**Before the Building Practitioners Board**

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| | BPB Complaint No. CB25166 |
| Licensed Building Practitioner: | Quentin Stevenson (the Respondent) |
| Licence Number: | BP 122331 |
| 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 | Auckland |
| Hearing Type: | In Person |
| Hearing Date: | 26 November 2019 |
| Decision Date: | 07 February 2020 |

Board Members Present:

Richard Merrifield, LBP, Carpentry and Site AOP 2 (Presiding)
Robin Dunlop, Retired Professional Engineer
Faye Pearson-Green, LBP Design AOP 2
Rob Shao, LBP, Carpentry and Site AOP 1

**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.

**Board Decision:**

The Respondent **has not** committed a disciplinary offence.

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## Introduction

[1] The hearing resulted from a complaint into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations[1] to hold a hearing in relation to building work at *[omitted]*. The alleged disciplinary offence the Board resolved to investigate was that the Respondent 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.

## Function of Disciplinary Action

[2] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*[2] and in New Zealand in *Dentice v Valuers Registration Board*[3].

[3] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*[4] Collins J. noted that:

> *"… the disciplinary process does not exist to appease those who are dissatisfied … . The disciplinary process … exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community."*

[4] The Board can only inquire into "the conduct of a licensed building practitioner" with respect to the grounds for discipline set out in section 317 of the Act. It does not have any jurisdiction over contractual matters.

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[1] The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.
[2] *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.
[3] [1992] 1 NZLR 720 at p 724
[4] [2016] HZHC 2276 at para 164

**Evidence**

[5] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed[5]. 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.

[6] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.

[7] The allegation before the Board was that the Respondent had failed to provide a record of work for restricted building work carried out at *[omitted]*. The work in question occurred sometime between June 2015 and January 2016 and involved the construction of foundations. He was identified by the Complainant as a result of the Respondent's company, Q S Building Limited trading as Slab Specialists, being noted as the contracted entity that constructed the foundations.

[8] The Respondent claimed he did not carry out, supervise or even attend the site in question. He stated he could not provide a record of work as he had not carried out or supervised any restricted building work.

[9] At the hearing the Board heard evidence from the Respondent that he did not have any involvement in the building work. The Board also received a sworn statement from *[omitted]*. The statement set out that the Respondent worked on a full-time basis from December 2015 until mid-February 2016 at *[omitted]*.

**Board's Conclusion and Reasoning**

[10] The Board has decided that the Respondent **has not** 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) and should not be disciplined.

[11] Whilst 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[6] there was no evidence before the Board that the Respondent had carried out any restricted building work at the property in question. Accordingly, the Board found that the Respondent did not have an obligation to provide a record or work and that he had not breached section 88(1) of the Act.

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

[6] Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

Signed and dated this 7th day of February 2020

**Richard Merrifield**
Presiding Member