

Before the Building Practitioners Board

	BPB Complaint No. CB25608
Licensed Building Practitioner:	Campbell Morris (the Respondent)
Licence Number:	BP131256
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Complaint
Hearing Location	Wellington
Hearing Type:	In Person
Hearing Date:	27 July 2021
Substantive Decision Date:	1 September 2021
Penalty Decision Date:	23 September 2021

Board Members Present

Mr C Preston, Chair (Presiding)
Mr M Orange, Deputy Chair, Barrister
Mrs F Pearson-Green, LBP, Design AOP 2
Ms J Clark, Barrister and Solicitor, Legal Member

Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

Disciplinary Finding:

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

The Respondent **has not** committed a disciplinary offence under section 317(1)(b) or (d) of the Act.

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Summary of the Board’s Penalty Decision

- [1] The Respondent has failed to provide a record of work on completion of restricted building work. He is fined \$1,500 and ordered to pay costs of \$750. The Board has also decided that the Respondent has not carried out building work in a negligent or incompetent manner on the basis that the contraventions were not serious enough and that he did not carry out building work in a manner that was contrary to a building consent.

The Charges

- [2] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had 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).
- [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 22 September 2021, the Board received the Respondent’s submissions. He stated:

I write to ask the Board to reconsider its decision to impose a \$1,500 fine and a \$750 order of costs.

Regarding the fine, while I accept that I should have provided the record of works I ask the Board to reduce this amount in recognition of the unnecessary time, expense and stress that the untrue allegations of negligence have caused. [Omitted] was unhappy at the costs of his project and was looking for someone to blame. The Board provided him with an opportunity to do this at my expense.

Regarding the costs, the decision says that I provided a limited response to the allegations but I did not have to introduce any more evidence at the hearing which shows that I had provided a sufficient level of detail. The hearing could have been avoided if the Registrar had acknowledged that the photos that [Omitted] submitted showed unfinished, not negligent work which is what you found.

[6] The Board has considered the submission and has made the following decisions.

Penalty

[7] The Board's initial view was that a \$1,500 fine was the appropriate penalty for the disciplinary offence. The amount was consistent with other fines imposed by the Board for a failure to provide a record of work. The Board did not take into account any of the matters alleged under section 317(1)(b) or 317(1)(d) of the Act in setting the amount. Put another way, had the only allegation under investigation been that the Respondent had failed to provide a record of work, then, on the basis of the evidence before the Board, the decision would have been the same. Given those factors, the Board has decided to uphold its initial view. There are no reasons why the Board should reduce the fine.

Costs

[8] The Board's initial view was that \$750 in costs was appropriate. The amount is minimal compared to the actual amount of costs incurred. As was noted in the Substantive Decision, the amount of costs imposed for an-person hearing would, ordinarily, be in the order of \$3,500. The allegations under sections 317(1)(b) and (d) were not upheld, so the Board formed the view that a lesser amount of costs was appropriate. The Board noted the limited cooperation by the Respondent leading up to the hearing and, on the basis, arrived at an amount of \$750.

[9] The Respondent has submitted that, as he did not adduce any further evidence at the hearing his limited response to the allegations prior to it, the increase in the amount of costs was not warranted. The Board does not agree. Additional evidence was obtained at the hearing. It was obtained by thorough questioning of the Respondent and other witnesses present. As such, the Board has decided that the amount was appropriate.

Publication of Name

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

Final Section 318 Order

[11] 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 \$1,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$750 (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.

[12] 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

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

Signed and dated this 7th day of October 2021.



Mr C Preston
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.