

## Before the Building Practitioners Board

	BPB Complaint No. CB25952
Licensed Building Practitioner:	Weixin Shen (the Respondent)
Licence Number:	BP101037
Licence(s) Held:	Carpentry; Site – AoP 1

---

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

---

Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	9 February 2023
Substantive Decision Date:	24 February 2023
Penalty Decision Date:	26 April 2023

#### Board Members Present

Mrs J Clark, Barrister and Solicitor, Legal Member (Presiding)  
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2  
Mr D Fabish, LBP, Carpentry and Site AoP 2  
Mrs K Reynolds, Construction Manager

#### 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.

## Contents

<b>Summary of the Board’s Penalty Decision</b> .....	2
<b>The Charges</b> .....	2
<b>Penalty</b> .....	2
<b>Costs</b> .....	3
<b>Publication of Name</b> .....	3
<b>Section 318 Order</b> .....	3
<b>Right of Appeal</b> .....	4

### Summary of the Board’s Penalty 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 \$500. The decision will be recorded in the Register of Licensed Building Practitioners for a period of three years.

### The Charges

- [2] 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 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) (section 317(1)(da)(ii) of the Act);
- [3] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [4] 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.
- [5] On 31 March 2023, the Board received the Respondent’s submissions on penalty and costs. The Respondent did not make any submissions on the publication order. The Board has considered the submissions and made the following decisions.

### Penalty

- [6] The Board’s initial view was that a fine of \$1500 was the appropriate penalty for the disciplinary offence.
- [7] Having considered the submissions received, the Board has decided to uphold its initial view.

- [8] The Respondent stated that the penalty was “*too strict for me*” but did not provide any details to support this statement. He did refer to not having had any other complaints against him. The matter of no prior complaints was already taken into account by the Board in the setting of the penalty.
- [9] The submission, however, largely repeated factual matters which were already canvassed at the hearing and considered in reaching the Board’s substantive decision. These factual matters are not relevant to the issues of penalty.
- [10] The Board is also mindful that the penalty is consistent with other decisions on failure to provide a record of work matters.
- [11] The Respondent should note that he can apply to the Registrar for a payment plan if he is in a constrained financial position.

### **Costs**

- [12] The Board’s initial view was that \$500 in costs was appropriate.
- [13] Having considered the submissions received, the Board has decided to uphold its initial view.
- [14] Again, the Respondent’s submission did not put forward any grounds for a reduction in these costs. For the reasons set out in the substantive decision, the costs were already heavily discounted from the usual half-day hearing tariff.
- [15] As noted above, the Respondent can seek a payment plan to pay off the costs.

### **Publication of Name**

- [16] The Board’s initial view was there were no good reasons to further publish the matter.
- [17] No submissions were made by the Respondent on publication. Accordingly, the Board has decided to uphold its initial view.

### **Section 318 Order**

- [18] 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 \$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(I)(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.

- [19] 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**

- [20] The right to appeal Board decisions is provided for in s 330(2) of the Act<sup>ii</sup>.

Signed and dated this 1<sup>st</sup> day of May 2023.



**Mrs J Clark**  
Presiding

---

#### **<sup>i</sup> 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.”*

#### **<sup>ii</sup> 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.*