

## Before the Building Practitioners Board

	BPB Complaint No. CB25471
Licensed Building Practitioner:	Ashok Maharaj (the Respondent)
Licence Number:	BP 122781
Licence(s) Held:	Carpentry and Site AOP 1

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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:	8 October 2020
Decision Date:	4 November 2020

#### Board Members Present:

Chris Preston, Chair (Presiding)  
Mel Orange, Deputy Chair, Legal Member  
Faye Pearson-Green, LBP, Design AOP 2  
David Fabish, LBP, Carpentry and Site AOP 2

#### 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.

#### Board Decision:

The Respondent **has** committed disciplinary offence under section 317(1)(i) of the Act.

The Respondent **has not** committed disciplinary offence under section 317(1)(da)(ii) of the Act.

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### Summary of the Board’s Decision

- [1] The Respondent has brought the regime into disrepute by obtaining an unethical financial gain. His licence is cancelled for a period of six months. He is ordered to pay costs of \$3,500. The Board has also decided that the Respondent did not carry out any restricted building work and that a record of work did not have to be provided.

### The Hearing

- [2] The Board, on receiving a Registrar’s Report in respect of the matter, reviewed the file and decided to deal with it by way of a Draft Decision. In making that decision, the Board noted that the Respondent had not responded to the complaint.
- [3] The Respondent disputed the findings in the Draft Decision and sought a hearing. The Draft Decision was set aside, and a hearing was scheduled.

### The Charges

- [4] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations<sup>1</sup> to hold a hearing in relation to building work at *[Omitted]*. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:

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

- (a) 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
- (b) 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 (s 317(1)(i) of the Act).

### Function of Disciplinary Action

[5] 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*<sup>2</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>3</sup>.

[6] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*<sup>4</sup> 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.”*

[7] 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 Complainant’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 persons<sup>5</sup>:

*... 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.*

[8] Finally, the Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. Those grounds do not include contractual breaches other than when the

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

<sup>3</sup> [1992] 1 NZLR 720 at p 724

<sup>4</sup> [2016] HZHC 2276 at para 164

<sup>5</sup> *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

conduct reaches the high threshold for consideration under section 317(1)(i) of the Act which deals with disrepute.

- [9] The above commentary on the limitations of the disciplinary process are important to note as, on the basis of it, the Board’s inquiries, and this decision, focus on and deal with the serious conduct complained about.

**Evidence**

- [10] The Board must be satisfied, on the balance of probabilities, that the disciplinary offences alleged have been committed<sup>6</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.
- [11] The Respondent, who now resides in Australia, appeared by video conference. He was assisted by Mr Warburton, who appeared in person. The Complainant, *[Omitted]*, attended with her son-in-law *[Omitted]*. Both gave evidence.
- [12] The Respondent was engaged, by way of his business Keyline Homes and Projects Limited, to oversee the construction of a new residential build under a building consent. The building consent documentation noted that the Respondent was the agent for the owner. The building consent was issued to the Respondent.
- [13] The building work included restricted building work for which a record of work is required on completion. The complaint to the Board noted that the Respondent had not provided one.
- [14] The build involved multiple licensed building practitioners. The evidence in the documentation provided to the Board was that several of them, including the Respondent, had not provided records of work. The Board resolved to initiate separate Board Inquiries into their conduct.
- [15] The Board was provided with the Respondent’s licensing history as well as the dates when the building work was carried out. The records show that the Respondent was licensed for some, but not all, of the period of the build. A timeline follows:

Respondent’s involvement starts	1 September 2017
Consent issued	12 April 2018
Respondent’s carpentry licence suspended	31 May 2018
First inspection (foundation), Respondent present	9 October 2018
Respondent’s suspension ends	17 January 2019
Respondent’s involvement ends	23 March 2019
Respondent issued a Site AOP 1 licence	12 November 2019

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<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [16] Based on the above, the Respondent was licensed in Carpentry for a part, but not all, of the build.
- [17] Under section 297 of the Act, a person is not a licensed building practitioner during a period of suspension. The Board only has jurisdiction over licensed persons. As such, it does not have during periods of suspension. In this respect, however, it should be noted that it is an offence for a non-licensed person to carry out restricted building work. The Ministry of Business Innovation and Employment is the prosecuting authority for such matters.
- [18] The Board does, however, have jurisdiction over the periods before and after his suspension.
- [19] Turning to the complaint, the Complainant stated:
- Ashok (the Respondent) was paid in full and was overseeing the entire project. Since he received final payment, he has not been answering or returning any calls for over six months. His wife has advised us that he has run out of funds and won't be finishing the building.*
- [20] The Complainant also stated that the Respondent had failed to provide documents, namely sub-division records, producer statements required for a Code of Compliance Certificate, and records of work. The Complainant noted that he repeatedly tried to contact the Respondent, but the Respondent did not answer or return the calls.
- [21] On 28 February 2020, the Complainant advised that they had not received a record of work from the Respondent.
- [22] The project has been taken over by new contractors. It is still not complete. The Complainants have reported that the Respondent's conduct has left them in a difficult financial position, and they do not have the money to complete the build.
- [23] At the hearing, the Board received evidence that the Complainant had a budget of \$400,000 for the build. The Respondent knew this and stated that he could complete the build for that price. The Complainant was operating on the understanding that the sum of \$400,000 included subdividing the land off the parent title and all landscaping and furnishings. She also believed the sum included all subdivision reserve contributions and the removal of trees. The Respondent's position was that reserve contributions and the removal of trees were additional costs which are yet to be paid (\$64,382.35 including the final contractual payment of \$10,000). The Complainant considered that payments in excess of the work completed had been made. She estimated that an additional \$67,000 was required to complete.
- [24] The Respondent took the position that he was not the licensed building practitioner who was responsible, but that *[Omitted]* was. The Respondent stated, in a written submission made prior to the hearing that he did not carry out or supervise any building work and, as such, he did not have to provide a record of work. He accepted he was instrumental in obtaining a resource consent and the building consent. He

noted he was not a director of Keyline Homes and Projects Limited for the period 16 April 2018 until 15 November 2019 and that the job was supervised by a licensed building practitioner employed by Keyline Homes and Projects Limited, *[Omitted]*, who issued a record of work for the work undertaken by Keyline Homes and Projects Limited.

- [25] A search of the Companies Register shows that the Respondent was a Director of Keyline Homes and Projects Limited but that *[Omitted]*, another employee of the Respondent, became a director over a period when the Respondent was bankrupt. He was, throughout, the sole shareholder. He is now the sole director.
- [26] The Respondent maintained that he bore no responsibility over the period when he was not a director of Keyline Homes and Projects Limited.
- [27] The Complainant gave evidence that the Respondent was on-site and was carrying out building work but was unable to provide any specifics of what he allegedly carried out.
- [28] The Respondent stated that the only reason why his name appeared on building inspections was because his name was on the Council's file and not because he was on site.

#### **Board's Conclusion and Reasoning**

- [29] The Board has decided that the Respondent **has** 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 (s 317(1)(i) of the Act and **should** be disciplined.
- [30] The Board has also 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).
- [31] The reasons for the Board's decisions follow.

#### Record of Work

- [32] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work<sup>7</sup>.
- [33] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had "good reason" for not providing a record of work on "completion" of the restricted building work.

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<sup>7</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

- [34] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner-builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.
- [35] In this instance, evidence was received that Mr Kant, a licensed building practitioner, had carried out the restricted building work and had provided a record of work. There was evidence that the Respondent was involved in the project by way of notations on inspection records, but the Board accepted that the references were most likely auto-populated fields and that the Respondent was not, in fact, on-site carrying out or supervising restricted building work. As such, the Board has decided that the Respondent was not required to provide a record of work.

### Disrepute

- [36] The more serious allegation was that of disrepute. This related to taking funds and not completing the work associated with the payments made.
- [37] The disrepute disciplinary provision in the Act is similar to legislation in other occupations including medical professionals, teachers, lawyers and conveyancers, chartered accountants, financial advisors, veterinarians and real estate agents. The Board considered the disrepute provisions in Board Decision C2-01111<sup>8</sup> and discussed the legal principles that apply.
- [38] Turning to the conduct which brings or is likely to bring the regime into disrepute the Act does not provide guidance as to what is “disrepute”. The Oxford Dictionary defines disrepute as “the state of being held in low esteem by the public”<sup>9</sup>, and the courts have consistency applied an objective test when considering such conduct. In *W v Auckland Standards Committee 3 of the New Zealand Law Society*<sup>10</sup>, the Court of Appeal held that:

*the issue of whether conduct was of such a degree that it tended to bring the profession into disrepute must be determined objectively, taking into account the context in which the relevant conduct occurred. The subjective views of the practitioner, or other parties involved, were irrelevant.*<sup>11</sup>

- [39] As to what conduct will or will not be considered to bring the regime into disrepute, it will be for the Board to determine on the facts of each case. The Board will, however, be guided by finding in other occupational regimes. In this respect it is noted disrepute was upheld in circumstances involving:

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<sup>8</sup> Board decision dated 2 July 2015.

<sup>9</sup> Online edition, compilation of latest editions of *Oxford Dictionary of English, New Oxford American Dictionary, Oxford Thesaurus of English and Oxford American Writer's Thesaurus*, search settings UK English, accessed 12/05/15

<sup>10</sup> [2012] NZCA 401

<sup>11</sup> [2012] NZAR 1071 page 1072

- criminal convictions<sup>12</sup>;
- honest mistakes without deliberate wrongdoing<sup>13</sup>;
- provision of false undertakings<sup>14</sup>; and
- conduct resulting in an unethical financial gain<sup>15</sup>.

- [40] It is also noted that there are a number of cases where the conduct related to specific or important tasks a licensed building practitioner is required to complete within their occupations. Often such behaviour is measured within the context of a code of conduct or ethics. A code is yet to be established within the Building Act, although provision for one is made. What is clear from the cases though is that unethical or unprofessional conduct can amount to disreputable conduct.
- [41] In C2-01688 the Board found that a licensed building practitioner had brought the regime into disrepute in respect of his conduct in relation to financial transactions.
- [42] The Board heard evidence in this case which varied between the Complainant and the Respondent. The Complainant considered that they would receive a turn-key new dwelling on a subdivided property for the sum of \$400,000. The Respondent took the position that there were excluded items which equated to \$54,382.25. Irrespective the full contractual amount of \$400,000, less a final payment of \$10,000 had been paid to the Respondent's company. The building work was far from finished. The Complainant considered there were additional costs of \$67,000 to complete.
- [43] As in C2-01688 the Board makes a finding that the Respondent has brought the regime into disrepute in respect of his conduct in relation to financial transactions. The Respondent has taken money and has not applied it to the purposes for which it was received. Moreover, when confronted, he has not dealt with the matter. Rather he ignored approaches and has not engaged with the Complainant.
- [44] The Board does not accept the argument that the Respondent bears no responsibility for financial matters as he ceased to be a director. He was, throughout, the sole shareholder and, it would appear, only ceased to be a director due to his bankruptcy. An employee became the director, and it would appear that this was a matter of convenience whilst the Respondent was a bankrupt as the Respondent is now, once again, the sole director.
- [45] The Board, therefore, finds that the Respondent's conduct has resulted in him obtaining a financial gain at the expense of the Complainants and that such conduct brings the regime into disrepute.

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<sup>12</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>13</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>14</sup> *Slack, Re* [2012] NZLCDT 40

<sup>15</sup> *Colliev Nursing Council of New Zealand* [2000] NZAR 7

- [46] Finally, the Board notes that the Courts have stated that the threshold for disciplinary complaints of disrepute is high and that when the disciplinary provision was introduced to Parliament the accompanying Cabinet paper noted:

*This power would only be exercised in the most serious of cases of poor behaviour, such as repetitive or fraudulent behaviour, rather than for minor matters.*

- [47] The matters before the Board are serious, and the sums of money involved are considerable. On the basis of the above, the Board therefore finds that the Respondent's conduct has brought the regime into disrepute.

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

- [48] 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.

- [49] The matter was dealt with at a hearing. The Board heard evidence relevant to penalty, costs and publication, and 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

- [50] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*<sup>16</sup> commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

*[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.*

- [51] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>17</sup> the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act they have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.

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<sup>16</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>17</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

- [52] As noted, the Respondent has previously appeared before the Board and has previously been disciplined by it. In complaint number C2-01621 the Respondent's licence was suspended for six months. That matter was heard in 2018. It involved similar allegations in that the Board noted, in that the Respondent did not deal with issues when they arose.
- [53] The Respondent has not amended his ways. A more severe penalty is required. The penalty needs to deter others and protect the public.
- [54] Deterrence was also noted in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*<sup>18</sup>. The High Court, when discussing penalty stated:

*[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner's conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner's offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner's decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.*

- [55] Cancellation of a license is the equivalent of striking off within the licensed building practitioner regime.
- [56] The Respondent's approach to the matters under inquiry is also an aggravating feature as the manner in which a licensed person responds to a disciplinary complaint and conducts their defence can be taken into consideration by the Board. In *Daniels v Complaints Committee*<sup>19</sup> the High Court held that it was permissible to take into account as an adverse factor when determining penalty that the practitioner had responded to the complaints and discipline process in a belligerent way. Whilst the Respondent has not been belligerent, he did not, initially, engage in the disciplinary process. He has also failed to take any accountability for the financial position he has left the Complainant in.
- [57] The Board did not make a finding as regards a failure to provide a record of work. A penalty is only required for the disrepute matter, which is serious.
- [58] Taking all of the above factors into account, the Board considers that a cancellation of the Respondent's licence is warranted. His licence will be cancelled for a period of six months. This is in order to not only punish the Respondent but also to deter others from such conduct and to protect the public.

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<sup>18</sup> [2012] NZAR 481

<sup>19</sup> [2011] 3 NZLR 850.

## Costs

- [59] Under section 318(4) the Board may require the Respondent “to pay the costs and expenses of, and incidental to, the inquiry by the Board.”
- [60] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case<sup>20</sup>.
- [61] In *Collie v Nursing Council of New Zealand*<sup>21</sup> where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:
- But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*
- [62] The Board the matter was dealt with at a hearing. The Board’s standard scale of costs for a half-day hearing is \$3,500. The Board considers that this is a reasonable sum for the Respondent to pay toward the costs and expenses of, and incidental to, the inquiry by the Board. It is less than 50% of actual costs.

## Publication

- [63] 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>22</sup>. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:
- 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.*
- [64] As a general principle, such further public notification 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. This is in addition to the Respondent being named in this decision.
- [65] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>23</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>24</sup>. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal

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<sup>20</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>21</sup> [2001] NZAR 74

<sup>22</sup> Refer sections 298, 299 and 301 of the Act

<sup>23</sup> Section 14 of the Act

<sup>24</sup> Refer sections 200 and 202 of the Criminal Procedure Act

Procedure Act do not apply but can be instructive<sup>25</sup>. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*<sup>26</sup>.

- [66] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest<sup>27</sup>. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [67] The Board notes that the Respondent has moved to Australia. On that basis, the Board will not order further publication.

### Section 318 Order

- [68] 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..

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,500 (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, there will not be action taken to publicly notify the Board's action, except for the note in the Register and the Respondent being named in this decision.**

- [69] 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

- [70] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **27 November 2020**. 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

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<sup>25</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>26</sup> *ibid*

<sup>27</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

consider those submissions prior to coming to a final decision on penalty, costs and publication.

- [71] In calling for submissions on penalty, costs and mitigation, the Board is not inviting the Respondent to offer new evidence or to express an opinion on the findings set out in this decision. If the Respondent disagrees with the Board's findings of fact and/or its decision that the Respondent has committed a disciplinary offence, the Respondent can appeal the Board's decision.

### Right of Appeal

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

Signed and dated this 6<sup>th</sup> day of November 2020



**Chris Preston**  
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:*
  - (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.*