

Before the Building Practitioners Board

	BPB Complaint No. CB24698
Licensed Building Practitioner:	Manu Miller (the Respondent)
Licence Number:	BP 127853
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	Wellington
Hearing Type:	In Person
Hearing Date:	6 March 2019
Decision Date:	8 April 2019

Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
Bob Monteith, LBP Carpentry and Site AOP 2
Faye Pearson-Green, LBP Design AOP 2

Appearances:

Nikki McGill, Barrister and Solicitor for the Respondent

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 not** committed a disciplinary offence.

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Introduction

[1] The hearing resulted from a complaint into 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:

- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act); and
- (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).

Function of Disciplinary Action

[2] 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.

[3] 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*⁴ 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.”

[4] 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. It does not have any jurisdiction over contractual matters.

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

⁴ [2016] HZHC 2276 at para 164

Procedure

- [5] The matter was heard as a consolidated hearing with complaint number CB24083⁵.
- [6] The hearing was originally scheduled for 29 January 2019. As a result of travel disruptions, the Board was not able to form a quorum. The Respondent was present on the original hearing date.
- [7] The hearing was rescheduled to 6 March 2019. The Respondent was given notice of the rescheduled date. He did not appear. Legal counsel representing him advised that he had elected not to attend.
- [8] The Board was disappointed that the Respondent elected not to attend. As a Licensed Building Practitioner, he has responsibilities to the licensing regime which include taking part in Board disciplinary hearings when required. In this respect the Board notes that the Respondent was a required witness for the hearing into CB24083. His failure to appear resulted in the Board being unable to question him as a witness and obtain what could have been key evidence.

Evidence

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁶. 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.
- [10] 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.
- [11] In addition to the documentary evidence before the Board heard evidence at the hearing from:

[Omitted]	Respondent in CB24083
[Omitted]	Complainant in CB24083
Tim Watson	Technical Assessor to the Board
- [12] [Omitted], the Respondent in the consolidated complaint matter CB24083, was contracted, by way of his company, [Omitted] to design, supply and construct a new residential dwelling for the Complainant using structurally insulated panels.
- [13] The dwelling was constructed using staff provided by the Respondent's business. The Respondent carried out aspects of the building work and provided a record of work which stated he supervised internal walls. [Omitted] provided a written response on behalf of the Respondent dated 13 July 2018. In it he stated that the Respondent

⁵ A hearing can proceed as a consolidated matter under Regulation 13.

⁶ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

was involved in timber partitioning system installation, fitting internal doors and exterior windows. At the hearing [Omitted] stated that the Respondent did not carry out any work on the panels as he dislikes working with them and that he only carried out internal framing and internal bracing work. [Omitted] stated that if the Respondent did assist with other aspects it was not in his capacity as a licensed building practitioner.

Board's Conclusion and Reasoning

- [14] The Board has decided that the Respondent **has not**:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act); or
 - (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).
- [15] The Board reached its decision on the basis that there was insufficient evidence on which to make findings that the Respondent had committed disciplinary offences under either section.
- [16] The Board noted that the evidence before it would have substantiated a charge of failing to provide a record of work on completion of restricted building work. The Respondent had carried out restricted building work, notably the installation of brace lining plaster board and windows. He did not provide a record of work for those elements. However, as the Respondent had not been given notice of the charge or an opportunity to defend it the Board considered that, in the interests of natural justice, that it would be unfair to make a finding against the Respondent. He is, however, cautioned that he is obliged under section 88 of the Act to provide a record of work for any restricted building work that he carried out or supervises.

Signed and dated this 8th day of April 2019



Richard Merrifield
Presiding Member