

Before the Building Practitioners Board

	BPB Complaint No. 26322
Licensed Building Practitioner:	Anil Kumar (the Respondent)
Licence Number:	BP 123444
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Complaint proceeding as a Board Inquiry
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	23 July 2024
Substantive Decision Date:	24 February 2025
Penalty Decision Date:	29 April 2025

Board Members:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr D Fabish, Carpentry and Site AoP 2 (till 16 October 2024)
Mr G Anderson, LBP, Carpentry and Site AoP 2

Appearances:

J Hilario, Counsel for the Registrar

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) and (d) of the Act.

The Respondent's licence is cancelled, and he may not apply to be relicensed for a period of six months and ordered to pay costs of \$2,500. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

Summary of the Board's Penalty Decision

- [1] The Board found that the Respondent had carried out and supervised building work in a negligent and incompetent manner and in a manner that was contrary to the building consent issued. The Board also found there had been a pattern of non-compliance over multiple properties. The Board noted that the disciplinary offending was serious, and it decided it would cancel the Respondent's licence and order that he not be able to reapply to be licensed for a period of six months. The Board also ordered that the Respondent pay costs of \$2,500 and that the Board's decision be published. A record of the offending will also be recorded on the public Register for a period of three years.
- [2] The Respondent submitted, in response to the indicative penalty order, that his licence should not be cancelled. The Board did not accept that submission. It confirmed the penalty, costs and publication orders.

The Charges

- [3] This penalty decision arises out of the Board's substantive decision in which it found that the Respondent had breached section 317(1)(b) and (d) of the Act.
- [4] 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.
- [5] In its substantive decision, the Board set out its indicative position regarding penalty, costs, and publication and invited the Respondent to make written submissions on those matters.
- [6] On 31 March 2025, the Board received the Respondent's submissions. It has considered them and made the following decisions.

Penalty

- [7] The Board's initial view was that the cancellation of the Respondent's licence was the appropriate penalty, and that it should order that he not be able to reapply to be licensed for a period of six months.
- [8] The Respondent submitted:

Dear the lbp.govt.nz i am anil kumar lbp license number 123444 justice request to the board have build many homes for kiwis and code of compliance given my records shows to the council records and still work in progress if i dont have building license i cant complete my work owners needs clients to be license i dont have work how i will paying this fines which bords has put on me i have already suffered a lot with unpaid payment from the clients which i paying and now 4 hefty fines to me i am in big state of shock were i get this money to pay i am in stress if I have license to continue my work there's was chance of paying this fines slowly or lift the license so i can pay this fines put food for my feamly as we all are suffering with the situation every were My

humble request to the building Practitioners Board council to reconsider the judgment of my case anil kumar

- [9] The Board based its decision on the seriousness of the conduct, a previous disciplinary history before the Board, and a pattern of non-complying conduct over a number of complaints. In its substantive decision, the Board noted:

[43] The Respondent has also appeared before the Board on other disciplinary matters at the same time as this matter was under consideration. In total, the Board has dealt with four matters, all of which deal with serious disciplinary offending and a pattern of non-compliant building work. The Board considers it appropriate to consider the penalty in this matter in conjunction with the other matters so as to impose a penalty that is proportionate to the overall conduct and takes into account the totality of the Respondent's disciplinary offending.

[44] With the nature and extent of the Respondent's disciplinary offending in mind and taking into consideration the various purposes of disciplinary action, the Board has decided that the cancellation of the Respondent's licence is the most appropriate form of penalty. The principal reasons are, firstly, the protection of the public. The licensing regime exists to ensure the public can have confidence in those who carry out restricted building work, which is integral to the safe and healthy functioning of a home. A practitioner who fails to display the required competencies, which the Respondent has, puts those objects at risk. Secondly, and related, a cancellation will ensure that the Respondent's competency is re-assessed if he decides, once the cancellation period has ended, to reapply for a licence.

- [10] The Respondent's submission has not dissuaded the Board from that view. Whilst the Board has some sympathy for the predicament the Respondent will find himself in. It should be noted, however, that it has been of his own doing and that the Board needs to protect the public. Also, the Respondent can work under the supervision of another Licensed Building Practitioner so he can continue to work and earn an income. He will also be able to carry out building work that does not require a licence.

Costs

- [11] The Board's initial view was that \$2,500 in costs was appropriate.
- [12] Having considered the submissions received, the Board has decided to uphold its initial view.
- [13] The Respondent should note that if the payment of the costs presents a financial difficulty, he can apply to the Registrar for time to pay them off.

Publication of Name

- [14] The Board's initial view was that there were good reasons to further publish the matter. The Respondent did not submit on the matter of publication, and the Board affirms its indicative decision.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(a)(i) of the Act, the Respondent's licence is cancelled, and the Registrar is directed to remove the Respondent's name from the Register of Licensed Building Practitioners and pursuant to section 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of six [6] months.

The cancellation period is to run concurrently with the cancellation orders made by the Board.

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(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.

- [16] 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

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

Signed and dated this 6th day of May 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:

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- (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.*