

Before the Building Practitioners Board

	BPB Complaint No. 26513
Licensed Building Practitioner:	Ricki Donovan Helagi (the Respondent)
Licence Number:	BP 128748
Licence(s) Held:	Carpentry

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:	Complaint
Hearing Type:	On the Papers
Draft Decision Date:	11 March 2025
Final Decision Date:	9 May 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor

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)(da)(ii) of the Act.

The Respondent is fined \$1,000 and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

Contents

Summary of the Board's Decision	2
Background	2
The Charges	2
Regulation 10 Decision.....	3
Regulation 9 Decisions	3
Draft Decision Process	3
Evidence	4
Further Evidence and Submissions Received	4
Failure to Provide a Record of Work	4
Did the Respondent carry out or supervise restricted building work.....	5
Was the restricted building work complete	5
Has the Respondent provided a record of work.....	5
Was there a good reason	6
Board's Decision	6
Penalty, Costs and Publication	6
Penalty	6
Costs.....	7
Publication	8
Section 318 Order	8
Right of Appeal	9

Summary of the Board's Decision

- [1] The Respondent failed to provide a record of work on completion of restricted building work. He is fined \$1,000 and ordered to pay costs of \$700.

Background

- [2] On 14 February 2025, the Board withdrew a Notice of Proceeding for this matter, and the Respondent was given an opportunity to file a response to the complaint. On the basis of the response, the Board decided to proceed as follows.

The Charges

- [3] Under regulation 10 of the Complaints Regulations, the Board must, on receipt of the Registrar's Report, decide whether to proceed no further with the complaint because regulation 9 of the Complaints Regulations applies. Having received a Registrar's Addendum Report the report, the Board decided that regulation 9 applied to some but not to all of the allegations.

Regulation 10 Decision

- [4] In this matter, the disciplinary charges the Board resolved to further investigate¹ were that the Respondent may, in relation to building work at [OMITTED], have failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out 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) of the Act contrary to section 317(1)(da)(ii) of the Act.

Regulation 9 Decisions

- [5] The complaint to the Board also contained allegations that the Respondent had:
- (a) carried out or supervised building work in a negligent or incompetent manner (s 317(1)(b) of the Act);
 - (b) breached the code of ethics prescribed under section 314A of the Act (s 317(1)(g) of the Act); and
 - (c) 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).
- [6] With regard to the allegations made, the Board decided that regulation 9(f)(ii) of the Complaints Regulations applied. It provides:

Complaint not warranting further investigation

A complaint does not warrant further investigation if—

- (f) the investigation of it is—*
- (ii) unnecessary;*

- [7] In considering whether the investigation of a complaint is necessary, the Board must consider the directions of the courts regarding the threshold for matters to be dealt with as a disciplinary matter. In short, the conduct has to fall seriously short of expected standards of conduct.²
- [8] On this basis, the Board has decided that whilst there was some evidence that supported the additional allegations, the matters raised did not reach the seriousness threshold as outlined by the courts.

Draft Decision Process

- [9] In this instance, the Board decided that a formal hearing was not necessary. The Board considered that there was sufficient evidence before it to allow it to make a decision on the papers. It noted, however, that there may have been further evidence in relation to the matter that the Board was not aware of. To that end, it

¹ The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

² *Collie v Nursing Council of New Zealand* [2001] NZAR 74

issued a Draft Decision. The Respondent was provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. The Board further noted that if the Respondent requested an in-person hearing, then the Draft Decision would be set aside, and a hearing would be scheduled.

Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed³. 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.

Further Evidence and Submissions Received

- [11] After the Board issued the Draft Decision, it received a submission from the Respondent. He stated:

I do not wish to ask for a new hearing and incur the additional costs for such. We are already suffering substantial losses for this project in the amount \$198,865.33 composed of unpaid invoices issued to the complainant and legal costs paid to date.

It is noted in the decision, relating to the issue of “the record of work”, that the BPB considers the end of engagement for the project to be 14th, February, 2024.(Clause16). Attached to this document are emails between the complainant and PHB regarding discussions about completion of outstanding works in April 2024.

Also attached is the final email confirming the client wished to terminate the contract and not have PHB complete the remaining works dated 24th June 2024.

- [12] The Board took the further evidence and submissions into account when making this Final Decision.

Failure to Provide a Record of Work

- [13] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.⁴
- [14] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work⁵ unless there is a good reason for it not to be provided.⁶

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁴ Section 88(1) of the Act.

⁵ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

⁶ Section 317(1)(da)(ii) of the Act

Did the Respondent carry out or supervise restricted building work

- [15] The Respondent was engaged to carry out and/or supervise building work on a new residential dwelling under a building consent. His work was building work on structural and cladding elements of the build, both of which are restricted building work because they form part of the primary structure and/or external moisture management system of a residential dwelling.⁷

Was the restricted building work complete

- [16] In its Draft Decision, the Board set out that the Respondent was involved in the build until 14 February 2024, when his engagement came to an end as a result of a commercial dispute.
- [17] The Respondent submitted that he continued to work until 24 June 2024. He did not state what restricted building work was outstanding up until that date.
- [18] In his original response to the complaint, the Respondent set out:

This client owes us \$200k still today 24th February 2025, after we let them move in on the 24th December 2023. We have since sent the Hauraki District Council our record of work, but the delay was due to liaising with our lawyers on how we can best deal with the predicament that we're in.

- [19] A Code Compliance Certificate (CCC) application was made on 12 January 2024. A CCC application is submitted once all restricted building work is complete.
- [20] The Complainants wrote on multiple occasions asking the Respondent to provide documentation required to obtain a CCC, including the record of work. Because the Complainants did not have the Respondent's record of work, they were advised by the Auckland Council to make a complaint about its non-provision, and that if they did, a CCC would be granted.
- [21] A CCC was granted on 16 April 2024. It would not have been granted if there was outstanding restricted building work.
- [22] Because of those factors, the Board does not accept that the restricted building work was not complete until June 2024. It was most likely complete when the Complainants moved into the dwelling, which was in December 2023.

Has the Respondent provided a record of work

- [23] The Respondent did not provide a record of work on completion or soon thereafter. Since the complaint was made, the Respondent states he has provided his record of work to the Territorial Authority. That provision was late and outside of the allowable timeframe for providing a record of work.

⁷ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Was there a good reason

- [24] There was a commercial dispute. The requirement to provide a record of work is a statutory obligation. A dispute is not a good reason to fail to provide a record of work in a timely manner.

Board's Decision

- [25] The Respondent **has** failed to provide a record of work on completion of restricted building work.

Penalty, Costs and Publication

- [26] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [27] The matter was dealt with on the papers. The Board made an indicative order in its Draft Decision. It has since received submissions and has made a final decision regarding penalty, costs, and publication.
- [28] The Board provided the Respondent with an opportunity to provide a record of work before it made a final decision. He provided one, and, on that basis, the penalty is reduced by \$500 to \$1,000.

Penalty

- [29] The Board has the discretion to impose a range of penalties.ⁱⁱ Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.⁸ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:⁹
- (a) protection of the public and consideration of the purposes of the Act;¹⁰
 - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;¹¹
 - (c) setting and enforcing a high standard of conduct for the industry;¹²
 - (d) penalising wrongdoing;¹³ and

⁸ *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

⁹ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁰ Section 3 Building Act

¹¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹² *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹³ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

(e) rehabilitation (where appropriate).¹⁴

[30] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases¹⁵ and applying the least restrictive penalty available for the particular offending.¹⁶ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty¹⁷ that is consistent with other penalties imposed by the Board for comparable offending.¹⁸

[31] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.¹⁹

[32] Record of work matters are at the lower end of the disciplinary scale. The Board's normal starting point for a failure to provide a record of work is a fine of \$1,500, an amount which it considers will deter others from such behaviour. Since the complaint was made, the Respondent has provided a record of work. The late provision has been taken into account, and the fine has been reduced to \$1,000 in recognition of it.

Costs

[33] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.²⁰

[34] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²¹. The starting point can then be adjusted up or down, depending on the particular circumstances of each case²².

[35] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was simple. Adjustments are then made.

[36] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$700 toward the costs of and incidental to the Board's inquiry. This is the Board's

¹⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

¹⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁶ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

¹⁷ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁸ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁹ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

²⁰ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

²¹ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²² *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

scale amount for a simple matter that has been dealt with by way of a Draft Decision. It is significantly less than 50% of actual costs.

Publication

- [37] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public Register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act,²³ and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [38] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.²⁴ Further, as a general principle, publication may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.²⁵
- [39] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

- [40] 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 \$1,000. |
| Costs: | Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$700 (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, the Respondent will be named in this decision, which will be published on the Board's website.**
- [41] 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.

²³ Refer sections 298, 299 and 301 of the Act

²⁴ Section 14 of the Act

²⁵ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Right of Appeal

[42] The right to appeal Board decisions is provided for in section 330(2) of the Actⁱⁱⁱ.

Signed and dated this 20th day of May 2025.



M Orange
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 318 Disciplinary Penalties**

- (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:*

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- (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 1 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.*

iii **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.*