

Before the Building Practitioners Board

	BPB Complaint No. CB25832
Licensed Building Practitioner:	Jacob Woods (the Respondent)
Licence Number:	BP 117855
Licence(s) Held:	Carpentry, Site AoP 1

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 Type:	In Person by Audio Visual Link
Hearing and Decision Date:	8 September 2022

Board Members Present:

Mr M Orange, Deputy Chair, Barrister (Presiding)
Mr D Fabish, LBP, Carpentry and Site AOP 2
Mrs F 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.

Disciplinary Finding:

The Respondent **has not** committed a disciplinary offence.

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Summary of the Board’s Decision

- [1] The Respondent has not committed a disciplinary offence. The Board found that there was insufficient evidence to establish that he had carried out or supervised restricted building work.

The Board

- [2] The Board is a statutory body established under the Building Act.¹ Its functions include receiving, investigating, and hearing complaints about, and to inquire into the conduct of, and discipline, licensed building practitioners in accordance with subpart 2 of the Act. It does not have any power to deal with or resolve disputes.

The Hearing

- [3] The Board, on receiving a Registrar’s Report in respect of the matter, reviewed the file and decided to deal with it by way of a Draft Decision.
- [4] The Respondent disputed the findings in the Draft Decision and sought a hearing. The Draft Decision was set aside, and a hearing was scheduled.

The Charges

- [5] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations² to hold a hearing in relation to building work at [OMITTED], Auckland. The alleged disciplinary offences the Board resolved to investigate were that the Respondent 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

¹ Section 341 of the Act.

² The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act).

Function of Disciplinary Action

- [6] 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*³ and in New Zealand in *Dentice v Valuers Registration Board*⁴.
- [7] 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*,⁵ 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.”

Inquiry Process

- [8] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial. 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.

Evidence

- [9] 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.
- [10] 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.

³ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

⁴ [1992] 1 NZLR 720 at p 724

⁵ [2016] HZHC 2276 at para 164

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

- [11] In addition to the documentary evidence before the Board heard evidence at the hearing from the Respondent.
- [12] The Complainant was summoned. She advised the Board Officer that she was not aware of the hearing and had to go to work. She joined the conference but had technical difficulties. She did not participate in the hearing and left after approximately 10 minutes.
- [13] The Respondent outlined his building experience and his association with Master Builders. He noted that he always provided a record of work on completion and that he was prepared to do so in this instance but he had a concern that the owners had interfered with or changed some of the restricted building work that had been completed when the building contract came to a premature end, and he was, as a result, concerned about providing a record of work and taking responsibility for work that may no longer be compliant. On that basis, he wanted to return to check the work prior to providing a record of work. In support of the submission, the Respondent provided a copy of a Disputes Tribunal decision which traversed changes that had been made by the owners.
- [14] The Board also received evidence about the various Licensed Building Practitioners that were involved in the building work, including invoices submitted. The Respondent, employed staff and contractors to assist with the build. Included was a project manager whom the Board investigated by way of a Board Inquiry and at least two other Licensed Building Practitioners. The Respondent was not sure about who among his staff was licensed but stated that he considered, as the employer and main contractor, that he was supervising. He did not carry out any actual work.

Board's Conclusion and Reasoning

- [15] The Board has decided that the Respondent **has not** 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 not** be disciplined.
- [16] The Board has made its decision on the basis that there was insufficient evidence to establish, on the balance of probabilities, that the Respondent had carried out or supervised restricted building work. The invoices provided and the evidence received in the related Board Inquiry showed that other Licensed Building Practitioners were on site and were carrying out and supervising the build. As such, the records of work should have come from those persons.
- [17] Whilst the Board has made the above finding, the Respondent is cautioned that he needs to maintain accurate records of who, in the way of Licensed Building Practitioners, he has on-site carrying out restricted building work. The reason is that

section 88(1) of the Act requires that each and every licensed building practitioner who carries out restricted building work provides a record of work, even if they are working on the same restricted building work element. The reason for this is to establish a complete record of who did or supervised restricted building work should further investigations be required in the future.

[18] The Respondent should note, however, 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. He is required to act of his own accord and not wait for others to remind him of his obligations. In situations where he might not return to compete restricted building work or is unsure if he will, then it would be advisable to provide a record of work for what he competed up to that point in time. There is no restriction on the number of records of work that can be provided. If he was to return and carry out or supervise further restricted building work, he could then provide another record of work.

[19] Finally, the Respondent should not confuse a record of work with “signing off” work. A record of work is not the equivalent of a producer statement. It is not a statement as to the quality or compliance of restricted building work. It is, put simply, a statement of who did or supervised what in the way of restricted building work. In this respect, it is to be noted that a record of work given by a licensed building practitioner does not, of itself, create any liability that would not otherwise exist, as section 88(4) provides:

*(4) A record of work given under subsection (1) does not, of itself,—
create any liability in relation to any matter to which the record of work
relates; or give rise to any civil liability to the owner that would not otherwise
exist if the licensed building practitioner were not required to provide the
record of work.*

[20] Further, a record of work can provide protection in the event of a dispute as it can also record what has not been completed. In essence, elements of restricted building work can be tagged out and expressly excluded.

Signed and dated this 28th day of September 2022



Mr M Orange
Presiding Member