

Before the Building Practitioners Board

	BPB Complaint No. CB25328
Licensed Building Practitioner:	Nicholas Mavroyannis (the Respondent)
Licence Number:	BP 114527
Licence(s) Held:	Design AOP 1

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

Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	23 June 2020
Substantive Decision Date:	4 July 2020
Penalty Decision Date:	19 August 2020

Board Members:

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

Disciplinary Finding:

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

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Summary of the Board’s Penalty Decision

[1] The Respondent carried out design work in a negligent manner. He is fined the sum of \$2,500 and ordered to pay costs of \$3,500. The fine was reduced following receipt of penalty submissions on the basis of additional mitigation presented.

The Charges

[2] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) 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 7 August 2020, the Board received submissions from Counsel acting for the Respondent. It has considered them and made the following decisions.

Penalty

[6] The Board’s initial view was that a fine of \$3,500 was the appropriate penalty for the disciplinary offence.

[7] Counsel has submitted that the indicative penalty was unduly harsh and should be adjusted to reflect matters raised in the submissions. Counsel referred to previous decisions of the Board and submitted the penalty was not consistent with those imposed in the decisions referred to. Counsel submitted that a 40% reduction in the fine would be appropriate.

- [8] Included with the submission was an email from the Respondent which stated:

Due to the LBP Hearing I have noticed I need to employ another person full time to manage jobs and liaise with clients so I can focus more on drawing & checking drawings before lodgements. I will be employing a person on the 24th August full time.

Also I will be increasing drafting work to a part time Architectural graduate whom has done casual work for me, (only drawing site, floor, & elevation plans).

This will free up my time to check drawings are of a high quality & are Building code compliant with minimal errors, to reflect what is a responsible LBP Designer for clients and the industry.

- [9] The Board notes that the penalty decisions referred to by Counsel relate to disciplinary conduct that was not, in the Board's view, as serious as that committed by the Respondent. It considers that the indicative penalty is an appropriate starting point.
- [10] The Board does accept, however, that there are mitigating factors that have been brought to its attention which should be taken into account, including the matters noted in paragraph [8] herein. The Board will apply a \$1,000 reduction to the fine. The sum is set at \$2,500.

Costs

- [11] The Board's initial view was that \$3,500 in costs was appropriate. Counsel has submitted that a 25% reduction would be appropriate on the basis that the Respondent was cooperative, and the hearing was not overly complicated.
- [12] The Board does not agree that the Respondent was cooperative. He defended his position and whilst he accepted some wrongdoing at the hearing, the position he took at the Registrar's Report stage meant an in-person hearing was required. It should also be noted that the costs imposed are approximately 25% of the costs involved in investigating and hearing a matter of this type. Further reductions are not warranted.

Publication of Name

- [13] The Board's initial view was there were no good reasons to further publish the matter. This remains the case.

Section 318 Order

[14] 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 \$2,500.

Costs: Pursuant to s 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 s 301(1)(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.

[15] 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

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

Signed and dated this 26th day of August 2020



Mel 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:

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- (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.