

**Before the Building Practitioners Board**

BPB Complaint No. 26784

Licensed Building Practitioner:

Sione Vaiangina (the Respondent)

Licence Number:

BP 141324

Licence(s) Held:

Carpentry

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**Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner  
Under section 315 of the Building Act 2004**

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Complaint or Board Inquiry

Complaint

Hearing Location

Wellington

Hearing Type:

In Person

Hearing and Decision Date:

9 December 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

**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 **has not** committed disciplinary offences under sections 317(1)(g) or (i) 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.

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## Summary

- [1] The Respondent failed to provide a Record of Work on the completion of restricted building work. He was fined \$1,000 and ordered to pay costs of \$700. The fine was reduced on the basis that, after the hearing had been conducted, the Respondent provided a Record of Work.
- [2] The Board also decided that the Respondent had not breached either sections 317(1)(g) or (i) of the Act, on the basis that the evidence received at the hearing established that the Respondent was not the person who contracted to carry out the building work and who received the payments that were complained about.

## 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.<sup>1</sup>

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<sup>1</sup> 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.

[4] In this matter, the disciplinary charges the Board resolved to further investigate<sup>2</sup> were that the Respondent may, in relation to building work at [OMITTED], have:

- (a) 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;
- (b) breached the Code of Ethics prescribed under section 314A of the Act contrary to section 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 contrary to section 317(1)(i) of the Act.

[5] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(g) of the Act, it would be inquiring into whether the Respondent breached Clause 10 of the Code of Ethics, which provides:

**10. *You must comply with the law***

- (1) *When you carry out or supervise building work, you must ensure that the building work complies with the following:*
  - (a) *the Building Act 2004;*
  - (c) *the Building (Residential Consumer Rights and Remedies) Regulations 2014;*

[6] The specific matters to be investigated under Clause 10 were the alleged failures to comply with:

- (a) section 362D of the Act and regulation 5 of the Building (Residential Consumer Rights and Remedies) Regulations 2014 (the Consumer Regulations) with respect to the alleged failure to provide the prescribed disclosure information and checklist; and
- (b) section 362F of the Act and regulation 6 of the Consumer Regulations in respect of the alleged failure to provide a written building contract.

[7] The Board also gave notice that, in further investigating the Respondent's conduct under section 317(1)(i) of the Act, it would be investigating whether the Respondent may have brought the licensing regime into disrepute with respect to taking funds and not completing the agreed building work.

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<sup>2</sup> 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.

## Evidence

- [8] The Board must be satisfied, on the balance of probabilities, that the alleged disciplinary offences have been committed<sup>3</sup>. 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.
- [9] The complaint contained very little detail but contained serious allegations regarding the Respondent's conduct. In a similar vein, the Respondent did not address the allegations in the complaint in his response. As a consequence, it was necessary for the matter to proceed to a hearing.
- [10] At the hearing, it was established that the Respondent was not the person who contracted to carry out the building work but rather was assisting a family member who had agreed to undertake the work. That person, the Respondent's uncle, was not a Licensed Building Practitioner (LBP). As such, he was not a person over whom the Board had any jurisdiction. Nor was he a person who could have carried out or supervised the restricted building work that formed part of the building consent that had been issued.
- [11] Because the Respondent was not the person who had contracted to carry out the work and was not, for the purposes of the LBP Code of Ethics, in business, the Board determined that the allegations under sections 317(1)(g) and (i) of the Act could not proceed, and they were dismissed.
- [12] The Respondent was informed at the hearing and reminded that, had he provided a full and detailed response to the complaint when it was first brought to his attention, a hearing may not have been necessary, and cost and inconvenience to those involved could have been avoided.
- [13] Regarding the remaining allegation, that the Respondent had failed to provide a Record of Work on the completion of restricted building work, the Respondent's involvement in the restricted building work stopped when he went overseas for family reasons. He was then informed that another LBP had taken over the work and would be completing it. That LBP took over on 4 April 2024.
- [14] The Complainant provided evidence that she and others had been trying to get hold of the Respondent to obtain a Record of Work from him, and that the Respondent's failure to provide a Record of Work was delaying the issue of a Code Compliance Certificate. At the hearing, the Respondent was somewhat vague regarding whether he had been contacted and why he had not provided a Record of Work. In his written response, he had set out that he had forgotten about it because of his "fully scheduled daily commitments that year".

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<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

### **Failure to Provide a Record of Work**

- [15] 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.<sup>4</sup>
- [16] 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 work<sup>5</sup> unless there is a good reason for it not to be provided.<sup>6</sup>

#### Did the Respondent carry out or supervise restricted building work

- [17] The Respondent was engaged to carry out and/or supervise building work on an alteration to a residential dwelling under a building consent. His work included the primary structure and the external moisture management system of a residential dwelling,<sup>7</sup> both of which are forms of restricted building work for which a Record of Work must be provided.

#### Was the restricted building work complete

- [18] The Respondent's restricted building work came to an end when he was informed that another LBP would be finishing what he had started. That was on or before 4 April 2024, and that was when the Respondent should have provided his Record of Work.

#### Has the Respondent provided a Record of Work

- [19] The Respondent had not provided a Record of Work at the time of the hearing.

#### Was there a good reason for the Respondent to withhold his Records of Work

- [20] The Respondent submitted that he had not been asked for a Record of Work. Whilst that was contrary to other evidence received, the obligations under the Act are clear. The requirement is that an LBP provide a Record of Work on completion. He cannot wait until the owner or the Territorial Authority demands one. He was required to act of his own accord and not wait for others to remind him of his obligations.

#### Did the Respondent fail to provide a Record of Work

- [21] The Respondent has failed to provide a Record of Work on the completion of restricted building work in accordance with section 88(1) of the Act.

### **Board Decisions**

- [22] The Respondent **has** committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

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<sup>4</sup> Section 88(1) of the Act.

<sup>5</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

<sup>6</sup> Section 317(1)(da)(ii) of the Act

<sup>7</sup> Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

[23] The Respondent **has not** committed disciplinary offences under sections 317(1)(g) or (i) of the Act.

### **Penalty, Costs and Publication**

[24] 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.

[25] The Respondent made submissions at the hearing as regards penalty, costs and publication.

#### Penalty

[26] The Board has the discretion to impose a range of penalties.<sup>ii</sup> 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.<sup>8</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>9</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>10</sup>
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>11</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>12</sup>
- (d) penalising wrongdoing;<sup>13</sup> and
- (e) rehabilitation (where appropriate).<sup>14</sup>

[27] 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 cases<sup>15</sup> and applying the least restrictive penalty available for the particular offending.<sup>16</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>17</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>18</sup>

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<sup>8</sup> *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]

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

<sup>10</sup> Section 3 Building Act

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

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

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

<sup>14</sup> *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

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

<sup>16</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

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

- [28] 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.<sup>19</sup>
- [29] 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 were no mitigating factors, but the Board did provide the Respondent with an opportunity to provide his Record of Work by 19 December 2025 and informed him that if he did so, the fine would be reduced to \$1,000.
- [30] On 15 December 2025, the Respondent provided a Record of Work.

Costs

- [31] 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.<sup>20</sup>
- [32] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings<sup>21</sup>. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case<sup>22</sup>.
- [33] 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 moderately complex. Adjustments are then made.
- [34] Ordinarily, the Board's costs order for a moderately complex matter, determined at an in-person hearing, would be \$2,950. However, because the only disciplinary finding made was in relation to a Record of Work.
- [35] 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.

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<sup>19</sup> 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.

<sup>20</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

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

<sup>22</sup> *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.

## Publication

- [36] 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,<sup>23</sup> 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.
- [37] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>24</sup> 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.<sup>25</sup>
- [38] 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**

- [39] 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.**
- [40] 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.

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<sup>23</sup> Refer sections 298, 299 and 301 of the Act

<sup>24</sup> Section 14 of the Act

<sup>25</sup> Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

## Right of Appeal

[41] The right to appeal Board decisions is provided for in section 330(2) of the Act<sup>iii</sup>.

Signed and dated this 13<sup>th</sup> day of January 2026.



**Mr M Orange**  
Presiding Member

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### <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 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:*

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- (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.*