

Before the Building Practitioners Board

	BPB Complaint No. CB 25751
Licensed Building Practitioner:	Haoyang Liu (the Respondent)
Licence Number:	BP 128459
Licence(s) Held:	Carpentry

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 Location	Auckland
Hearing Type:	In Person
Hearing and Decision Date:	5 May 2022

Board Members Present:

Mr C Preston, Chair (Presiding)
Mr M Orange, Deputy Chair, Barrister
Mr D Fabish, LBP, Carpentry and Site AOP 2
Ms J Clark, Barrister and Solicitor, Legal Member

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.

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Summary of the Board’s Decision

- [1] The Respondent has not committed a disciplinary offence. The Board decided that there was insufficient evidence to make a finding that the Respondent had carried out or supervised restricted building work.

The Charges

- [2] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at [OMITTED]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent may have 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).

Function of Disciplinary Action

- [3] 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*² and in New Zealand in *Dentice v Valuers Registration Board*³.

Inquiry Process

- [4] 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

¹ The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

² *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

³ [1992] 1 NZLR 720 at p 724

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.

- [5] 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

- [6] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. Under section 322 of the Act, the Board has relaxed rules of evidence that allow it to receive evidence that may not be admissible in a court of law.

- [7] 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.

- [8] In addition to the documentary evidence before the Board heard evidence at the hearing from:

Haoyang Liu	Respondent
[OMITTED]	Complainant
[OMITTED]	Witness, Licensed Building Practitioner
[OMITTED]	Witness, Auckland City Council
[OMITTED]	Witness, Auckland City Council

- [9] The Board provided interpreters for both the Respondent and the Complainant.
- [10] The Complainant engaged [OMITTED] to build a new residential dwelling. [OMITTED] went into liquidation following the completion of the build. The Complainant had to arrange for a Code of Compliance Certificate without [OMITTED]’s assistance. She engaged her lawyer to assist. The lawyer identified the Respondent, from Council documentation, as a Licensed Building Practitioner who may have carried out restricted building work. A record of work was requested from the Respondent. He refused to provide one on the basis that he had not carried out or supervised any restricted building work. The Complainant made a complaint to the Board as regards the non-provision.
- [11] Included in the evidence before the Board was the Building Consent Authority file. It contained a form entitled “Record of Licensed Building Practitioners (LBPs) on-site

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

carrying out or supervising Restricted Building Work (RBW)” (the LBP Record). It identified the Respondent by way of a handwritten notation dated 20-3-18 as the Licensed Building Practitioner carrying out “weatherboard”. It was this notation that prompted the Complainant and her lawyer to seek a record of work from the Respondent.

- [12] Also in the Building Consent file were two inspections which noted the Respondent as a Licensed Building Practitioner involved in the building work. They were an ICA inspection carried out by [OMITTED] on 22 March 2018 and attended by [OMITTED], and an ICL inspection carried out by [OMITTED] and attended by [OMITTED].
- [13] At the hearing, the Respondent gave evidence that he had previously supervised some restricted building work for persons involved with [OMITTED] but that, prior to the building work related to this matter being undertaken, he ceased his relationship with [OMITTED] as he had concerns with the quality of their builds. The Respondent denied any knowledge of, or engagement in, the building work at [OMITTED].
- [14] The Council witnesses gave evidence that the LBP Record was kept on-site with the building consent and that it can be filled out by anyone involved in the site or building work. The Respondent accepted that the record contained his details but denied that he provided those details and noted that he had changed how his signature and details were entered on forms as he was concerned his details were being used without his knowledge or consent.
- [15] Mr [OMITTED] gave evidence that he was a project manager for the build and that, at the time, he worked for [OMITTED]. He stated he did not know the Respondent and had not seen him at the building site, and had no knowledge of him carrying out or supervising any restricted building work.
- [16] Neither Mr [OMITTED] or Mr [OMITTED] were able to identify the Respondent or confirm he was on site when they carried out their inspections. They did not obtain any confirmation of who the Licensed Building Practitioners were that were carrying out or supervising restricted building work. They accepted that the Council system for checking Licensed Building Practitioners was predominately based on trust and not on proof of the identity of the Licensed Building Practitioners.
- [17] The Complainant, who lived near the building site, was not able to identify the Respondent as having carried out or supervised any building 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] The Board made its decision on the basis that, other than Council records, there was no evidence identifying the Respondent as having carried out or supervised any restricted building work at the property. With regard to the Council records, the Board decided that they were not reliable as there were no systems or processes in place to verify Licensed Building Practitioner details provided during the build. As the Council witnesses noted, the Council system for recording Licensed Building Practitioners was based on trust, not proof.
- [20] Given those factors, the Board decided that there was insufficient evidence to establish that, on the balance of probabilities, the Respondent had carried out or supervised any restricted building work

Signed and dated this 3rd day of June 2022

A handwritten signature in black ink that reads "Chris Preston". The signature is written in a cursive, slightly slanted style.

Mr C Preston
Presiding Member