

Before the Building Practitioners Board

	BPB Complaint No. CB25064
Licensed Building Practitioner:	Dennis Reeve (the Respondent)
Licence Number:	BP 117513
Licence(s) Held:	Carpentry and Site AOP 2

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

Complaint or Board Inquiry	Board Inquiry
Hearing Location	Whangarei
Hearing Type:	In Person consolidated with CB25068
Hearing Date:	27 November 2019
Decision Date:	23 December 2019

Board Members Present:

Richard Merrifield, LBP, Carpentry and Site AOP 2 (Presiding)
Mel Orange, Legal Member
Robin Dunlop, Retired Professional Engineer
Bob Monteith, LBP Carpentry and Site AOP 2
Faye Pearson-Green, LBP Design AOP 2

Appearances:

Jennifer Thompson, Barrister and Solicitor for the Respondent

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.

Board Decision:

The Respondent **has not** committed a disciplinary offence.

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Introduction

[1] The hearing resulted from a Board Inquiry into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:

- (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) 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).

Function of Disciplinary Action

[2] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*² and in New Zealand in *Dentice v Valuers Registration Board*³.

[3] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*⁴ Collins J. noted that:

¹ The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

² *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

³ [1992] 1 NZLR 720 at p 724

⁴ [2016] HZHC 2276 at para 164

“... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”

- [4] The Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. It does not have any jurisdiction over contractual matters.

Consolidation

- [5] The Board may, under Regulation 13, consolidate two or more complaints into one hearing but only if the complaints are, in the opinion of the Board, about substantially the same subject matter and the complainant and the licensed building practitioner in respect of each complaint agree to the consolidation.
- [6] The Board sought agreement for consolidation of this matter with complaint number CB25068. The consent of all those involved was forthcoming. The two matters were consolidated.

Background to the Complaint

- [7] The hearing proceeded after multiple adjournments were granted following separate requests from the two Respondent’s appearing at the consolidated hearing.

Evidence

- [8] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. Under section 322 of the Act the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.
- [9] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.
- [10] In addition to the documentary evidence before the Board heard evidence at the hearing from:
- | | |
|--------------|--|
| Dennis Reeve | Respondent |
| [Omitted] | Respondent in consolidated matter |
| John Rennie | Technical Assessor |
| [Omitted] | Licensed Building Practitioner – Roofing |
- [11] [Omitted] was engaged to build two dwellings, one of which was described as a minor dwelling on the one site. Each dwelling had a separate building consent issued

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

for its construction. Construction on the minor dwelling was undertaken in 2016 and 2017 and construction on the main dwelling commenced in early 2017.

- [12] The full scope of the consented building work was not completed by [Omitted]. The owners cancelled the contract with the company on or about 2 March 2018 and the company was placed into liquidation on 6 March 2018.
- [13] The owners of the property complained to the Board about the quality and compliance of the building work that had been completed noting that remedial work was required. The complaint was in respect of the Respondent in CB25068.
- [14] The Board engaged the Technical Assessor to carry out an independent assessment of the building work that had been completed and to report on the alleged issues. He provided the Board with a report which detailed the individuals who had carried out the building work, the dates of that work and the quality and compliance issues noted. Those issues included:
1. set out of piled foundation alleged to have been done incorrectly requiring piles to be re-done;
 2. concrete floor slab poured in place without joinery rebates being formed;
 3. below slab plumbing and drains laid in incorrect position;
 4. incorrect cladding ordered;
 5. external cladding not fixed properly;
 6. substitution of in- situ wall with a wall constructed of concrete masonry units;
 7. poor solid plaster finish to block wall;
 8. WANZ support bars not installed adequately;
 9. joinery unit installed incorrectly;
 10. wall framing constructed with defects;
 11. roof cladding installed incorrectly; and
 12. lintel connections not constructed properly.

- [15] The Technical Assessor also identified a number of other licensed building practitioners who carried out or supervised building work on the site including the Respondent who had provided two records of work. As a result of the Respondent being identified the Board resolved to initiate a Board Inquiry into the Respondent's conduct.
- [16] The Respondent described his involvement as project supervision and site management. He took over on or about 26 April 2017 from [Omitted] who had undertaken a similar role. The Respondent's involvement in the project came to an end prior to [Omitted]'s contract being cancelled.
- [17] During the course of the hearing, and in questioning the Respondent and the witnesses present, the Board identified further licensed building practitioners that had carried out or supervised the building work to which the complaint related.
- [18] The Board's questioning also confirmed that the Respondent had not personally undertaken or supervised any of the building work. The Respondent's evidence was that there were licensed persons on site who were carrying out the work and that his role was planning, coordination and oversight.
- [19] The Respondent was questioned about why, if he had not carried out or supervised any of the building work, he had provided a record of work for bracing and wall cladding and a second record of work for foundations, walls roof, columns and beams, roof cladding and wall cladding. His response was that he did so as a result of a misunderstanding of his obligations. He noted that he was now aware of the requirement for each licensed building practitioner to provide a record of work for the restricted building work that they carried out.

Board's Conclusion and Reasoning

- [20] The Board has decided that the Respondent **has not**:
- (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); or
 - (c) 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)
- and **should not** be disciplined.
- [21] The charges under section 317(1)(b) and 317(1)(d) require that the licensed building practitioner have carried out or supervised building work. The term "building work" is defined term in section 7 of the Act as:

building work —

(a) *means work—*

- (i) *for, or in connection with, the construction, alteration, demolition, or removal of a building; and*
- (ii) *on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code; and*

(b) *includes sitework; and*

(c) *includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act; and*

(d) *in Part 4, and the definition in this section of “supervise”, also includes design work (relating to building work) of a kind declared by the Governor-General by Order in Council to be building work for the purposes of Part 4.*

- [22] The charge under section 317(1)(d)(ii) of the Act requires that the Respondent have undertaken restricted building work⁶ which is a subset of building work.
- [23] The Board has decided that the Respondent has not committed any of the alleged disciplinary offences on the basis that the Board was satisfied that the Respondent did not carry out or supervise any building work or any restricted building work. The work was carried out or supervised by other licensed building practitioners.
- [24] The Board considers that the finding that the Respondent has not committed a disciplinary offence is consistent with the principle of the licensing regime under the Act is that each and every licensed person is responsible for and accountable for the work that they carry out or supervise under the authority of their licence.
- [25] The Board does note the Respondent, by providing a record of work for restricted building work that he neither carried out nor supervised, has circumvented the record of work system which is designed to create a permanent record of each and every licensed building practitioner and of the restricted building work that they either carried out or supervised. It is noted, however, that it is not a disciplinary offence to provide a false or misleading record of work and as such there is no disciplinary action that can be taken other than under bringing the regime into disrepute. The Respondent was not charged with disrepute and the Board does consider that the conduct would have come within the scope of that charge if he had been. Notwithstanding the Respondent is cautioned and advised to take care in the future with regard to the provision of records of work.
- [26] The Board also noted that the Respondent, who has a Site AOP 2 licence, could have done better in his coordination and oversight role. It did not, however, consider that the Respondent had departed from an accepted standard of conduct as judged

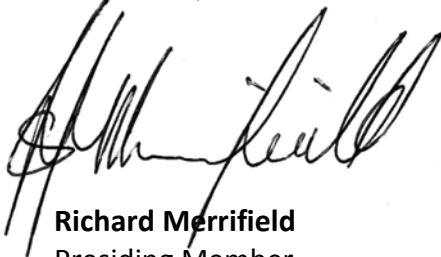
⁶ Restricted building work is defined in the Building (Definition of Restricted Building Work) Order 2011.

against those of the same class of licence⁷. In coming to this decision, it noted that the Technical Assessor had identified areas of noncompliance with the building code but that the conduct was not serious enough to warrant a disciplinary outcome. In coming to that decision, the Board took into account the involvement of other licensed building practitioners and the Courts directions as regards the threshold for disciplinary action. In *Collie v Nursing Council of New Zealand*⁸ the Court noted:

[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

[27] Notwithstanding the above the Respondent is once again cautioned to take greater care in the future.

Signed and dated this 23rd day of December 2019

A handwritten signature in black ink, appearing to read 'Richard Merrifield', written over a horizontal line.

Richard Merrifield
Presiding Member

⁷ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁸ [2001] NZAR 74