

Before the Building Practitioners Board

	BPB Complaint No. CB25458
Licensed Building Practitioner:	Rajendra Krishna (the Respondent)
Licence Number:	BP 112034
Licence(s) Held:	Carpentry

Penalty Decision of the Board under section 318 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Type:	In person
Hearing Location:	Auckland
Hearing Date:	13 April 2021
Substantive Decision Date:	19 April 2021
Penalty Decision Date:	8 June 2021

Board Members (Penalty Decision):

Mr M Orange, Deputy Chair, Legal Member (Presiding)
Mr B Monteith, LBP, Carpentry and Site AOP 2
Mr R 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.

Disciplinary Finding:

The Respondent **has** committed disciplinary offences under sections 317(1)(b), 317(1)(d) and 317(1)(da)(ii) of the Act.

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Summary of the Board's Penalty Decision

- [1] The Respondent has carried out building work in a negligent manner, in a manner contrary to a building consent, and has failed to provide a record of work on completion of restricted building work. The Respondent is fined the sum of \$4,000 and ordered to pay costs of \$2,500. A summary of the matter will be published.

The Charges

- [2] This penalty decision arises out of the Board's substantive decision in which it found that the Respondent had committed the following disciplinary offence(s):
- (a) carried out or supervised building work or building inspection work in a negligent 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
 - (c) 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).
- [3] 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.
- [4] In its substantive decision, the Board set out its indicative position as regards penalty, costs and publication and invited the Respondent to make written submissions on those matters.
- [5] On 19 May 2021, the Board received the Respondent's submissions. It has considered them and made the following decisions.

Penalty

[6] The Board's initial view was that the Respondent should pay a fine of \$4,000.

[7] The Respondent submitted that a fine of \$500 would be appropriate.

I most respectfully request that the penalty component be reviewed or reduced as these will have adverse effect on my wellbeing during these hard times. I was unable to do take any new building work since this complaint was made. I had serious issues on my mental health and penalising with such harsher amount will reduce my chance to put food on the table. I hope the Board will take some responsibility in allowing me to continue my practises, rather put another burden on Governments social pay-outs.

[8] The Respondent expressed confusion as to why the penalty had increased from that which was indicated in the Board's Draft Decision. The Respondent should note that when the Board deals with a matter on the basis of a draft decision, it reduces the level of fine in recognition of the process used and the savings it creates for the licensing regime. In this instance, the Respondent rejected the Board's Draft Decision and requested an in-person hearing. The discount applied during the Draft Decision process is no longer available.

[9] The Respondent has not expressed any level of acceptance of his failures, nor of the Board's decision. Rather he has implied that the interpreter engaged by the Board was the reason why the Board made the decisions that it did. The Respondent is reminded that he can appeal the Board's decision to the District Court if he disagrees with it.

[10] The offending was serious, and it was aggravated by this being the second time the Respondent has before the Board. The Board does not believe he learnt from that case and that a more significant penalty is required so that he learns and amends the way in which he carries out and supervises building work.

[11] Having considered the submissions received, the Board has decided to uphold its initial view. The fine is set at \$4,000.

Costs

[12] The Board's initial view was that \$3,500 in costs was appropriate. Again, the Draft Decision process level of costs is no longer available. Significant costs have been incurred, and it is appropriate that the Respondent contributes to those costs.

[13] The Respondent submitted:

While I can understand that the Board has found my guilt on 2 issues on the facts before the Board, then the cost is somehow automatically becomes a burden on my shoulder irrespective whether I agree or disagree. I request that \$3500 is excessively high and unjustified, the proportion of amount is requested to be halved in view of my current financial situation

[14] The Respondent's financial situation is a factor. At the same time the financial burden of the investigation and hearing should not fall to other Licensed Building Practitioners.

- [15] The Respondent should also note that he may request that he be allowed to pay the fines and costs over time.
- [16] Notwithstanding, the above the Board has decided that it will reduce the costs of \$2,500 on the basis of the Respondent's financial situation.

Publication of Name

- [17] The Board's initial view was there were good reasons to further publish the matter.
- [18] The Respondent submitted:
- *I utterly request that publication be withheld as this would have adverse effect on my future job prospect and livelihood. There are 3 penalties altogether, fine, cost and publication.*
 - *And if the Board decides to penalise me fully then meeting the payments would be impossible and unlikely in my health and financial situation. If the boards decides to reconsider the penalty component, I assure you that I have taken the boards observation seriously and I have learnt a lesson on the mistakes. I fully promise that the rules and regulations would be followed and adhered to. Following the rules would be my utmost priority.*
- [19] Countering this is the fact that the offending was serious, and the Respondent has not changed his ways following his first appearance before the Board. It is important that other Licensed Building Practitioners learn from the case and that the public are informed. The matter will be published.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(f) of the Act, the Respondent's is ordered to pay a fine of \$4,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,500 (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(I)(iii) of the Act.

In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision.

- [21] 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

[22] The right to appeal Board decisions is provided for in s 330(2) of the Actⁱⁱ.

Signed and dated this 9th day of June 2021



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 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.*