

## Before the Building Practitioners Board

	BPB Complaint No. 26509
Licensed Building Practitioner:	Stuart William McArthur (the Respondent)
Licence Number:	BP 129234
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 Dates:	11 December 2024 and 20 May 2025
Substantive Decision Date:	22 May 2025
Penalty Decision Date:	9 October 2025

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mr G Anderson, LBP, Carpentry and Site AoP 2  
Ms E Harvey McDouall, Registered Architect  
Mr C Lang, Building Surveyor and Quantity Surveyor

#### 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 disciplinary offences under sections 317(1)(b), (d) and (da)(ii) of the Act.

The Respondent is fined \$4,000 and ordered to pay costs of \$2,950. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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## Summary of the Board’s Penalty Decision

[1] The Respondent carried out and supervised building work on a kit-set dwelling as a subcontractor. Issues arose with the foundations, subfloor and flooring, and the Board found that the Respondent had conducted himself in a negligent manner with respect to those issues. The Board also found that he had carried out and supervised building work that was contrary to the building consent issued and had failed to provide a record of work on completion of restricted building work. The Board fined the Respondent \$4,500 and ordered that he pay costs of \$2,950, but on the basis of submissions received, it reduced the fine to \$4,000. A record of the disciplinary offending, which will be published in Code Words and Wrap Up, will be recorded on the public Register 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 committed disciplinary offences.
- [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 regarding penalty, costs, and publication and invited the Respondent to make written submissions on those matters.
- [5] On 3 July 2025, the Board received a submission from Counsel representing the Respondent. It has considered the submission and has made the following decisions.

## Penalty

[6] The Board’s initial view was that a fine of \$4,500 was the appropriate penalty for the disciplinary offence. In its substantive decision, the Board set out:

*[60] The Board considered adopting a starting point of suspending or cancelling the Respondent’s licence because the conduct was in the middle to upper band of seriousness. However, because the Respondent had been found to have been negligent, as opposed to*

*incompetent, it decided that neither suspension nor cancellation was warranted. On that basis, it adopted a starting point of a fine of \$5,000, which is consistent fines imposed for similar offending.*

[61] *There are both aggravating and mitigating factors present. The mitigating factors are the contributing conduct of [OMITTED]. The fine will be reduced to \$4,000 in recognition of the contribution. The aggravating factor is that the Respondent has previously been disciplined by the Board. Because this is a second offence, the fine has been lifted to \$4,500.*

- [7] Counsel has submitted that [OMITTED]'s contribution to the issues was greater than the Board gave credit for. In particular, it was submitted that [OMITTED]'s "misdirection and communication faults" were a significant factor. A fine of \$2,000 was submitted as being appropriate, based on a starting point of \$1,500 with a \$500 uplift for repeat offending.
- [8] The Board does not consider that the suggested fine of \$2,000 reflects the seriousness of the offending or that it would be consistent with penalties imposed by the Board for similar offending. The suggested starting point of \$1,500 is the Board's normal starting point for a first record of work offence alone. In this matter, the Respondent was found to have committed multiple disciplinary offences, and a higher fine is warranted.
- [9] The Board does, however, accept that the contributory impact of those working for [OMITTED] was significant, and it is prepared to lift the associated discount to \$1,000, making the final penalty \$4,000.

### **Costs**

- [10] The Board's initial view was that \$2,950 in costs was appropriate. Counsel submitted that the costs order should be reduced because of the extent to which [OMITTED] contributed to the complexity.
- [11] The indicative costs order was based on a moderately complex half-day hearing, whereas the hearing was conducted over two hearing days, with the second hearing day having been necessitated because of, amongst other things, [OMITTED]'s involvement. The Board did not increase the costs order, and it noted:
- No additional costs have been imposed for the second hearing day because the Board accepted that the additional costs did not result from the Respondent's actions.*
- [12] In those circumstances, the Board does not consider that a reduction in the costs order is warranted. The amount is affirmed.

### Publication of Name

- [13] The Board’s initial view was that there were good reasons to further publish the matter.
- [14] Counsel submitted that the publication was likely to decrease the Respondent’s income over the three-year publication period.
- [15] Regarding the findings being recorded in the Register of Licensed Building Practitioners, this accords with section 301(1)(l)(iii) of the Act. The Register is established by section 298 of the Act, and section 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.*
- [16] Section 301 of the Act 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:*
- [17] The final provision, action taken under section 318, is the reason why details on the disciplinary offence must be contained in the Register.
- [18] Taking the above provisions into consideration, it is clear that one of the purposes of the Register is to allow an informed consumer to choose a licensed building practitioner. Providing information regarding 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.

[19] Turning to the other forms of publication, they are consistent with open justice, and the Respondent's submissions do not reach the threshold for any form of suppression order to be granted.

### Section 318 Order

[20] 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 \$4,000.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,950 (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, the Respondent will be named in this decision, which will be published on the Board's website, and the Registrar is to publish a summary of the decision and Code Words and/or the Wrap Up.**

[21] 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

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

Signed and dated this 21<sup>st</sup> day of October 2025



**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:*

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- (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—*

- (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.*