

## Before the Building Practitioners Board

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|---------------------------------|-----------------------------|
|                                 | BPB Complaint No. CB25169   |
| Licensed Building Practitioner: | Tony Pryce (the Respondent) |
| Licence Number:                 | BP 109432                   |
| 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           | New Plymouth     |
| Hearing Type:              | In Person        |
| Hearing Date:              | 15 October 2020  |
| Substantive Decision Date: | 23 October 2020  |
| Penalty Decision Date:     | 18 December 2020 |

#### 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  
Mr R Shao, LBP, Carpentry and Site AOP 1

#### 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), 317(1)(d) and 317(1)(da)(ii) of the Act.

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### Summary of the Board’s Penalty Decision

[1] The Respondent has carried out and supervised building work in a negligent manner and work that was not in accordance with the building consent. He has also failed to provide a record of work on completion of restricted building work. He is fined \$5,000 and ordered to pay costs of \$2,000.

### 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 or incompetent manner (s 317(1)(b) of the Act);
- (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); and
- (c) has 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 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 12 November 2020, the Board received a submission from the Complainant. On 1 December 2020, the Board received the Respondent’s submissions. The Board has considered both submissions and has made the following decisions.

### **Penalty**

- [6] The Board's initial view was that a \$5,000 fine was the appropriate penalty for the disciplinary offence.
- [7] The Respondent took issue with some of the Board's findings. The appeal process is the correct way to deal with any disagreement with the Board's decision.
- [8] The Respondent also noted that he has liquidated his business and is now working for wages and has had to borrow money to cover lawyer's fees. He asked that his financial circumstances be taken into consideration.
- [9] The Complainant did not take issue with the penalty imposed.
- [10] Having considered the submissions received the Board has decided to uphold its initial view. The Board does note the Respondent's financial position and acknowledges that he may have difficulty in paying the fine and costs. He can apply to the Registrar to pay those off over time.

### **Costs**

- [11] The Board's initial view was that \$2,000 in costs was appropriate. The amount is less than the amount the Board would ordinarily charge for a half-day hearing. The amount was reduced on the basis that the hearing was consolidated with another matter. The amount ordered is significantly less than the actual costs incurred. Given this, the amount will not be reduced any further.

### **Publication of Name**

- [12] The Board's initial view was there were no good reasons to further publish the matter.
- [13] The Complainant has stated that publication should take place so that others are informed. The outcome of the complaint will be recorded on the public Register for a period of three years. The Board's decision will be published on its website. The Board's indicative decision was that it would not carry out any further publication. The record on the Registrar and the publication of the decision on the Board's website ensure that consumers can be informed when carrying out their due diligence. The Board does not consider that any further publication is necessary.
- [14] Having considered the submissions received the Board has decided to uphold its initial view.

### Section 318 Order

[15] 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 \$5,000.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,000 (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.

[16] 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

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

Signed and dated this 7<sup>th</sup> day of January 2021



**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:

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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.