

## **Before the Building Practitioners Board**

	BPB Complaint No. CB25353
Licensed Building Practitioner:	Blair Pitcaithly (the Respondent)
Licence Number:	BP 121088
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 Type:	In person
Hearing and Decision Date:	7 October 2020
Penalty Decision Date:	10 February 2021

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

Mr C Preston, Chair (Presiding)  
Mr D Fabish, LBP, Carpentry and Site AOP 2  
Mr R Shao, LBP, Carpentry and Site AOP 1  
Mr F Thomas, LBP, Roofing, Registered Plumber

#### **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)(a) and 317(1)(i) of the Act.

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### Summary of the Board’s Penalty Decision

[1] The Board found that the Respondent’s criminal offending reflects adversely on his fitness to carry out or supervise building work, and that he has brought the regime for licensed building practitioners disrepute. His license is cancelled for a period of three years and he is ordered to pay costs of \$1,500. The outcome of this complaint 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) has been convicted, whether before or after he or she is licensed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more and the commission of the offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work; and
- (b) has 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>1</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 16 December 2020, the Board received the Respondent’s submissions. It has considered them and made the following decisions.

### Penalty

[6] The Board’s initial view was that the Respondent’s licence should be cancelled for a period of three years.

[7] The Respondent's submission was:

*i wont be paying you clowns a cent and this hasnow been forward to my laywer*

[8] No mitigation has been presented. The Board has, therefore, decided to uphold its initial view.

#### **Costs**

[9] The Board's initial view was that \$1,500 in costs was appropriate. The Respondent has not addressed the question of costs other than to state he will not pay them.

[10] The Board does not see any reasons to depart from its initial view. The amount of costs is confirmed.

#### **Publication of Name**

[11] The Board's initial view was there were good reasons to further publish the matter. The Respondent has not addressed publication. Again the Board has decided to uphold its initial view.

#### **Section 318 Order**

[12] 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 (3) years.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,500 (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(l)(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.**

[13] 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

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

Signed and dated this 17<sup>th</sup> day of February 2021



**Mr C Preston**  
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:*
  - (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."*

### <sup>ii</sup> **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.*