

Before the Building Practitioners Board

	BPB Complaint No. 26867
Licensed Building Practitioner:	Rory Alexander Funnell (the Respondent)
Licence Number:	BP 129400
Licence(s) Held:	Bricklaying and Blocklaying – Veneer and Structural Masonry

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
Hearing and Draft Decision Date:	4 November 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mr G Pearson, Barrister and Solicitor – Legal Member
Ms E Harvey McDouall, Registered Architect
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)(da)(ii) of the Act.

The Respondent is fined \$1,500 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.

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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 \$1,500 and ordered to pay costs of \$700. The disciplinary finding will be recorded on the public Register for a period of three years.
- [2] If the Respondent provides a record of work by the close of the submission period to both the owner and the Territorial Authority, as per the requirements of section 88(1) of the Act, the fine will be reduced to \$1,000.

The Charges

- [3] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.¹
- [4] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at **[Omitted]** Auckland, 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.

Service

- [5] Prior to considering the disciplinary charge, the Board needs to determine whether the Respondent has been provided with notice of the complaint and with an opportunity to respond to it. This is to ensure that he is afforded his right to natural justice as section 283 of the Act stipulates that the Board “*must comply with the principles of natural justice*” and with the Complaints Regulations.
- [6] The principles of natural justice require that hearings are conducted in a manner that ensures that a respondent is given a fair opportunity to be heard, to contradict the evidence and that the decision-making process is conducted fairly, transparently and in good faith. In terms of a fair hearing, a respondent should be given the opportunity to respond to an allegation which, with adequate notice, might be effectively refuted. The Complaints Regulations recognise those principles and prescribe a process that must be complied with when a complaint is made. That process includes providing the Respondent with a copy of the complaint and an opportunity to respond to it³ and the opportunity to appear and be heard at a hearing.⁴
- [7] In this matter, the Respondent did not appear at the hearing. He had been provided with a Notice of Hearing, and he did engage in the investigation process in that he responded to the complaint.
- [8] The Board’s Notice of Proceeding and Notice of Hearing were sent to the address that the Respondent maintains on the Register of Licensed Building Practitioners. The response to the complaint was received from that address. In this respect, the Register must contain certain information, including under section 301(1)(d) of the

¹ 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. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

² 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.

³ Regulation 7(2) of the Complaints Regulations.

⁴ Regulation 12 of the Complaints Regulations.

Act, an “address for communications under this Act”. Under section 302, the licensed building practitioner must keep their details up to date:

302 Obligation to notify Registrar of change in circumstances

- (1) *Each [person applying to become licensed], and each licensed building practitioner, must give written notice to the Registrar of any change in circumstances within 10 working days after the change.*
- (2) *Change of circumstances—*
 - (a) *means any change in the information that the person has provided to the Registrar under this subpart; and*
 - (b) *includes any change that may be prescribed (if any).*

[9] As the Respondent has not provided any updated details, the address to be used for communications with him is that contained in the Register.⁵ It is also an offence if a Licensed Building Practitioner fails to update the Register.

[10] The Act also provides for the service of notices in section 394. It provides that:

394 Service of notices

- (1) *Any notice or other document required to be served on, or given to, any person under this Act is sufficiently served if it is—*
 - (a) *delivered personally to the person; or*
 - (b) *delivered to the person at the person’s usual or last known place of residence or business; or*
 - (c) *sent by fax or email to the person’s fax number or email address; or*
 - (d) *posted in a letter addressed to the person at the person’s usual or last known place of residence or business.*
- (5) *A notice or other document sent by post to a person in accordance with subsection (1)(d) must be treated as having been received by that person at the time at which the letter would have been delivered in the ordinary course of post.*

[11] Given the above, the Board finds that the required notices under the Regulations have been provided to the Respondent.

[12] The Respondent is not obliged to attend a hearing. The requirement is that he is given the opportunity to do so. As that has occurred, natural justice requirements have been met. The Board will consider the matter.

[13] The Board also notes that the purposes of the disciplinary provisions in the Act would be defeated if licensed building practitioners were able to avoid complaints by

⁵ Section 314 of the Act.

not engaging in investigations or appearing at hearings. As such, it is appropriate that it deals with the matter.

Draft Decision Process

- [14] The Board’s jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers necessary prior to it making a decision.
- [15] Ordinarily, the Board makes a decision after holding a hearing.⁶ The Board may, however, depart from its normal procedures if it considers that doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice.⁷
- [16] In this instance, the Board has decided that a formal hearing is not necessary. The Board considers that there is sufficient evidence before it to allow it to make a decision on the papers. There may, however, be further evidence in relation to the matter that the Board was not aware of. To that end, this decision is a draft Board decision. The Respondent will be provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. If the Respondent requests an in-person hearing, or the Board directs that one is required, this decision will be set aside, and a hearing will be scheduled.

Evidence

- [17] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences have been committed.⁸ 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.

Failure to Provide a Record of Work

- [18] 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 (TA) on completion of their restricted building work.⁹
- [19] 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 TA on completion of restricted building work¹⁰ unless there is a good reason for it not to be provided.¹¹

⁶ Regulation 10 of the Complaints Regulations.

⁷ Under Clause 27 of Schedule 3 the Board may regulate its own procedure and it has summary jurisdiction, which allows for a degree of flexibility in how it deals with matters: *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

⁸ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁹ Section 88(1) of the Act.

¹⁰ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

¹¹ Section 317(1)(da)(ii) of the Act

Did the Respondent carry out or supervise restricted building work

[20] The Board is satisfied that the Respondent carried out restricted building work for the purposes of the Building Act 2004. The Respondent was engaged to undertake bricklaying and blocklaying work to a residential building under a building consent. That work formed part of the building's primary structure, including structural masonry associated with the slab and foundation stage of construction. Work of this nature is required to comply with Clause B1 (Structure) of the New Zealand Building Code, which relates to the stability and structural performance of buildings. Building work affecting compliance with Clause B1 is restricted building work as defined in sections 7 and 84 of the Act and the Building (Definition of Restricted Building Work) Order 2011. The Respondent was therefore required to be licensed for, and to carry out, the work as restricted building work.¹²

Was the restricted building work complete

[21] The Board is satisfied that the restricted building work carried out by the Respondent was complete for the purposes of section 88(1) of the Act. The Respondent's engagement was limited to discrete restricted building work in the nature of structural masonry and associated blockwork undertaken as part of the slab and foundation stage of the project. Auckland Council inspection records show that this stage of the work was inspected and ultimately passed, with outstanding matters from earlier inspections recorded as having been cleared, and no further foundation or slab work required. In particular, the inspection outcome dated 28 February 2024 records that the work was completed in accordance with the approved plans and specifications. There is no evidence that the Respondent was required to carry out or supervise any further restricted building work after that point. Accordingly, the Board finds that the restricted building work for which the Respondent was responsible was complete, and that the obligation to provide a Record of Work not later than that time.

Has the Respondent provided a record of work

[22] The Board finds that the Respondent has not provided a Record of Work in relation to the restricted building work he carried out. The complainant has stated that no Record of Work was provided to him following completion of the Respondent's restricted building work. In addition, the TA's records do not record receipt of a Record of Work from the Respondent in respect of the relevant building consent. The Respondent has not produced evidence of providing his record of work to the Complainant or the TA. On the evidence available, the Board is satisfied that a Record of Work has not been provided.

Was there a good reason

[23] The Board has considered whether there was any good reason for the Respondent not to provide a Record of Work. The Respondent has not identified any basis on which he was entitled to withhold a Record of Work, and no circumstances have

¹² Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

been put forward that would excuse compliance with section 88(1) of the Act. In particular, there is no evident uncertainty as to responsibility for the restricted building work, or other impediment that could justify the non-provision of a Record of Work. The Board therefore finds that there was no good reason for the Respondent to withhold a Record of Work.

Did the Respondent fail to provide a record of work

[24] Having found that the Respondent carried out restricted building work, that the restricted building work for which he was responsible was complete, that no Record of Work has been provided, and that there was no good reason for withholding it, the Board concludes that the Respondent failed to provide a Record of Work in accordance with section 88(1) of the Building Act 2004. The Board is therefore satisfied that the Respondent has committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

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. Included was information relevant to penalty, costs, and publication. The Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

[28] 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.¹³ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹⁴

- (a) protection of the public and consideration of the purposes of the Act;¹⁵

¹³ *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]

¹⁴ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁵ Section 3 Building Act

- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;¹⁶
- (c) setting and enforcing a high standard of conduct for the industry;¹⁷
- (d) penalising wrongdoing;¹⁸ and
- (e) rehabilitation (where appropriate).¹⁹

[29] 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 cases²⁰ and applying the least restrictive penalty available for the particular offending.²¹ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty²² that is consistent with other penalties imposed by the Board for comparable offending.²³

[30] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.²⁴

[31] 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. There are no aggravating or mitigating factors present. As such, the Board sees no reason to depart from the starting point.

[32] The Board will provide the Respondent with an opportunity to provide a record of work before it makes a final decision on the appropriate penalty. If one is provided to both the owner and the Territorial Authority as per the requirements of section 88(1) of the Act, it will be taken into consideration as a mitigating factor, and the penalty will be reduced by \$500 to a fine of \$1,000.

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.²⁵

¹⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁷ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹⁸ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁹ *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

²⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²¹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

²² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁴ 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.

²⁵ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

- [34] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.²⁶ The starting point can then be adjusted up or down, depending on the particular circumstances of each case.²⁷
- [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 scale amount for a simple matter that has been dealt with by way of a Draft Decision. It is significantly less than 50% of the 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,²⁸ 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 1990.²⁹ 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.³⁰
- [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.

²⁶ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²⁷ *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.

²⁸ Refer sections 298, 299 and 301 of the Act

²⁹ Section 14 of the Act

³⁰ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

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 \$1,500.

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.

Submissions on Draft Decision

[42] The Board invites the Respondent to:

- (a) provide further evidence for the Board to consider; and/or
- (b) make written submissions on the Board's findings. Submissions may be on the substantive findings and/or on the findings on penalty, costs and publication.

[43] Submissions and/or further evidence must be filed with the Board by no later than the close of business on Tuesday 3 February 2026.

[44] If submissions are received, then the Board will meet and consider those submissions.

[45] The Board may, on receipt of any of the material received, give notice that an in-person hearing is required prior to it making a final decision. Alternatively, the Board may proceed to make a final decision which will be issued in writing.

[46] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

Request for In-Person Hearing

[47] If the Respondent, having received and considered the Board's Draft Decision, considers that an in-person hearing is required then one will be scheduled, and a notice of hearing will be issued.

[48] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on Tuesday 3 February 2026.

[49] If a hearing is requested, this Draft Decision, including the Board’s indicative position on penalty, costs and publication, will be set aside.

Right of Appeal

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

Signed and dated this 8th day of January 2026



Mr M Orange
Presiding Member

This decision and the order herein were made final on Wednesday 4 February 2026 on the basis that no further submissions were received.

Signed and dated this 4th day of February 2026



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:*

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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 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:
- (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.