

Before the Building Practitioners Board

	BPB Complaint No. CB25107
Licensed Building Practitioner:	Dion South (the Respondent)
Licence Number:	BP 113121
Licence(s) Held:	Dion South

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

Complaint or Board Inquiry	Complaint
Hearing Location	Tauranga
Hearing Type:	In Person
Hearing Date:	31 October 2019
Substantive Decision Date:	27 November 2019
Penalty Decision Date:	28 February 2020
Board Members Present:	
	Chris Preston (Presiding)
	Mel Orange, Legal Member
	Bob Monteith, LBP Carpentry and Site AOP 2
	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 committed the following disciplinary offence(s):
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
 - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act); and
 - (c) has 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 a certificate of work about any plans and specifications required to accompany the building consent application (s 317(1)(da)(i) 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] On 15 December 2019, the Board received the Respondent's submissions. It has considered them and made the following decisions.

Penalty

- [5] The Board's initial view was that the Respondent's licence be suspended for a period of six months.
- [6] The Respondent expressed his disagreement with the Board's findings and decision. In this respect the Respondent is reminded of his right to appeal to the District Court.
- [7] The Board, in calling for submissions, was not seeking a review of its findings and/or decision or the introduction of new evidence. Notwithstanding the Board has

reviewed the information provided, including the claims as regards trusses. It does not find that there is any new information that would warrant it reviewing its original decision.

- [8] The only information provided as regards mitigation was the following submission:

I would really love to continue being a licenced building practitioner because I love what I do and hey ill be doing this profession till I cant work anymore . These dirty tactics from [Omitted] have caused me to fall bankrupt, something that I would have never ever have contemplated would have happened to me. The financial and emotional stress that this has caused over the past 4 years; there are no words to describe it . There is no way this outcome should ever have happened to a person with exceptional building skills .

- [9] The above matters were known to the Board at the time it made its indicative decision. They were taken into consideration.
- [10] The Board notes that the Respondent has not accepted any wrongdoing, does not appear to have learnt from the complaint and has not indicated that he will be amending his practices in the future.
- [11] Given the above factors and the having considered the submissions received the Board has decided to uphold its initial view. The penalty is confirmed.

Costs

- [12] The Board's initial view was that \$3,500 in costs was appropriate. The Respondent has submitted:

I do not understand why I should be paying \$3500 just to cover the costs of this inquiry when [Omitted] has 100% pulled the wool over me with his false allegations . I do not know how I could ever afford to pay this in my current financial position?

- [13] The costs of the investigation and hearing were substantial. The amount ordered is less than the guideline of 50% of actual costs and is appropriate.
- [14] The Respondent should note that he can apply to the Registrar to pay the costs over time.

Publication of Name

- [15] The Board's initial view was there were no good reasons to further publish the matter. This remains the case.

Section 318 Order

[16] For the reasons set out above, the Board directs that:

- Penalty:** Pursuant to section 318(1)(b) of the Act, the Respondent's licence is suspended for a period of six [6] months and the Registrar is directed to record the suspension in the of Licensed Building Practitioners.
- Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,500 (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.

[17] 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

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

Signed and dated this 28th day of February 2020



Chris Preston
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 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.