

Before the Building Practitioners Board

	BPB Complaint No. CB25534
Licensed Building Practitioner:	Yenkanna Naidu (the Respondent)
Licence Number:	BP 130861
Licence(s) Held:	Carpentry

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:	4 May 2021
Substantive Decision Date:	8 June 2021
Penalty Decision Date:	14 June 2021

Board Members Present

Mr C Preston, Chair (Presiding)
Mr D Fabish, LBP, Carpentry and Site AOP 2
Mr B Monteith, LBP, Carpentry and Site AOP 2
Mrs F 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) and section 317(1)(d) of the Act.

The Respondent **has not** committed a disciplinary offence under section 317(1)(c) and section 314B(b) of the Act.

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Summary of the Board’s Penalty Decision

[1] The Respondent has been incompetent in his supervision of unlicensed persons and has carried out or supervised building work that did not comply with a building consent. The offending was serious. The Respondent’s licence is cancelled for a period of three years. He is ordered to pay costs of \$3,500. The Board’s findings will be published.

The Charges

[2] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had committed the following disciplinary offence(s):

- (a) carried out or supervised building work or building inspection work in an 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).

[3] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act¹, 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 6 July 2021, the Board received the Respondent’s submissions.

[6] On 13 July 2021, the Respondent filed a Notice of Appeal in the District Court.

[7] The Board notes that a right of appeal under section 330(2)(b) of the Act arises against any decision of the Board to take action under section 318 of the Act, which is the disciplinary penalties provision. At the time of the appeal being filed, the Board had not made a final determination as regards penalty.

[8] Notwithstanding the filing of an appeal prior to a final decision on section 318 matters being made, the Board has considered the Respondent’s submissions and has made the following decisions.

Penalty

- [9] The Board's initial view was that the Respondent's licence should be cancelled for a period of three years. The reasons why were set out in the Board's Substantive Decision.
- [10] The Respondent set out that, in his submission, the Board's indicted penalty failed to take various factors into account. Specifically, he noted that it would impact the Respondent's business, his employees and current contracts underway. He submitted:
4. *The decision will have a serious impact on my business, and my ability to make a living.*
 5. *I will be unable to run my business as it currently stands if my LBP licence is cancelled and I am unable to reapply for three years.*
 6. *At present I am working on three projects which employs 8 employees. There are no issues with the work carried out on those projects and they are proceeding without issue. Four of my employees are on work permit and 1 apprentice. it will affect them with finding another employer.*
 7. *Also I am struggling with a project where a client wants to cancel the contract because of my license even though we have done the work. It is affecting my business where we have done the work and not been paid for.*
- [11] The Board acknowledges that cancellation will have an impact on the Respondent and his business. The Board needs to balance this against the need to ensure that the purposes of the licensing regime and of the Act are maintained. The licensing regime exists to ensure that building work, and in particular restricted building work, is carried out and supervised in a safe and compliant manner. It is not to ensure employment or the operation of a business. The Board also notes that a building business that is engaged in carrying out restricted building work can operate without a shareholder, director or business principle being a licensed building practitioner. A business entity can employ or contract a licensed building practitioner to carry out or supervise restricted building work, and this option is open to the Respondent. In this respect, the Board notes that the Respondent already employs a number of staff.
- [12] The Respondent did, in his submissions, acknowledge his lack of supervision and stated that he had learnt from the complaint. He stated he considered his workers were capable of carrying out the work. The serious compliance issues do not indicate that this was the case. Also, the Respondent has not, however, provided any evidence or submissions on changes he has or will make to his systems or processes to ensure that his supervision will, in the future, be adequate.
- [13] The Respondent also outlined his building experience and qualifications. Included was a Level 5 National Certificate in Construction (Supervisor). As the Board's findings related to supervision, and the Respondent has already undertaken training

in supervision, the Board does not consider a training order in conjunction with a suspension order until such time as the training is complete would be appropriate.

- [14] Finally, the Respondent notes that this is his first offence. In this respect, the Board notes that the Respondent was first licensed on 15 May 2018 and that the conduct complained about took place from 8 November 2018, some six months after he was first licensed. Given this, the Board considers the submission has limited weight. It must also, as with the other submissions made, be weighed against the seriousness of the conduct.
- [15] Given the above, and having considered the submissions received, the Board has decided to uphold its initial view. The cancellation of the Respondent's licence for a period of three years is confirmed.

Costs

- [16] The Board's initial view was that the sum of \$3,500 in costs was appropriate. The Respondent did not make any specific submissions on costs. The Board remains of the view that the amount is appropriate.

Publication of Name

- [17] The Board's initial view was there were good reasons to further publish the matter. Those reasons were set out in the Substantive Decision. Again, the Respondent has not addressed the question of publication in this submissions. The Board confirms its indicative decision for the reasons set out in the Substantive Decision. The Board will carry out further publication.

Section 318 Order

- [18] 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 three years.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3500 (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(I)(iii) of the Act.

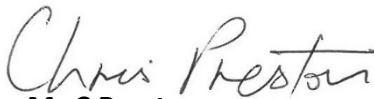
In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision.

- [19] 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

[20] The right to appeal Board decisions is provided for in s 330(2) of the Actⁱⁱ. As noted above, the Respondent has already filed an appeal against the Board's decision.

Signed and dated this 2nd day of August 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:*
 - (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.*

