

Before the Building Practitioners Board

	BPB Complaint No. CB25403
Licensed Building Practitioner:	Anaru Te Patu (the Respondent)
Licence Number:	BP 130891
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Complaint
Hearing Location	Wellington
Hearing Type:	In Person
Hearing Date:	9 September 2020
Decision Date:	14 September 2020

Board Members Present:

Mel Orange, Deputy Chair, Legal Member (Presiding)
Robin Dunlop, Retired Professional Engineer
Bob Monteith, LBP, Carpentry and Site 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.

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 section 317(1)(b), 317(1)(d) or 317(1)(i) of the Act.

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Summary of the Board’s Decision

[1] The Respondent failed to provide a record of work on completion of restricted building work. The charges of negligence or incompetence and building contrary to a building consent were not upheld on the basis that the work complained about was not carried out or supervised by the Respondent. The charge of disrepute was not upheld on the basis that the Board found that the Respondent was supervising the licensed building practitioner for the carpentry work undertaken. The Respondent is fined \$1,000 and ordered to pay costs of \$3,500. The Board’s decision will be published.

The Charges

[2] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:

- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act, IN

¹ The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

THAT, he may have supervised building work in relation to a deck and a balustrade that did not meet acceptable standards;

- (b) carried out or supervised building work or building inspection work that does not comply with a building consent contrary to section 317(1)(d) of the Act, IN THAT, he may have supervised building work in relation to a deck, a waterproofing membrane, and a balustrade that was not carried out in accordance with the building consent issued;
- (c) 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) of the Act contrary to section 317(1)(da)(ii) of the Act, IN THAT, he may not have provided a record of work within a reasonable period of restricted building work being completed;
- (d) 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)(1) of the Act, IN THAT, he may have allowed his licence to be used to satisfy compliance requirements without any intention to provide actual supervision of unlicensed persons carrying out restricted building work.

Function of Disciplinary Action

[3] 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.

[4] 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.”

[5] In a similar vein, the Board’s investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint’s Regulations focuses on serious conduct that

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

warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons⁵:

... the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.

- [6] Finally, 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. Those grounds do not include contractual breaches other than when the conduct reaches the high threshold for consideration under section 317(1)(i) of the Act which deals with disrepute.
- [7] The above commentary on the limitations of the disciplinary process are important to note as, on the basis of it, the Board’s inquiries, and this decision, focus on and deal with the serious conduct complained about.

Inquiry Process

- [8] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. Rather the Board sets the charges, and it decides what evidence is required at a hearing to assist it in its investigations. In this respect, the Board reviews the available evidence when considering the Registrar’s Report and determines the witnesses that it believes will assist at a hearing. The hearing itself is not a review of all of the available evidence. Rather it is an opportunity for the Board to seek clarification and explore certain aspects of the charges in greater depth.
- [9] Whilst a complainant may not be required to give evidence at a hearing, they are welcome to attend and, if a complainant does attend, the Board provides them with an opportunity to participate in the proceedings.

Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁶. 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.
- [11] 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.

⁵ *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

⁶ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

[12] In addition to the documentary evidence before the Board heard evidence at the hearing from:

Anaru Te Patu	Respondent
[Omitted]	Complainant
[Omitted]	un-licensed builder who carried out the carpentry work
[Omitted]	Licensed Building Practitioner, Carpentry and Site AOP 1 ([Omitted])

[13] The complaint related to the construction of a new residential dwelling under a building consent which was issued on 14 August 2018. [Omitted] trading as [Omitted] contracted to carry out the work. The contract noted that [Omitted] would carry out the work and that [Omitted] and [Omitted] would supervise. That did not transpire. Rather the carpentry work was carried out by [Omitted], an unlicensed builder. The building work included restricted building work. Section 84 of the Act states:

All restricted building work must be carried out or supervised by a licensed building practitioner [who is licensed] to carry out or supervise the work.

[14] The Complainant noted that multiple records of work had not been provided. When inquiring about records of work with the Council, the Complainant became aware that the on site builder [Omitted] was not licensed and that he was, according to the Council, being supervised by the Respondent. An email from the Council dated 6 November 2019 stated:

Good afternoon [Omitted],

Thank you for talking with me over the phone, the record of works that we have received covering the RBW for your consent are attached. I am unable to locate the ROW for the carpenter.

I have spoken with the inspectors who undertook inspections for your dwelling and they have noted the builder who worked on your dwelling to be Anaru Tepatu his LBP number is 130891. I spoke to [Omitted] who spoke to the unregistered builder that you mentioned on the phone and [Omitted] confirmed that the builder was working under supervision of Anaru.

[15] The Respondent was noted on Council inspection documentation as being the supervising licensed building practitioner. The Council also had a photograph of a screenshot on a phone of the Respondent's licence on file.

[16] The Complainant contacted the Respondent as the Complainant had not, until that point in time, been aware of his involvement in the building work. The Respondent, on two occasions, denied any involvement in the building work. The Complainant gave evidence that she resided on site but had not seen the Respondent on-site at

any time and that she had never met him or been informed about him being the supervising licensed building practitioner.

- [17] The Respondent was served with the complaint on 26 November 2019. He was contacted on 14 April 2020 and asked if he was going to respond to it. He stated he had posted a response in December 2019 and that he would resubmit his response. The Respondent was contacted again on 21 April 2020. He stated he had located his information and that he would provide a response by email on 23 April 2020. No response to the complaint was provided to the Board.
- [18] As the Respondent had not responded to the complaint, the Board resolved to proceed to a hearing.
- [19] On 20 June 2020, following a prehearing conference in which the Respondent stated he would not attend the hearing and that the matter was rubbish and that it had nothing to do with him, the Respondent provided his first substantive response to the matter. He stated:

I did supervise the building work completed at [Omitted], as [Omitted], [Omitted] and the Porirua City council have also confirmed.

ROW was provided to [Omitted] for the Code of Compliance to be granted, I unfortunately can't locate my own copy of this document (as I have moved house after a separation and am waiting to get access to some of my belongings) but am happy to provide another if the Council or [Omitted] can't locate the original.

I was attending the site a couple of days a week to supervise the work being completed and I would go over work completed with [Omitted] and discuss what he was working on next.

The quality of work was never questioned during the build and the Complainant had said to [Omitted] how happy she was with the work during the build.

The waterproofing and balustrades were not part of the work completed by [Omitted] and supervised by myself and this was carried out by the owner in conjunction with the Council.

- [20] The Respondent also stated:

In regards to her claims regarding our phone conversation where I said I had not been to the address, she called me while I was busy and at first I was distracted and confused as to what she was talking about, and hence my initial response. By the time I realised it was about this property, her attitude and rudeness towards me made me not want to correct my initial response or continue the discussion with her.

- [21] A statement from the builder on site, [Omitted], was also provided as part of the 20 June 2020 response. He noted that he was working toward obtaining his carpentry licence, which has since been granted, and that he was being supervised by the Respondent.
- [22] The Respondent, [Omitted] and [Omitted] all gave evidence confirming the Respondent's supervision including that he would attend site twice a week when carpentry work was being undertaken at times when the Complainant was not present. The Respondent stated that personal issues he was experiencing when contacted by the Complainant about the work caused him to fail to recollect his involvement. [Omitted] stated that the Respondent had provided him with a record of work for his supervision. He subsequently provided a copy of the record of work.
- [23] The Respondent's record of work, which has been completed in two different inks and has an adjustment made to the date on it, is purportedly dated 9 July 2018. [Omitted] in providing the record of work, stated:

Attached are the emails and docs that were forwarded to PCC and printed out as art of the handover pack for the client.

I personally printed out and handed all the printed warranty info and maintenance schedule to our client on or around 1st July 2019 as I was on site overseeing our final inspection for CCC on that day.

It is possible the builder LBP form and membrane ROW weren't handed directly to the client as part of the handover pack partly due to the fact the house was handed over for occupation before CCC was issued and these docs weren't found to be missing until PCC had asked for them during the signoff process.

I've just found the membrane applicator's ROW in my computer files and this wasn't handed over to either the client or the Council during the CCC process. It is attached here and I've sent a copy to the owner.

I'm pretty sure they have hard copies of all the other paperwork and if they don't I can reprint them and send them again.

However as far as I was aware PCC have had all necessary docs required and have granted CCC on or around the 12th July.

- [24] The record of work referred to for the membrane work related to a deck and balustrade that was complained about. The record of work stated that [Omitted] had supervised waterproofing being "dual layer Equus Deboer duo torch on to roof/deck area".
- [25] The membrane installed differed from the consented product. [Omitted] stated that he made the decision to change the product used, that he considered it was a superior product and that he did not consult with the owner, the designer or the Council prior to making the change. The Complainant noted that the change

caused issues as regards the installation of a balustrade and in obtaining a code compliance certificate. The balustrade was not installed by persons working for or under [Omitted].

- [26] The Board questioned the Respondent as to whom he had provided his record of work. He stated he provided it to [Omitted] as that was the entity that had contracted him. He also stated he was not good with documentation and that he was going through a divorce at the time.

Board's Conclusion and Reasoning

- [27] The Board has decided that the Respondent 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 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 be disciplined.

- [28] The Board has decided that the Respondent **has not**:

- (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); or
- (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 (s 317(1)(i) of the Act)

Record of Work

- [29] 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 work⁷.
- [30] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had "good reason" for not providing a record of work on "completion" of the restricted building work.
- [31] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner-builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.

⁷ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

- [32] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states “on completion of the restricted building work ...”. As was noted by Justice Muir in *Ministry of Business Innovation and Employment v Bell*⁸ “... the only relevant precondition to the obligations of a licenced building practitioner under s 88 is that he/she has completed their work”.
- [33] Other jurisdictions such as those under the Plumbers, Drainlayers, and Gasfitters Act 2006 and the Electricity Act 1992 stipulate definitive time frames for the completion and provision of certification documentation by practitioners. The Building Act does not. Both section 88(1) and 317(1)(da)(ii) simply state “on completion”. As such, it is open to the Board to interpret how soon after actual completion (bearing in mind the discussion on completion outlined above) the record of work must be provided.
- [34] On a literal interpretation, the obligation to provide a record of work would be at the same time as completion. This would be impracticable and, therefore, cannot be the intended meaning. Time frames have not been specified and nor has Parliament chosen to use phrases such as “immediately on completion” or “as soon as reasonably practicable”. Given this and taking into consideration the requirement to give effect to the purpose of Parliament, the Board considers the use of the words “on completion” denotes a short time thereafter.
- [35] A degree of reasonableness has to be applied to this interpretation. Differing circumstances may result in longer or shorter timeframes. Generally, the prescribed form for a record of work is simple and straightforward and a licensed building practitioner ought to know what they have or have not done or supervised and as such there should be few impediments to it being completed and provided in short order. The situations where this is not the case will be rare and will have to be justified by the practitioner.
- [36] It must also be noted that the requirement is on the licensed building practitioner to provide a record of work, not on the owner or territorial authority to demand one. A claim that the licensed building practitioner was not asked for a record of work is not a defence. They must act of their own accord and not wait for others to remind them of their obligations.
- [37] As to when completion will have occurred is a question of fact in each case. It is noted, however, that [Omitted] correspondence to the Board when he provided a copy of the Respondent’s record of work, noted 1 July 2019 as a final inspection. Completion, therefore, occurred on or about that date.
- [38] The Respondent’s record of work is dated 9 July 2018. It predates completion and the issue of the building consent. The date, which has been altered, may have been an error.

⁸ [2018] NZHC 1662 at para 50

- [39] Irrespective it was clear from [Omitted] email correspondence and the Complainant's evidence that, regardless of the date on the record work, the Respondent's record of work, was not passed on to the owner. It is also clear from the Council's correspondence in November 2019 that the Council (the territorial authority) did not have the Respondent's record of work. Given those factors, the requirements of section 88(1) of the Act have not been complied with. Neither the owner nor the territorial authority were provided with a record of work on completion.
- [40] Rather the Respondent chose to provide a record of work to the main contractor. Whilst that may be common practice in some quarters of the building industry, it is a practice that carries with it the risk that the record of work will not be passed on to the required recipients, the owner and the territorial authority. Moreover, if a main contractor does not pass a record of work on to the final recipients, it is the author of the record of work that will be held accountable by the Board, not the person or entity that they entrusted to fulfil their statutory obligation. That is what has occurred in the present case.
- [41] It is also to be noted whilst, at times, a Respondent may not immediately know who the owner is there are ways and means of ascertaining such details⁹, including making enquiries of the main contractor, and that there should be no impediments to a record of work being provided to a territorial authority. It is also noted that in this case, the owner resided on-site and so her location was known.
- [42] Section 317(1)(da)(ii) of the Act provides for a defence of the licenced building practitioner having a "good reason" for failing to provide a record of work. If they can, on the balance of probabilities, prove to the Board that one exists then it is open to the Board to find that a disciplinary offence has not been committed. Each case will be decided by the Board on its own merits, but the threshold for a good reason is high.
- [43] The Respondent has noted personal circumstances. Those do not amount to a good reason as the issue was not that the Respondent did not do a record of work but that he gave it to the wrong persons.

Negligence and/or Incompetence and Contrary to a Building Consent

- [44] The issues the Board resolved to further investigate as regards section 317(1)(b) and 317(1)(d) of the Act related to a deck membrane and balustrade. The Board was satisfied that the building work complained about was not carried out under the supervision of the Respondent. This was established by the provision of a record of work noting the licensed building practitioner who did supervise the work. In this respect, it should be noted that each licensed building practitioner is responsible and accountable for their own work.

⁹ Ownership details of land are available on public registers.

- [45] The same applies to the change to the deck membrane product. Whilst an acceptable process to make the change had not been used the change was not instigated nor managed by the Respondent.

Disrepute

- [46] The Board's inquiries with regard to disrepute related to whether the Respondent was actually supervising the Respondent, or whether he was simply allowing his licence to be used so as to allow the on-site builder to satisfy the requirements of section 84 of the Act. In this respect, the Board found that there was sufficient evidence to establish, on the balance of probabilities, that the Respondent was supervising the on-site builder. Accordingly, there is no evidence on which to uphold a charge of disrepute.

Penalty, Costs and Publication

- [47] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [48] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [49] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*¹⁰ commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [50] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹¹ the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act, they do have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.

¹⁰ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹¹ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

[51] The Board's finding relates to the failure to provide a record of work. 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. The Board has taken the provision of a record of work to the main contractor as a mitigating factor. A reduction in the fine of \$500 will be applied. The fine is set at \$1,000.

Costs

[52] Under section 318(4) the Board may require the Respondent "to pay the costs and expenses of, and incidental to, the inquiry by the Board."

[53] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case¹².

[54] In *Collie v Nursing Council of New Zealand*¹³ where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.

[55] The manner in which a licensed person responds to a disciplinary complaint and conducts their defence can also be taken into consideration by the Board. In *Daniels v Complaints Committee*¹⁴ the High Court held that it was permissible to take into account as an adverse factor when determining penalty that the practitioner had responded to the complaints and discipline process in a belligerent way.

[56] The Board notes that the Respondent did not engage in the disciplinary process and that up until the hearing, he continued to deny any involvement in the work. Had he done so the matter could have been dealt with as a record of work matter on the papers. As it was the matter was dealt with at a hearing. The Board's standard scale of costs for a half-day hearing is \$3,500. Given the factors outlined above the Board does not see any reason to reduce the amount of costs. The sum of \$3,500 is set as the amount of costs to be paid.

¹² *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.

¹³ [2001] NZAR 74

¹⁴ [2011] 3 NZLR 850.

Publication

- [57] 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 Act¹⁵. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:
- 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.*
- [58] As a general principle, such further public notification 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. This is in addition to the Respondent being named in this decision.
- [59] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990¹⁶. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹⁷. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁸. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*¹⁹.
- [60] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²⁰. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [61] Based on the above, the Board will order further publication. The Board considers that it is appropriate to publish so that other practitioners can learn from the matter, including that a practitioner should engage in the disciplinary process.

¹⁵ Refer sections 298, 299 and 301 of the Act

¹⁶ Section 14 of the Act

¹⁷ Refer sections 200 and 202 of the Criminal Procedure Act

¹⁸ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

¹⁹ *ibid*

²⁰ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Section 318 Order

[62] 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 \$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(l)(iii) of the Act.

In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision.

[63] 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.

Submissions on Penalty, Costs and Publication

[64] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **15 October 2020**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

[65] In calling for submissions on penalty, costs and mitigation, the Board is not inviting the Respondent to offer new evidence or to express an opinion on the findings set out in this decision. If the Respondent disagrees with the Board's findings of fact and/or its decision that the Respondent has committed a disciplinary offence, the Respondent can appeal the Board's decision.

Right of Appeal

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

Signed and dated this 24th day of September 2020


Mel Orange
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:*
 - (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.*