

## **Before the Building Practitioners Board**

	BPB Complaint No. 26257
Licensed Building Practitioner:	Mingjian Huang (the Respondent)
Licence Number:	BP 131049
Licence(s) Held:	Bricklaying and Blocklaying – Veneer and Structural Masonry

---

### **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 Type:	On the Papers
Hearing and Decision Date:	16 December 2024

#### **Board Members Present:**

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2  
Mr G Anderson, 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.

#### **Disciplinary Finding**

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

The Respondent is fined \$3,500 and ordered to pay costs of \$2,350.

## Contents

Summary.....	2
The Charges .....	2
Procedure .....	4
Evidence.....	5
Code of Ethics .....	8
Disrepute .....	9
The conduct complained about .....	10
Was the conduct serious enough.....	13
Has the Respondent committed the disciplinary offences.....	13
Penalty, Costs and Publication.....	13
Penalty .....	13
Costs.....	14
Publication .....	15
Section 318 Order.....	16
Right of Appeal.....	16
This decision has been reissued on 20 May 2026 to correct a typographical error. The remainder of the document is unchanged. ....	16
Appendix One .....	17

## Summary

- [1] The Respondent breached the Code of Ethics for Licensed Building Practitioners (LBPs) and brought the licensing regime into disrepute by allowing his licence to be used for the purposes of satisfying the requirement in section 84 of the Act that restricted building work must be carried out or supervised by an LBP when he was living in [OMITTED] and was not providing adequate or effective supervision of the jobs to which he name was ascribed as the supervising LBP on records of work.
- [2] The Board impose a fine and costs. Other penalty options were not available because the Respondent no longer holds a licence.

## The Charges

- [3] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.<sup>1</sup>

---

<sup>1</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. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

- [4] In this matter, the disciplinary charges the Board resolved to further investigate<sup>2</sup> were set out in a Notice of Proceeding issued to the Respondent. The Board subsequently revised that notice to detail that the Respondent may, in relation to building work at multiple addresses in [OMITTED], where a record of work has been provided on the basis that a record of work has been provided detailing the Respondent as the supervising Licensed Building Practitioner, have:
- (a) breached the code of ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act in that he may have breached clause 10 of the Code of Ethics (comply with the law) by failing to comply with section 84 of the Building Act 2004, which requires that all restricted building work must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise the work (but only in relation to conduct that occurred after 25 October 2022), or, in the alternative;
  - (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 contrary to section 317(1)(i) of the Act, in that
    - i. he may have failed to comply with section 84 of the Building Act 2004, which requires that all restricted building work must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise the work; and/or
    - ii. he may have knowingly allowed his licence details to be used to complete records of work in circumstances where he has neither carried out nor supervised the restricted building work.
- [5] The Board gave notice that it would also investigate the Respondent's conduct in respect of the same grounds for discipline in relation to the following specific addresses, where records of work were submitted for restricted building work containing the Respondent's licensing details (noting that any conduct that occurred prior to 25 October 2022 will only be investigated with respect to section 317(1)(i) of the Act on the basis that the record of work predates the Code of Ethics coming into force):
- [OMITTED]
  - [OMITTED]
  - [OMITTED]
  - [OMITTED] and
  - [OMITTED].

---

<sup>2</sup> The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

- [6] The Notice of Proceeding appended a list of the properties under investigation. That list is in Appendix One of this decision.
- [7] The complaint about the Respondent arose after complaints that restricted building work was being carried out by persons who were not licensed. The investigations led to the Respondent being identified as an LBP who is providing records of work for some of the properties complained about.

**Procedure**

- [8] On 30 September 2024, a Minute was issued noting that the matter was ready to proceed to a hearing and that the Respondent had replied to a scheduling request for a prehearing by his authorised representative with the following:

*Hi There*

*My father-in-law said he won't be available for the hearing due to eye problem .*

*Please proceed without him.*

*Regards*

- [9] Inquiries were made with the Respondent's representative to ascertain whether reference was being made to just the prehearing conference or to the conference and the hearing itself. The response was: "He won't be able to do both, thanks".
- [10] The Board noted that the principles of natural justice require that hearings are conducted in a manner that ensures that the Respondent is given a fair opportunity to be heard and to contradict the evidence and that the decision-making process is conducted fairly, transparently and in good faith. In terms of a fair hearing, a party should be given the opportunity to respond to an allegation which, with adequate notice, might be effectively refuted.
- [11] The Board also noted that it could not compel the Respondent to attend the hearing and that if he chose not to participate, the hearing could proceed without him, using a different hearing procedure. Directions were issued to ascertain the Respondent's position, and he was given the opportunity to seek a hearing date when he could participate. He was advised that if he did not reply as directed, the Board would proceed to deal with the matter in his absence. No response was received from the Respondent.
- [12] A direction was also issued that if the matter was to proceed without the Respondent, it would be dealt with on the basis of a formal proof procedure and on the papers.
- [13] In deciding that the matter would be determined on the papers, the Board took into account the purposes of the disciplinary provisions in the Act and noted that they would be defeated if Licensed Building Practitioners (LBPs) were able to avoid complaints by not engaging in investigations or appearing at hearings.

## Evidence

- [14] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>3</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.
- [15] To assist the Board, evidential statements were taken from persons who were able to assist with the Board's investigations.
- [16] The Respondent was interviewed. He lives in [OMITTED]. Immigration New Zealand records show that he has had limited time in New Zealand since 2020. His last visit to New Zealand, within the period covered by the investigation, was in June 2022. He suffers from poor health but stated he maintains his competency by working in the industry in [OMITTED].
- [17] When Mr Huang was in New Zealand, he operated a company called A Jian Bricklayers Limited. He was its sole shareholder and director. The company was incorporated in January 2018 and was removed from the companies register in June 2025, most likely because annual returns had not been filed, the last one being filed in October 2022.
- [18] The Respondent stated that his company employed four unlicensed persons: [OMITTED], [OMITTED], [OMITTED] and [OMITTED], who obtained a licence in June 2023. The Respondent described [OMITTED] as his business partner.
- [19] The Respondent's company had projects in [OMITTED], [OMITTED], and [OMITTED]. He could not recall if the company carried out any work in NZ in 2022.
- [20] The Respondent also worked closely with [OMITTED], a company whose sole shareholder and director is [OMITTED], who is not a Licensed Building Practitioner (LBP). The Respondent stated he worked as a technical advisor and/or a consultant for them, as they did not have any LBPs of their own. [OMITTED] also worked for [OMITTED].
- [21] The Respondent stated that he provided records of work for [OMITTED], but not for any other entities, and that he did not authorise anyone to use his licence number for the purposes of providing records of work other than as noted. The Respondent, in an interview, outlined:
- He did not get paid by [OMITTED] for signing ROWs. [OMITTED], the company director of [OMITTED] is his best friend, and he helped him build this company so he does not charge him for his work.
  - Asked how he knew what he signs, as the information on a record of work is in English and he does not read / write/ speak any English, he stated that he

---

<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

signs the record of work without verifying the information on them because he trusts the Chinese people he works with.

- He advised that he has blurry vision and this is the reason he currently stays in [OMITTED], as he needs to visit his doctor every month. Asked how he carried out the supervision by videolink, if his eyesight was poor, he advised that only his left eye's vision is poor. The right eye is fine.

[22] Mr [OMITTED] was interviewed. He called himself a colleague of the Respondent and stated that he worked for him at A Jian Bricklayers. He stated he had not had any contact with him since July 2022, when the Respondent visited New Zealand and met with him. He denies any use of the Respondent's licence without his knowledge, but did outline a process whereby the Respondent supervised him via WeChat and then provided records of work for developers. The record of the interview noted:

*[OMITTED] company account and Huang signs the record of work forms he gives to the developer. Huang would send him the forms through WeChat*

*Says he has and sometimes writes Mr Huang's name and address on the record of work but he has never signed any record of work with Mr Huang's signature and he is 100% certain of this*

*He was shown individual records of work documents including number [OMITTED]. Says the record of work form is in his handwriting but it is Mr Huang's true signature. When shown a record of work for [OMITTED] he said the same applied*

*Says the developers would first contact Mr Huang and he would then tell them to contact him (He) and he would then be their point of contact from then on*

*Investigator showed him copies of invoices received by [OMITTED] he says he wrote the invoices himself and it is his handwriting and says two of these have Mr Huang's company and bank account number on and two have his own company name and bank account number on*

*He said the reason he put his company name and bank account number on the invoices dated 11 May 2022 was because Huang stopped paying him and he was not happy and decided to have the money put into his own account. Then Huang sued him at the court and this is when Huang meet with him in July 2022 and ended their relationship*

*Is after this he worked for another licenced bricklayer licence number [OMITTED].*

[23] Other persons from [OMITTED] were interviewed. They confirmed the above, noting that the Respondent would review work by video call before inspections.

- [24] A director of [OMITTED] and [OMITTED], Mr [OMITTED], whose businesses provide brick and blocklaying services in the [OMITTED] and the [OMITTED] areas. His businesses were previously associated with [OMITTED] (now in liquidation), the sole shareholder and director of which was Mr [OMITTED], the sole shareholder and director of [OMITTED]. He stated:

*[OMITTED] being a good friend of Mr Mingjian HUANG (“Mr Huang”), BP131049 (Bricklaying and Blocklaying) had an agreement with Mr Huang that Mr Huang signs off restricted building work (“RBW”) namely brick and blocklaying work, for [OMITTED]. This agreement extends to RBW carried out by [OMITTED] and [OMITTED].*

*The process for getting Huang’s sign off on Record of Work (“ROW”) documents is this: I regularly speak with Mr Huang over the phone or via WeChat and explain to him what work has been done. Mr Huang then signs the ROW documents, using the same pre-populated template saved on iCloud drive. Mr Huang has access to the iCloud drive. He accesses the ROW template saved there, checks that everything is correct, adds his signature at the last page and saves it on the drive. When I see that Mr Huang has completed ROWs for some of the projects, I download the signed copies of the ROW and send them to the Council.*

*Mr Huang does not always live in [OMITTED]. He visits New Zealand regularly. He visited some of the sites in [OMITTED] during his earlier visits. I do not remember when this was and what the addresses of the sites were.*

*I do not have a formal agreement with Mr Huang, and I do not pay him for signing off the RBW for the projects my companies subcontract to.*

*Once the ROW documents are submitted to the local Councils, I am the one who responds to the queries from the Council building inspectors over the phone when necessary.*

- [25] In October 2022, [OMITTED] applied to become a member of the [OMITTED]. The application listed the Respondent as an LBP employee, which was later retracted as a mistake.
- [26] The records of work that were purported to be from the Respondent included records in relation to [OMITTED]. Evidential statements stated that their contact person was Mr [OMITTED] and that they dealt with the Respondent’s company A Jian Bricklayers, and with [OMITTED]. The latter was incorporated in January 2022. Mr [OMITTED] is the sole director and shareholder of that company.
- [27] A witness from [OMITTED], for whom records of work were purported to have been provided by the Respondent, also stated that he only dealt with Mr [OMITTED].

- [28] Investigators for the Ministry of Business, Innovation and Employment conducted further investigations for the Board. Mr [OMITTED], a Principal Investigator, outlined in a brief of evidence:

Information obtained from Auckland and Hamilton councils indicated Mr Huang's name and licence number are associated with approximately 250 building consents issued by Auckland Council between 1 January 2022 to 31 December 2022 and 28 building consents issued by Hamilton Council between 1 June 2022 and 1 March 2023.

- [29] A Senior Investigator, Ms [OMITTED], reviewed a property file for [OMITTED], one of the properties where the Respondent had purportedly provided a record of work. She spoke to the Auckland Council inspector who had carried out a cladding inspection on 29 July 2022 at the property. He stated he had been presented with a copy of the Respondent's LBP card, which was valid and that he had been presented with the Respondent's LBP details at numerous sites in [OMITTED], but he had never seen nor met the Respondent. He was under the impression that the Respondent had carried out brick cladding work at [OMITTED]. The Respondent was not in New Zealand in July 2022.
- [30] The Board also directed that a handwriting analysis of the Respondent's writing be completed. It compared the Respondent's handwriting to the handwriting in various records of work that had been submitted under his name and licence number. It was completed by the New Zealand Police Document Examination Section. Their report was, because of the quality of the samples available, inconclusive.

### Code of Ethics

- [31] The Code of Ethics for LBPs was introduced by Order in Council.<sup>4</sup> It was introduced in October 2021 and came into force on 25 October 2022. The obligations are new, but there was a transition period of one year to allow practitioners to become familiar with the new obligations. Whilst the Code of Ethics is new, ethics have been a part of other regulatory regimes<sup>5</sup> for some time, and the Board has taken guidance from decisions made in other regimes.
- [32] The Code also differentiates between LBPs who are in business and those who are employed in that some of the ethical obligations only apply to those who are in business. In this matter, the Respondent was in business.
- [33] The disciplinary provision in the Act simply states, "has breached the code of ethics". Most disciplinary regimes frame the charge as some form of malpractice or misconduct, and the Board has considered the allegations within such a framework and with reference to superior court decisions. Within this context, in *Dentice v*

---

<sup>4</sup> Building (Code of Ethics for Licensed Building Practitioners) Order 2021

<sup>5</sup> Lawyers, Engineers, Architects and Accountants, for example

*Valuers Registration Board*,<sup>6</sup> Chief Justice Eichelbaum stated the purposes of disciplinary processes are to:

*Enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practice the profession in question; to protect both the public, and the profession itself, against persons unfit to practice; and to enable the professional calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.*

[34] The Board also notes that the courts have applied a threshold test to disciplinary matters, and it has applied those tests. In *Collie v Nursing Council of New Zealand*,<sup>7</sup> the test was stated as:

*[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.*

[35] Finally, when considering alleged breaches of the Code of Ethics, the Board needs to consider whether the conduct, if upheld as a breach of the Code, reaches the threshold for a disciplinary finding of disrepute, which is a more serious disciplinary finding.

### **Disrepute**

[36] Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public. Examples include:

- criminal convictions;<sup>8</sup>
- honest mistakes without deliberate wrongdoing;<sup>9</sup>
- provision of false undertakings;<sup>10</sup> and
- conduct resulting in an unethical financial gain.<sup>11</sup>

[37] The Courts have consistently applied an objective test when considering such conduct.<sup>12</sup> The subjective views of the practitioner or other parties involved are irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.<sup>13</sup>

---

<sup>6</sup> [1992] 1 NZLR 720 at 724

<sup>7</sup> [2001] NZAR 74

<sup>8</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>9</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>10</sup> *Slack, Re* [2012] NZLCDT 40

<sup>11</sup> *Collie v Nursing Council of New Zealand* [2000] NZAR 7

<sup>12</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>13</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

[38] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,<sup>14</sup> that the Respondent has brought the regime into disrepute and that the conduct was sufficiently serious for the Board to make a disciplinary finding.<sup>15</sup>

### **The conduct complained about**

[39] The issue under investigation was whether the Respondent had actually supervised the restricted building work that was recorded in the records of work provided at Appendix One.

[40] Section 84 of the Act requires that all restricted building work be carried out or supervised by an LBP. It states:

*All restricted building work must be carried out or supervised by a licensed building practitioner [who is licensed] to carry out or supervise the work.*

[41] The Respondent was not resident in New Zealand when the work properties listed in Appendix One took place; therefore, he could not have carried out the restricted building work. The only way he could have been the responsible LBP would be if he had supervised the restricted building work.

[42] The term “supervise” is defined in section 7 of the Act. The definition states:

*supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—*

*(a) is performed competently; and*

*(b) complies with the building consent under which it is carried out.*

[43] In C2-01143, the Board also discussed the levels of supervision it considers are necessary to fulfil a licensed building practitioner’s obligations, noting that the level of supervision required will depend on a number of circumstances, including:

- (a) the type and complexity of the building work to be supervised;
- (b) the experience of the person being supervised;
- (c) the supervisor’s experience in working with the person being supervised and their confidence in their abilities;
- (d) the number of persons or projects being supervised; and
- (e) the geographic spread of the work being supervised.

[44] Ultimately, the Board also needs to consider whether the work met the requirements of the building code and, if not, the level of non-compliance. In this

---

<sup>14</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. 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.

<sup>15</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

matter, it is noted that there were no allegations that the restricted building work had been carried out in a non-compliant manner.

- [45] Supervision under the Building Act has not yet been considered by the courts. It has, however, been considered in relation to the Electricity Act 1992<sup>16</sup>. The definition of supervision in that Act is consistent with the definition in the Building Act and, as such, the comments of the court are instructive. In the case, Judge Tompkins stated at paragraph 24:

*“As is made apparent by the definition of "supervision" in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.”*

- [46] There are varying types of supervision. The Ministry of Business, Innovation and Employment has issued a supervision guidance document.<sup>17</sup> It notes the different types of supervision: direct, general and remote. It also provides a matrix to assist in determining the appropriate form of supervision to be used. Generally, the greater the complexity of the work, the higher the need for direct supervision. Considerations as to the skill level of the person being supervised also need to be taken into consideration.
- [47] The question of the Board is whether the Respondent provided adequate remote supervision. Factors for consideration are the high number of properties and geographical spread of properties being supervised, the Respondent’s remote location, the manner in which he was allegedly carrying out his supervision (by WeChat and video), and the general relationship between the Respondent and Mr [OMITTED].
- [48] The Board’s view is that the Respondent was not fulfilling his duties as a supervisor and that, given the sheer number of properties and their spread, the manner in which he was supposedly supervising, his eyesight disabilities, and his lack of records and inability to an ability to recall those properties for which he provided records of work, he has been reckless and has allowed his licence to be used by persons who were not LBPs but whom required an LBP licence to conduct their business. In doing so, the Board considers that the Respondent has breached the Code of Ethics and has acted in a disreputable manner.

---

<sup>16</sup> *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

<sup>17</sup> Practice Note: Supervision, August 2017, issued under section 175 of the Act.

- [49] The introduction of the LBP regime was aimed at improving the skills and knowledge of those involved in residential construction and at giving consumers confidence in residential building, to avoid past systemic failures, as occurred in the leaky homes era. In this respect, the following was stated as the intention to the enabling legislation<sup>18</sup>:

*The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes prides in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.*

*We cannot make regulation more efficient without first getting accountability clear, and both depend on people having the necessary skills and knowledge. The Building Act 2004 will be amended to make it clearer that the buck stops with the people doing the work. Builders and designers must make sure their work will meet building code requirements; building owners must make sure they get the necessary approvals and are accountable for any decisions they make, such as substituting specified products; and building consent authorities are accountable for checking that plans will meet building code requirements and inspecting to make sure plans are followed.*

- [50] Section 3 of the Act, which sets out the Act's purposes, notes that the Act includes the purpose of promoting the accountability of builders. Section 14E of the Act encapsulates the statements in Hansard noted above. It sets out that:

**14E Responsibilities of builder**

- (1) *In subsection (2), builder means any person who carries out building work, whether in trade or not.*
- (2) *A builder is responsible for—*
  - (a) *ensuring that the building work complies with the building consent and the plans and specifications to which the building consent relates;*
  - (b) *ensuring that building work not covered by a building consent complies with the building code.*
- (3) *A licensed building practitioner who carries out or supervises restricted building work is responsible for—*
  - (a) *ensuring that the restricted building work is carried out or supervised in accordance with the requirements of this Act;**and*

---

<sup>18</sup> Hansard volume 669: Page 16053

- (b) *ensuring that he or she is licensed in a class for carrying out or supervising that restricted building work.*

[51] As noted, there were no known issues with the restricted building work that was carried out. Notwithstanding the way the Respondent has allowed his licence to be used will have put consumers' confidence in the LBP regime into question.

### **Was the conduct serious enough**

[52] This was a case of reckless inadvertence or carelessness. It was clear to the Board that the Respondent knew what was happening and allowed it to continue. He had a past relationship with Mr [OMITTED], and the reality was that he was allowing the latter to continue in business through the use of the Respondent's licence. The conduct was, and the Board's view, at the higher level of seriousness because it struck at the very heart of the LBP regime, which was established to ensure that restricted building work was carried out by licensed persons who had demonstrated that they have the requisite knowledge and skills to carry out the workout and compliant manner.

### **Has the Respondent committed the disciplinary offences**

[53] The Respondent has breached the Code of Ethics for LBPs and has brought the regime into disrepute regarding the allegations set out in the Notices of Proceeding issued.

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

[54] 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.

[55] The matter was dealt with on the papers. Included was information relevant to penalty, costs, and publication, which has been taken into consideration.

### **Penalty**

[56] The Board has the discretion to impose a range of penalties.<sup>ii</sup> Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.<sup>19</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>20</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>21</sup>

---

<sup>19</sup> *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

<sup>20</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>21</sup> Section 3 Building Act

- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>22</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>23</sup>
- (d) penalising wrongdoing;<sup>24</sup> and
- (e) rehabilitation (where appropriate).<sup>25</sup>

[57] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases<sup>26</sup> and applying the least restrictive penalty available for the particular offending.<sup>27</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>28</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>29</sup>

[58] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.<sup>30</sup>

[59] The Respondent no longer holds a licence and has not done so for some time. The Board's penalty options are, therefore, constrained. Because of this, the Board decided that the appropriate penalty would be a fine. Given the high number of properties and the level of recklessness or carelessness found, the Board considered that a fine at the higher level was required. Countering that, this matter has, because of the circumstances outlined earlier in this decision, been determined on the papers, and the Board has decided to reduce the fine to reflect that. The Board has also taken the Respondent's circumstances into consideration. Taking those various factors into account, the Board has arrived at a fine of \$3,500.

### Costs

[60] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.<sup>31</sup>

---

<sup>22</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>23</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>24</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>25</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

<sup>26</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>27</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>28</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>29</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>30</sup> In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

<sup>31</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

- [61] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings<sup>32</sup>. The starting point can then be adjusted up or down with regard to the particular circumstances of each case<sup>33</sup>.
- [62] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was complex.
- [63] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,350 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a complex matter that has been dealt with on the papers. It is significantly less than 50% of actual costs.

#### Publication

- [64] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will, if he regains a licence, be recorded in the public Register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act,<sup>34</sup> and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [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>35</sup> Further, as a general principle, publication 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, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.<sup>36</sup>
- [66] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business, Innovation and Employment, may publish under the principles of open justice reporting.

---

<sup>32</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>33</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>34</sup> Refer sections 298, 299 and 301 of the Act

<sup>35</sup> Section 14 of the Act

<sup>36</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

### Section 318 Order

[67] 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 \$3,500.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,350 (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(1)(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.

### Right of Appeal

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

Signed and dated this 7<sup>th</sup> day of May 2026.



**Mr M Orange**  
Presiding Member

**This decision has been reissued on 20 May 2026 to correct a typographical error. The remainder of the document is unchanged.**

Signed and dated this 20<sup>th</sup> day of May 2026.



**Mr M Orange**  
Presiding Member

**Appendix One**

Notice of Proceeding	Property
15 June 2023	<ul style="list-style-type: none"> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> </ul>
23 August 2023	<ul style="list-style-type: none"> <li>• Six houses at [OMITTED] and [OMITTED] (also known as [OMITTED]).</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> </ul>
5 December 2023	<ul style="list-style-type: none"> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> </ul>
28 February 2023	<ul style="list-style-type: none"> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> <li>• [OMITTED]</li> </ul>



- 
- (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 318 Disciplinary Penalties**

- (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 1 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.

**iii 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.