Before the Building Practitioners Board

	BPB Complaint No. CB25029
Licensed Building Practitioner:	Niall Tierney (the Respondent)
Licence Number:	BP 122075
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	Hamilton
Hearing Type:	In Person
Hearing Date:	12 June 2019
Decision Date:	23 July 2019

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.

Board Decision:

The Respondent **has** committed a disciplinary offence under section 317(1)(b), 317(1)(d) and 317(1)(da)(ii) of the Act.

Contents

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 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 (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) 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

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

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.

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

Niall Tierney	Respondent
[Omitted]	Complainant (by phone)
[Omitted]	Witness, Architect (by phone)

[8] The Complainant engaged the Respondent from Ryans Builders (Canterbury) Limited to carry out the construction of a new residential dwelling under a building consent. Building work commenced in or around February 2018 and the building work completed by the Respondent included restricted building work which required the provision of a record of work. The contractual relationship and the Respondent's

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

building work came to an end on 24 September 2018 when the Complainant brought the relationship to an end.

[9] During the progression of the build a building inspection carried out by the Christchurch City Council as the building consent authority (BCA) identified that not all sub floor fixings were stainless steel. The building consent expressly required that stainless steel fixings were to be used. The property in question is in Exposure Zone C, a flood prone area. The Architect stated the house was designed to accommodate for water inundation under the subfloor.

[10] Included in the documentation provided to the Board was a Site Notice issued by the BCA dated 8 June 2018.

> *This inspection was not undertaken today due to failed items not being rectified as recorded in previous 204 sub-floor failed inspections. During last site inspection, it was clearly explained to Niall that he was required to replace all Sub-floor fixings in accordance with Sec 4 NZS3604 and book a 204 Sub-floor reinspection prior to any further work proceeding or any additional Inspections booked. As of today 7/6/18 work to Sub-floor areas is yet to be completed, as confirmed by Niall during our phone conversation.*
>
> *It was again reiterated to Niall that the booked 213/215 inspections for today would not be undertaken until Stainless connections have been installed as per NZS3604 Section 4 and a passed 204 sub-floor Inspection completed by CCC.*

[11] On 14 June a further inspection was carried out. The BCA inspector noted:

> *Observation/Directive:*
>
> *Stainless connections have now been installed. It was observed that S/S fixings have been nailed over previous galv plates and that additional nailing is required to some.*
>
> *Engineer is to review fixing connections as installed and confirm they will perform as required I am SORG that new fixings will meet the durability requirements of NZS3604 Section 4 providing galv plates do not cause any adverse reaction.*

[12] The Respondent gave evidence that the 14 June 2018 BCA inspection was noted as a pass and that the building inspector had verbally advised that fixing the stainless steel over the galvanised fixings would be acceptable. He was not able to produce evidence that an engineer review of the fixings had been completed as per the BCA directive. The Respondent also gave evidence that he had discussed the solution with the owner and architect and that their agreement had been obtained. Neither of those persons accepted that it had been discussed or agreed. The Respondent further submitted that stainless steel fittings were not required under NZS3604 and, in that respect, were excessive.

[13] On 16 June 2018, [Omitted] emailed the Architect providing their expert opinion on accelerated galvanic corrosion. The opinion noted:

> *In our experience it is not a good idea to have galvanised steel straps touching stainless steel, as this could lead to accelerated galvanic corrosion. We suggest that you ask the manufacturers of the products for their opinion on whether this is a significant issue. Any remedial fixings that are made should be well clear of the existing fixings to ensure no contact.*

[14] A further opinion was provided by [Omitted], who emailed the Architect stating:

> *As per our discussion, stainless product should not be in contact with galvanised product as the two metals will react and cause corrosion in an environment where moisture is or could be present. In the situation you described we would recommend the galvanised fixing should be removed.*

[15] The Respondent produced an Australian Institute of Metals paper which, he submitted, showed that the interaction of galvanised ands stainless steel metals would not be an issue.

[16] On 25 September 2018 a further BCA inspection was carried out. It noted:

> *Audit called for to check stainless steel connections to sub floor framing and to review remedial work undertaken to pantry brace wall.*
>
> *Audit report revised to capture all items reviewed on 24/9/2018*
>
> *Items noted on audit will be rectified under outstanding failed final*
>
> *Observations -*
>
> *1) It is evident that not all the galvanized sub floor fixings were replaced with stainless steel. In some locations the stainless have been installed over the existing galv fixings.*
>
> *Some of the new stainless steel fixings have not been installed correctly, with joist connections not being fitted correctly or having the right amount of fastenings installed.*
>
> - *All galv fixings are to be removed and replaced with stainless steel*
>
> *Fixings are to be installed correctly to achieve the required kn rating.*

[17] The building work then passed a final inspection on 29 September 2018. The pass was based on the Respondent's assurances that the sub floor fixings had been rectified. The Architect completed an underfloor inspection of his own to verify that the fixings had been rectified. He ascertained that not all of them had been. He provided a marked-up copy of the site plan with notations as to those connections which were still noncompliant. Multiple areas of noncompliance were noted. The Architect raised his concerns with the owner/Complainant in a letter dated 1 October 2018. The letter noted:

Given the history of the project and that we felt we had been misled on several occasions with respect to the subfloor fixings, we thought a quick inspection would be prudent. I have attached a drawing (06 20180920 Subfloor fixings as installed) that we prepared following that inspection which outlines the current issues with the subfloor, as follows:

a. *Galvanised steel fixings are still evident in the subfloor area. Niall has confirmed on several occasions that these had all been replaced with stainless steel. He even booked a final inspection and provided photos to the inspector to show compliance, presumably in the knowledge that they had not.*

b. *60 stainless steel bolts have been installed, 56 of these were finger loose.*

c. *No confirmation of the adhesive used to secure these bolts has been provided. It should be epoxy but only builder's adhesive was evident near some fixings.*

d. *Three 100 x 75mm diagonal braces have not been installed, see attached structural floor plan (07 Diagonal braces) with the braces highlighted. The Structural Engineer confirmed the braces are required. No reason for not installing these has been provided by Niall.*

e. *Galvanised steel fixings are touching stainless steel in some places. This has been rejected by the Structural Engineer and Niall confirmed that all instances had been rectified. That's clearly not the case.*

f. *There is a pile in the wrong position.*

When we realised that there was such a range of issues that had still not been addressed or completed, we asked the Council Inspectors back to audit their final inspection, please see attached. They confirmed that the work wasn't complete and that their earlier Inspector had been told by Niall that it was, and he had taken Niall at his word. Niall proceeded to book another final inspection however this was cancelled in light of the findings of the audit.

[18] Other compliance issues noted in the complaint included:

(a) a failure to install three engineer specified bracing elements. The Respondent accepted that they had been missed as a result of an oversight but noted that the plans were, in this respect a "bit vague" and that the bracing had been over specified which diminished the consequences of the failure;

(b) a change to a wall that formed part of a pantry to allow for the installation of the fridge. The Respondent noted that the dimensions on the plans, as drawn, did not allow for the required opening for the fridge. Notwithstanding the wall that was altered was a brace wall. The BCA inspection of 25 September 2018 noted:

> *4) Brace wall 4.2/GS1-n/2.0 in the pantry, has had the framing checked out to accommodate the depth of the fridge due to the wall being installed in the wrong place.*
> *- As bracing is engineered, a remedial action is to be provided By [Omitted]*

Evidence was heard that the change had been discussed with the Architect who stated he would be providing as built changes as part of the code compliance certificate process and that, post completion of the change, the engineer had confirmed there was sufficient bracing; and

(c) a vapour control barrier product substitution. The Respondent stated that the specified product was not available from ITM, his normal supplier, and that the substitution had been discussed with the Architect and it had been agreed to so as to allow the build to progress. No minor variations were completed. Evidence was heard that it would be dealt with as part of the as built designs.

[19] The Complainant also provided extensive evidence of other issues with the build. This included 13 pages of a snag list from an inspection of the building work dated 25 September 2018. It included photographs of the noted items.

Board's Conclusion and Reasoning

[20] The Board has decided that the Respondent **has**:

(a) carried out or supervised building work or building inspection work in a negligent 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) 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.

[21] The Board's findings with regard to negligence relate to the underfloor connections.

[22] The failure to install bracing elements is a matter that falls within noncompliance with a building consent as does the underfloor connections.

[23] The Board has not made findings of with regard to:

(a) the pantry wall as it was noted there were dimensioning issues that prevented the full width of the fridge opening being constructed;

(b) vapour barrier substitution. The procedure used was not best practice in that minor variations must be carried out with the knowledge and consent of the building consent authority but, notwithstanding, the Board finds that the Architect had been informed and it would not have been unreasonable for the Respondent to have expected the Architect to deal with the minor variation. The Respondent is, however, cautioned that in future he should ensure a minor variation has been granted prior to undertaking the associated building work; or

(c) the snag list items as the Board considered that snag list items are not out of the ordinary and that the matters complained about were more commercial in nature and that the contractual relationship came to an end prior to them being attended to.

[24] The reasons for the Board's decisions follow.

<u>Negligence</u>

[25] Looking at the facts in relation to the underfloor connections the Board's finding of negligence relates to the Respondent's conduct following the failure to install stainless steel connections. The initial failure constituted a breach of section 317(1)(d). The Board's findings in that respect are discussed in the next section.

[26] The building consent authority (BCA) identified early on in the build that the building consent had not been complied with. The Respondent, rather then rectifying the matter by removing the galvanised fixings and replacing them with stainless steel fixings, simply installed stainless steel over the top of the. On 14 June 2018 the BCA noted that verification from an engineer that there would not be an adverse reaction was required. None was obtained. Subsequent inspections noted that the issue had not been appropriately dealt with. A final inspection passed the work. The pass was premised on the Respondent's assurances. The Architect carried out his own underfloor inspection. He noted that the matters had still not been fully dealt with.

[27] The Board noted a general reluctance by the Respondent to carry out the building work in a compliant manner. It also noted a pattern of him developing his own solutions, of not complying with BCA directions and of misleading the BCA as to the compliance of the work. The Board finds that noted conduct amounted to negligence.

[28] Negligence it is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*[6] test of negligence which has been adopted by the New Zealand Courts[7].

[29] The New Zealand Courts have stated that assessment of negligence in a disciplinary context is a two-stage test[8]. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[30] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act[9]. The test is an objective one and in this respect it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner[10].

[31] The Board notes that the purposes of the Act are:

> ***3 Purposes***
> *This Act has the following purposes:*
> *(a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
> *(i) people who use buildings can do so safely and without endangering their health; and*
> *(ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
> *(iii) people who use a building can escape from the building if it is on fire; and*
> *(iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
> *(b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

---

[6] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582
[7] *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)
[8] *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)
[9] *Martin v Director of Proceedings* [2010] NZAR 333 at p.33
[10] *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

[32] The Board also notes, as regards acceptable standards, that all building work must comply with the Building Code[11] and be carried out in accordance with a building consent[12]. As such, when considering what is and is not an acceptable standard, the Building Code and any building consent issued must be taken into account.

[33] Turning to seriousness in *Collie v Nursing Council of New Zealand*[13] the Court's noted, as regards the threshold for disciplinary matters, that:

> *[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.*

[34] Given the evidence before the Board and the above factors and the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct.

[35] With respect to seriousness the Board finds that the conduct was sufficiently serious enough to warrant a disciplinary outcome. Underfloor connections are integral to the long-term durability of a building. More importantly though the conduct was continuing and, at times, flagrant. It was not mere inadvertent error, oversight or for that matter carelessness. Rather it was deliberate and continuing.

<u>Contrary to a Building Consent</u>

[36] As noted above the Board's finding with respect to carrying out building work that does not comply with a building consent relates to the initial failure to install stainless steel underfloor fixings and to install required bracing elements. Both were clearly specified on the consent plans.

[37] Under section 40 of the Act all building work must be carried out in accordance with the building consent issued. In *Tan v Auckland Council*[14] the Justice Brewer, whilst dealing with a situation where no building consent had been obtained, noted:

> *[37] … those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.*
>
> *[38] … In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.*

[38] Unlike negligence contrary to a building consent is form of strict liability offence. All that need be proven is that the building consent has not been complied with, no

---

[11] Section 17 of the Building Act 2004
[12] Section 40(1) of the Building Act 2004
[13] [2001] NZAR 74
[14] [2015] NZHC 3299 [18 December 2015]

fault or negligence has to be established[15]. In this respect the contraventions are noted, and the elements of the disciplinary offence have been committed.

[39] The Board does, however, consider that the seriousness of the disciplinary offending still needs to be taken into account. In this respect the Board again notes the seriousness of the failings from a building compliance perspective and, more importantly, the Respondent's attitude toward compliance. The Respondent presented with an attitude that strict compliance was not required and that his own perceptions as to what was required to obtain compliance were to be put above those of the building consent and the BCA. In this respect the Board finds that the conduct was serious, and that the Respondent should be held accountable for his conduct.

Record of Work

[40] There was no evidence that a record of work had been provided.

[41] 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[16].

[42] 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.

[43] Completion had occurred. Final BCA inspections have been completed and the Respondent will not be returning to carry out further restricted building work. Given this the disciplinary offence has been committed.

Penalty, Costs and Publication

[44] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Act[i], consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

[45] 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

[46] 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

[15] *Blewman v Wilkinson* [1979] 2 NZLR 208

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

Patel v Complaints Assessment Committee[17] 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.*

[47] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*[18] 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 have the advantage of simplicity and transparency. The court recommended adopting a starting point for penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.

[48] The matters before the Board were serious. The level of negligence was high and there have been multiple disciplinary offences committed. The Respondent's overall conduct in continuing to fail to deal with underfloor fixings in an appropriate manner and in attempting to mislead the BCA is an aggravating matter as is the Respondent's overall attitude toward compliance with a building consent. In terms of mitigating factors, the Board does note the commercial dispute and the impacts that may have had on the Respondent.

[49] Based on the above the Board's penalty decision is that the Respondent pay a fine of $3,000. The fine is in respect of all three disciplinary offences.

<u>Costs</u>

[50] 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."

[51] 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 case[19].

[52] In *Collie v Nursing Council of New Zealand*[20] 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.*

---

[17] HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

[18] 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

[19] *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.

[20] [2001] NZAR 74

[53] Based on the above the Board's costs order is that the Respondent is to pay the sum of $2,000 toward the costs of and incidental to the Board's inquiry.

Publication

[54] 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 Act[21]. 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.*

[55] 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.

[56] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990[22]. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction[23]. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive[24]. 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*[25]*.*

[57] 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 interest[26]. 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.

[58] Based on the above the Board will not order further publication.

Section 318 Order

[59] 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 $3,000.**
Costs:	**Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $2,000 (GST included) towards the costs of, and incidental to, the inquiry of the Board.**

[21] Refer sections 298, 299 and 301 of the Act
[22] Section 14 of the Act
[23] Refer sections 200 and 202 of the Criminal Procedure Act
[24] *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350
[25] ibid
[26] Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

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.

[60] 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

[61] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **14 August 2019**. 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.

[62] 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 and/or its decision that the Respondent has committed a disciplinary offence the Respondent can appeal the Board's decision.

Right of Appeal

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

Signed and dated this 23rd day of July 2019

Chris Preston

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:*

(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.*