, for example

Valuers Registration Board,⁹ Chief Justice Eichelbaum stated the purposes of disciplinary processes are to:

Enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practice the profession in question; to protect both the public, and the profession itself, against persons unfit to practice; and to enable the professional calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.

- [28] The Board also notes that the courts have applied a threshold test to disciplinary matters, and it has applied those tests. In *Collie v Nursing Council of New Zealand*,¹⁰ the test was stated as:

[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.

- [29] Finally, when considering alleged breaches of the Code of Ethics, the Board needs to consider whether the conduct, if upheld as a breach of the Code, reaches the threshold for a disciplinary finding of disrepute, which is a more serious disciplinary finding.

The conduct under investigation

- [30] Two Code of Ethics provisions were under investigation. Both are related to the provision of statutorily required documentation. In total, three statutorily required documents were not provided. They were the prescribed disclosure information, prescribed checklist and a contract.
- [31] The Respondent has not provided a response to the allegations. As such, there is no evidence before the Board that refutes the allegations.
- [32] Clause 10 of the Code of Ethics requires compliance with the Building Act and the Building (Residential Consumer Rights and Remedies) Regulations 2014. It is clear that the Respondent has not, insofar as he has not provided mandatory documentation, complied with those legislative provisions. It follows that he has breached the Code of Ethics. The question then becomes one of whether the conduct was serious enough to warrant a disciplinary outcome.

Was the conduct serious enough

- [33] The Board has decided that the conduct was serious enough.
- [34] Regarding the prescribed disclosure information and checklist, the Respondent should be aware of his obligations, and his failure to comply resulted in the

⁹ [1992] 1 NZLR 720 at 724

¹⁰ [2001] NZAR 74

consumer not being as informed as they should have been, which, in turn, may have impacted their decision-making.

- [35] Turning to the failure to provide a contract, contracts provide certainty and ensure that the parties know what their contractual rights and obligations are. They also make enforcement of those contractual rights and obligations easier. In this respect, the Board also notes that a dispute has since arisen, and its management and resolution will have been made more difficult by the absence of a contract. The legislative provisions were put in place to protect consumers because building contracts are prone to disputes and are of high value and importance to them.
- [36] It should be noted, as regards seriousness, that under subsections 362D(4) and 362F(3) of the Act, a person who contravenes either section commits an infringement offence and is liable to a fine not exceeding \$2,000. The current prescribed infringement fine is \$500 for each contravention.¹¹ On that basis, the Respondent would have been liable to \$1,500 in infringement fines.

Respondent's submissions

- [37] The Respondent has not made a submission or requested a hearing. As such, the Board has made a final decision.

Board Decision

- [38] The Respondent has breached clause 10 of the Code of Ethics.

Penalty, Costs and Publication

- [39] 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.
- [40] The matter was dealt with on the papers. The Board made an indicative order in its Draft Decision. It has since received submissions and has made a final decision regarding penalty, costs, and publication.

Penalty

- [41] The Board has the discretion to impose a range of penalties.ⁱⁱ 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.¹² It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹³

¹¹ Schedule 1 of the Building (Infringement Offences, Fees, and Forms) Regulations 2007

¹² *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]

¹³ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

- (a) protection of the public and consideration of the purposes of the Act;¹⁴
 - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;¹⁵
 - (c) setting and enforcing a high standard of conduct for the industry;¹⁶
 - (d) penalising wrongdoing;¹⁷ and
 - (e) rehabilitation (where appropriate).¹⁸
- [42] 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 cases¹⁹ and applying the least restrictive penalty available for the particular offending.²⁰ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty²¹ that is consistent with other penalties imposed by the Board for comparable offending.²²
- [43] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.²³
- [44] In this matter, the Board adopted a starting point of a fine of \$2,000. In setting the starting point, the Board took into account that whilst the Code of Ethics is new and the Board has been taking an educative approach towards its enforcement, the requirements to provide prescribed disclosure information, checklists, and contracts have been in place since 2014, so practitioners should be well aware of them and be complying with those requirements. Also, as previously noted, under Schedule 1 of the Building (Infringement Offences, Fees, and Forms) Regulations 2007, the fines that would be imposed if the matter had been dealt with by way of infringement notices would have been \$1,500. On that basis, and having taken into consideration other penalty decisions made and the fact that this matter is being dealt with as a disciplinary matter following a complaint, the Board arrived at the starting point of \$2,000.
- [45] The matter has been dealt with by way of a Draft Decision. On that basis, the Board has applied a 25% penalty reduction. The fine is reduced to \$1,500. The Board does

¹⁴ Section 3 Building Act

¹⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁶ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹⁷ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁸ *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

¹⁹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁰ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

²¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

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

²³ 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.

not consider that there are any other mitigating factors it should take into consideration.

Costs

- [46] 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.²⁴
- [47] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²⁵. The starting point can then be adjusted up or down, depending on the particular circumstances of each case²⁶.
- [48] 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.
- [49] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$700 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a moderately complex matter that has been dealt with by way of a Draft Decision. It is significantly less than 50% of actual costs.

Publication

- [50] 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,²⁷ 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.
- [51] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.²⁸ 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.²⁹
- [52] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note,

²⁴ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

²⁵ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²⁶ *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.

²⁷ Refer sections 298, 299 and 301 of the Act

²⁸ Section 14 of the Act

²⁹ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

[53] 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 \$1,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$700 (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(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.

[54] 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

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

Signed and dated this 15th day of April 2025.



Mr M Orange
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 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—

-
- (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.*