

## Before the Building Practitioners Board

	BPB Complaint No. CB25848
Licensed Building Practitioner:	Sam Newman (the Respondent)
Licence Number:	BP 101290
Licence(s) Held:	Carpentry

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

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Complaint or Board Inquiry	Complaint
Hearing Location	Napier
Hearing Type:	In Person
Hearing Date:	25 May 2022
Substantive Decision Date:	3 June 2022
Penalty Decision Date:	23 June 2022

#### Board Members Present

Mr M Orange, Deputy Chair, Barrister(Presiding)  
Mr C Preston, Chair  
Mr R Shao, LBP, Carpentry and Site AOP 1  
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 disciplinary offences under sections 317(1)(b) and 317(1)(d) of the Act.

### **Summary of the Board's Penalty Decision**

- [1] The Respondent conducted himself in a negligent manner when he carried out building work without first ensuring that a building consent was issued for building work that required a building consent and in respect of cabinetry work carried out. The Respondent also brought the licensing regime into disrepute in respect of charging for services that were not delivered and for misrepresenting his competence and the building work that he was able to carry out, including that he could carry out building work that required a building consent without one on the basis that he was a Licensed Building Practitioner. The Respondent is censured and fined the sum of \$3,500. He is ordered to pay costs of \$3,500. A record of the disciplinary offending will be on the Public Register for a period of three years.

### **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 a negligent manner (s 317(1)(b) of the Act); and
  - (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 (s 317(1)(i) 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 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.
- [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 June 2022, the Board received the Respondent's submissions. The Respondent acknowledged the findings and noted he had learnt from the matter. He accepted the Board's decisions on penalty and costs but requested that no further publication be carried out.
- [6] The Board has considered the Respondent's submissions. It confirms its orders. Those orders include that there will not be any further publication of the Board's findings.
- [7] The Respondent should note that the Board does not have a discretion as regards publication on the Register. As such, the matter will be recorded on the Register for a period of three years.

## Section 318 Order

[8] For the reasons set out above, the Board directs that:

**Penalty:** Pursuant to section 318(1)(d) of the Act, the Respondent is censured and pursuant to section 318(1)(f) of the Act, he 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 \$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 section 301(I)(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.

[9] 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

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

Signed and dated this 18<sup>th</sup> day of July 2022



**Mr M Orange**  
Presiding Member

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### <sup>i</sup> 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:

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- (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.