

Before the Building Practitioners Board

	BPB Complaint No. CB24069
Licensed Building Practitioner:	Bradley Rule (the Respondent)
Licence Number:	BP 111822
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Board Inquiry
Hearing Location	Wellington
Hearing Type:	On the Papers
Hearing Date:	13 February 2019
Substantive Decision Date:	21 February 2019
Penalty Decision Date:	22 March 2019

Board Members Present:

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

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.

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Introduction

[1] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had 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).

[2] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Act¹, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

[3] 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.

[4] In the Substantive Decision the Board noted:

[10] Notice of the Board Inquiry was served on the Respondent. He did not provide a response. The Complainant did note on 18 April 2018, as part of the withdrawal of the complaint, that a record of work had since been received.

[5] On 27 February 2019, the Board received the Respondent’s submissions. The Respondent noted:

I have received a complaint from you guys which I understand has been heard by the board. I never received any correspondence on this until this Monday the 23/2/19. I spoke with Gemma yesterday and she said I should have received a letter end of last year, but I was not in Queenstown from the 16/12 to 14/1 so did not get this. (may have got lost somewhere).

I did supply a ROW to Queenstown roofing when requested, but they have not past it on, due to them awaiting payment from the client. The complaint was then withdrawn. I am sorry if I did not supply the ROW direct to the owner, but I was contracted by Queenstown roofing.(sorry my fault).

[6] The Board's records show that the Notice of Hearing and Board Inquiry was delivered to the Respondent's address, as provided by him to the Register of Licensed Building Practitioners on 17 December 2018. As such the required period of notice under the Regulations of at least 15 working days was given. The question is whether service of the notice was effective.

[7] In this respect the Register of Licensed Building Practitioners must contain certain information including under section 301(1)(d) 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).*

[8] As the Respondent has not provided any updated details, the address to be used for communications with him is that contained in the Register.

[9] 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.*

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

[11] 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 not maintaining up to date contact details as per the requirements of the Act.

- [12] Moreover, the Board notes that the Respondent's submission shows that the record of work was not provided to the owner or the territorial authority as per the requirements of section 88 of the Act. Whilst it may have been pragmatic to provide it to another contractor to pass the record of work on to the owner the course of action chosen ran the risk that it was not passed on. This is what has occurred. As such, even if the Respondent had appeared or made submissions for the hearing the result would not have changed.
- [13] Turning to the submissions as regards penalty the Board has considered them and made the following decisions.

Penalty

- [14] The Board's initial view was that a \$1,500 fine was the appropriate penalty for the disciplinary offence. The Respondent has submitted, in addition to the above, that:

I would really struggle to pay any monies for a fine as it is hard enough living in Queenstown as it is. Also, I think to have my name published would be unfair as I do value my LBP and take it seriously when doing works. I hope you can see my side of the story and if I did receive a letter I would have responded asap explaining this.

- [15] The Board notes that a record of work may have been provided to the main contractor in a timely fashion. It considers that to be a mitigating factor. The fine will be reduced accordingly. It is set at \$1,000.
- [16] Whilst the Board has sympathy for the Respondent's personal circumstances it does not consider that they warrant any further reductions in the level of the fine.

Costs

- [17] The Board's initial view was that \$500 in costs was appropriate. This remains the case.

Publication of Name

- [18] The Board's initial view was there were no good reasons to further publish the matter. The Respondent has submitted it would be unfair to publish his name. Publication has not been ordered. The Board therefore takes the submission as an objection to the Respondent's disciplinary offending being recorded on the Register in accordance with s 301(1)(l)(iii) of the Act.
- [19] The Register is established by s 298 of the Act and s 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.*

[20] Section 301 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:*

[21] The final provision, action taken under s 318, is the reason why detail on the disciplinary offence must be contained in the Register.

[22] Taking the above provisions into consideration it is clear that one of the purposes of the Register is to allow informed consumer and 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.

[23] Having considered the submissions received the Board has decided to uphold its initial view.

Section 318 Order

[24] 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 \$500 (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)(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.

- [25] 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

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

Signed and dated this 22nd day of March 2019



Richard Merrifield
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—

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- (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.*