

Before the Building Practitioners Board

	BPB Complaint No. CB25059
Licensed Building Practitioner:	Bernard Wood (the Respondent)
Licence Number:	BP 115523
Licence(s) Held:	Design AOP 1

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

Complaint or Board Inquiry	Complaint
Hearing Location	Hamilton
Hearing Type:	On the Papers
Hearing Date:	20 August 2019
Substantive Decision Date:	19 September 2019
Penalty Decision Date:	25 November 2019

Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
Robin Dunlop, Retired Professional Engineer
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.

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Introduction

- [1] 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 or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act).
- [2] 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.
- [3] In its substantive decision the Board set out its indicative position as regards penalty and invited the Respondent to make written submissions on those matters.
- [4] On 9 October 2019, the Board received the Respondent's submissions. It has considered them and made the following decisions.

Penalty

- [5] The Board's initial view was that a period of suspension or cancellation of the Respondent's licence may have been required. The Board noted:
 - [39] *Given the level of negligence found and the concerns about the Respondent's competence the Board has considered whether cancellation or suspension may be warranted. However, it has decided to allow him an opportunity to submit at least two but no more than three recent consented and stamped designs for review and consideration by the Board. This ensures that he has an opportunity to substantiate the submissions he made as regards his competence. The Respondent is to include all RFI requests and responses associated with the designs and should note that the Board may verify these with the building consent authority.*
 - [40] *If the Board considers, on review, that the Respondent is competent then an alternative penalty will be considered. If no designs are submitted or the Board finds that the Respondent's competence has not been established from those submitted designs, then the Board will further consider whether suspension or cancellation is warranted.*

[41] *The Respondent may also make other mitigating submissions when submitting his consented designs and submissions on costs and publication.*

[6] The Respondent submitted plans as requested. He also submitted testimonials and submissions from his legal representative. Those submissions included a submission that the concerns raised in respect of [omitted] were limited to that one project.

[7] Specifically, with regard to penalty, the Counsel for the Respondent submitted:

11 When determining penalty, in addition to the matters above, Mr Wood would like the Board to consider the matters below:

11.1 *Mr Wood's early acknowledgement and appreciation that his design work for this project was open to criticism, along with his admission in his letter to the Board dated 12 August 2019;*

11.2 *the operational changes Mr Wood has made to his business, including:*

(a) *continuously updating his "live" list of internal items to check against for every building consent, to ensure the same RFI questions are not raised again and to improve his professional working knowledge of the New Zealand Building Code; and*

(b) *utilising contractors (some with design III licensing) to assist and critique his work, drawings and specifications as well as outsourcing work where appropriate;*

11.3 *Mr Wood's cooperation and involvement in the disciplinary process and the learnings he has attained; and*

11.4 *Mr Wood's excellent record as an architectural designer:*

(a) *Mr Wood has had no complaints against him to the Board before or complaints of this nature in his 15 years of practice as an architectural designer;*

(b) *Mr Wood has a record of happy and satisfied clients (as evidenced by the enclosed testimonials); and*

(c) *Mr Wood has never before had a Council decline a building consent application he has prepared.*

12 *Taking these matters into account, Mr Wood respectfully submits that a fine of no more than \$1,500 would be appropriate. This penalty accords with the Board's decision in April 2019 (BPB Complaint No. CB24108) where the Board determined that suspension was not appropriate where the disciplinary proceeding resulted from a one-off incident, and where the Board was confident the respondent had learned from it and had put in processes to prevent it happening again.*

[8] Having considered the submissions received the Board has decided to modify its initial view.

- [9] The Board completed a review of the designs submitted and accepted that the matter to which the disciplinary hearing related was not representative of his usual standard of work. It is satisfied that a suspension or cancellation of licence is not required.
- [10] A penalty is still required. The matters were serious and, as set out in the substantive decision, a penalty ensures the enforcement of a high standard of propriety and professional conduct. In this instance the Board agrees with the submissions and considers that a fine is appropriate. It does not, however, agree with the suggested level of the fine.
- [11] The Board adopts a starting point, based on the seriousness of the matter and penalties imposed in similar matters, of a fine of \$5,000. It notes the mitigating factors outlined in the submissions and highlighted above and, on the basis of them, it reduces the fine to \$3,000.

Costs

- [12] Counsel has submitted that 25% of actual costs would be appropriate. The Board Respondent was cooperative, and the hearing was not complicated. Costs for a hearing of this type would normally be in the order of \$3,500. They are reduced to \$2,000 on the basis of the cooperation.

Publication of Name

- [13] The Board's has decided that there are no good reasons to further publish its decision. The Respondent will be named in this 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 \$3,000.

Costs: Pursuant to s 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.

Publication: The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with s 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.

- [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 Actⁱⁱ.

Signed and dated 25 November 2019



Richard Merrifield
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—

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- (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.*