

## Before the Building Practitioners Board

	BPB Complaint No. CB25688
Licensed Building Practitioner:	Joseph Taupo (the Respondent)
Licence Number:	BP 120568
Licence(s) Held:	Bricklaying and Blocklaying – Structural Masonry, Veneer

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

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Complaint or Board Inquiry	Complaint
Hearing Location	Queenstown
Hearing Type:	In Person
Hearing Date:	8 December 2022
Decision Date:	21 December 2022
Penalty Decision Date:	6 March 2023

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, LBP, Design AoP 2  
Ms K Reynolds, Construction Manager  
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)(b) of the Act.

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### Summary of the Board’s Penalty Decision

- [1] The Respondent carried out building work in a negligent manner. He is fined \$2,000 and ordered to pay costs of \$1,875. A record of the disciplinary offending 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 carried out or supervised building work in a negligent manner (s 317(1)(b) 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 30 January 2023, the Board received a submission made on behalf of the Respondent. It has considered them and made the following decisions.

### Penalty and Costs

- [6] The Board’s initial view was that a \$2,00 fine and costs of \$1,875 was warranted. The level of the fine was based on the seriousness of the offending and its proportionality to another matter that came before the Board in a consolidated hearing. The costs were split between the consolidated hearings. As such, it was a reduced amount.
- [7] The submission put forward the view that the Respondent had been dealt with harshly. It also outlined the Respondent’s personal circumstances, including a change in employment which, it was stated, was a result of the Respondent potentially losing his licence. The Respondent asked the Board to reconsider the level of the fine and costs imposed.
- [8] Having considered the submissions received, the Board has decided to uphold its initial view.

- [9] The principles behind the imposition of a penalty were set out in the Board's substantive decision. As noted in the substantive decision, the purpose of professional discipline is to uphold the integrity of the profession. In *Hart* and in *Dorbu v New Zealand Law Society (No 2)*,<sup>1</sup> the High Court, when discussing penalty, stated:

*[35] ... The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner's offending.*

- [10] The Respondent did not take responsibility for his actions, and he continues to take the position that he did no wrong. The Board considers there is a risk of reoffending. Further, the penalty imposed was consistent with other fines imposed by the Board for similar offending, and it was proportionate to the fine imposed for the other related matter that came before the Board. Finally, whilst the Board recognises the mitigating factors that the Respondent has raised in relation to his personal circumstances, it does not consider that they warrant a reduction in the fine or penalty.
- [11] With regard to costs, it is important other Licensed Building Practitioners do not bear the full burden of the costs incurred. Also, the amount imposed was significantly less than the costs actually incurred.
- [12] Finally, the Respondent should note that the Respondent may apply to the Registrar for time to pay the fine and costs.

#### **Publication of Name**

- [13] The Board's initial view was there were no good reasons to further publish the matter. There are no reasons to change that decision.

#### **Section 318 Order**

- [14] 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 \$2,000.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,875 (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.

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<sup>1</sup> [2012] NZAR 481

- [15] 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**

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

Signed and dated this 15<sup>th</sup> day of March 2023



**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 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.*