

Before the Building Practitioners Board

	BPB Complaint No. 26482
Licensed Building Practitioner:	Rodney Gibson (the Respondent)
Licence Number:	BP 119149
Licence(s) Held:	Design AoP 2

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

Complaint or Board Inquiry:	Complaint
Hearing Location:	Wellington
Hearing Type:	In Person
Hearing Date:	8 April 2025
Substantive Decision Date:	13 May 2025
Penalty Decision Date:	8 August 2025

Board Members Present

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr G Anderson, LBP, Carpentry and Site AoP 2
Ms E Harvey McDouall, Registered Architect
Ms S Chetwin CNZM, Barrister and Solicitor, Professional Director
Mr C Lang, Building Surveyor and 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)(b) of the Act.

The Respondent is fined \$2,500 and ordered to pay costs of \$2,950. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary of the Board's Penalty Decision

- [1] The Respondent submitted a Building Consent application for what was purported to be a building to be constructed in accordance with a MultiProof Approval. The application should have disclosed that a building manufactured in China was going to be installed on new foundations. The Board found that the Respondent's Building Consent application was misleading and that he had conducted himself in a negligent manner.
- [2] The Board's initial view was that the Respondent should be fined \$2,500, ordered to pay costs of \$2,950 and that the Board's decision should be published without the Respondent being named. The Respondent submitted that he should not be fined or pay costs and that there should not be any publication orders. The Board did not accept the submissions made and affirmed its penalty, costs and publication orders.

The Charges

- [3] This penalty decision arises out of the Board's substantive decision in which it found that the Respondent had carried out building work (design work) in a negligent manner. It did not uphold other allegations that it was investigating under sections 317(1)(c), (d), (da)(i) or (i) of the Act.
- [4] Having found that the Respondent had committed a disciplinary offence, 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.
- [5] In its substantive decision, the Board set out its indicative position regarding penalty, costs, and publication and invited the Respondent to make written submissions on those matters.
- [6] On 23 June 2025, the Board received the Respondent's submissions. It has considered them and made the following decisions.

Penalty

- [7] The Board's initial view was that a fine of \$2,500 was the appropriate penalty. The Board's reasons were set out in its substantive decision.

- [8] The Respondent put forward what he considered to be mitigating factors. First, he stated that he had not intended to misrepresent the building work and that there may have been a misunderstanding between him and the Council. He also submitted that shortcomings were not the result of any lack of effort on his part to get it right. The Respondent also made a qualified acceptance of the Board's findings. He stated: *"I accept that the board has found that I erred in the way I applied for building consent"*.
- [9] The Respondent also set out his personal circumstances and noted his lack of income with which to pay a fine. He submitted:
- In these circumstances I respectfully request a waiver the fine. Currently I have not income and no way of paying this un justified penalty.*
- [10] The Respondent defended the charges, and parts of his mitigation submission were at odds with the evidence that was before the Board. The Board did not accept that the issue arose as a result of miscommunication, but did accept that there may not have been an intention to mislead. The key point, however, is that as a Design AoP 2 practitioner, the Respondent should have known better and should not have made the errors that he did.
- [11] The Board does not agree with the Respondent's submission that the proposed penalty is unjustified. He committed a disciplinary offence, and there should be consequences. Also, the statement that the Respondent considers it an unjustified penalty indicates that he has not acknowledged his wrongdoing.
- [12] In its substantive decision, the Board set out the reasons why penalties are imposed and why it had settled on a fine of \$2,500. Having reviewed the Respondent's submissions and reflected on the reasons why it imposed a fine, the Board has decided it will not waive or reduce the fine. A penalty is warranted. There are no new mitigating factors that warrant a reduction, and the amount imposed reflects the seriousness of the offence and will act as a deterrent to others.
- [13] The Respondent should note that if he is in a difficult financial position (of which no evidence was provided), he can ask the Registrar for time to pay the fine.

Costs

- [14] The Board's initial view was that \$2,950 in costs was appropriate.
- [15] The Respondent submitted that costs should lie where they stand. In other words, each participant should bear their own costs. He noted that he did not initiate the complaint, that most of the grounds of the complaint against him were not upheld, and that he had incurred expense.
- [16] The costs of an investigation and disciplinary hearing are funded through licence fees. It is not appropriate that other fee payers bear all of the costs of a disciplinary matter. The Board does, however, take an approach to costs that ensures only a portion of the actual costs is recovered.

- [17] That the Respondent did not initiate the complaint is irrelevant. The complaint was validly made on good grounds.
- [18] Looking at the submission that not all of the alleged grounds of discipline were upheld, it is enough that one ground was upheld. Had it been a situation where the hearing costs were increased because of the other charges, it may have been a reason to reduce the costs order. Given the finding of negligence and because the focus of the hearing was on the conduct that related to it, the Board does not consider that the costs were unduly increased because of the other charges, or that a reduction in the order, which is substantially less than 50% of the actual costs, is appropriate.
- [19] On the basis of the above, and having considered the submissions, the Board considers \$2,950 to be a reasonable amount, and it has decided to uphold its initial view regarding costs.

Publication of Name

- [20] The Board's initial view was that there should be further publication, in addition to the Respondent being named on the Register, but that the Respondent would not be named in the further publication. The Respondent has submitted that there should not be any publication.
- [21] Regarding the decision being recorded in the Register of Licensed Building Practitioners, that is a requirement of section 301(1)(l)(iii) of the Act. The Register is established by section 298 of the Act, and section 299 sets out its purposes, which are:

The purpose of the Register is—

- (a) *to enable members of the public to—*
- (i) *determine whether a person is a licensed building practitioner and, if so, the status and relevant history of the person's [licensing]; and*
 - (ii) *choose a suitable building practitioner from a list of licensed building practitioners; and*
 - (iii) *know how to contact the building practitioner; and*
 - (iv) *know which licensed building practitioners have been disciplined within the last 3 years; and*
- (b) *to facilitate the administrative, disciplinary, and other functions of the Board and the Registrar under this Act.*

- [22] Section 301 of the Act sets out the matters to be contained in the Register. The section uses the phrasing "must", which makes the provisions mandatory, not discretionary:

- (1) *The Register must contain all of the following information, to the extent that the information is relevant, for each licensed building practitioner whose name is entered in the Register:*
- (l) *information about the status and history of the person's [licensing], particularly—*

- (i) *the class [in which the person is licensed]; and*
- (ii) *the date on which the person's name was entered in the Register; and*
- (iii) *any action taken under section 318 on a disciplinary matter in respect of the person in the last 3 years:*

- [23] The final provision, action taken under section 318, is the reason why details on the disciplinary offence must be contained in the Register.
- [24] Taking the above provisions into consideration, it is clear that one of the purposes of the Register is to allow an informed consumer to choose a Licensed Building Practitioner. Providing information as regards disciplinary action helps to facilitate this. It is also clear that the Board has no discretion as regards information on disciplinary action being retained on the Register.
- [25] Turning to the further publication indicated, the Board considers it appropriate to publish on the basis that other Licensed Building Practitioners could learn from the Board's findings. The proposed publication was not intended to single out the Respondent, which is why the Board indicated the Respondent would not be named. The Board's position is that such publication is still warranted and that it would benefit other practitioners.
- [26] Based on the above, a summary of the decision will be published. The Respondent will not be named in that publication. The Respondent should note that the Board has not made any form of suppression order.

Section 318 Order

- [27] 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 \$2,500.
- Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,950 (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(1)(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.
- The Registrar is to publish an article on Code Words and/or the Wrap Up summarising the Board's decision. The Respondent is not to be named in that publication.

- [28] 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

[29] The right to appeal Board decisions is provided for in s 330(2) of the Actⁱⁱ.

Signed and dated this 21st day of August 2025.



Mr 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 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.*