

## Before the Building Practitioners Board

	BPB Complaint No. CB25305
Licensed Building Practitioner:	Glenn Wymer (the Respondent)
Licence Number:	BP128205
Licence(s) Held:	Carpentry

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

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Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	7 July 2020
Substantive Decision Date:	20 July 2020
Penalty Decision Date:	25 August 2020

#### Board Members Present

Mel Orange, Deputy Chair, Legal Member (Presiding)  
Bob Monteith, LBP, Carpentry and Site AOP 2  
Faye Pearson-Green, LBP, Design 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)(b) of the Act.

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## Summary of the Board’s Penalty Decision

- [1] The Respondent carried out building work in a negligent manner. The fine of \$4,000 and costs of \$3,500 is upheld.

## The Charges

- [2] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act).
- [3] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [4] In its substantive decision, the Board set out its indicative position as regards penalty, costs and publication and invited the Respondent to make written submissions on those matters.
- [5] On 14 August 2020, the Board received submissions from Legal Counsel acting for the Respondent. The submissions included a letter from the Respondent. The Board has considered both and has made the following decisions.

## Penalty

- [6] The Board’s initial view was that the Respondent should pay a fine of \$4,000.
- [7] Counsel’s submission, amongst other things, was:
- The scale of the penalty to be considered should be at the lower end of the penalty range. There was no finding of any deficiency in the standard of work or risk to the client or public as a result of the work undertaken*
- [8] The Respondent’s letter took issue with the hearing and hearing process. To the extent that the Respondent may have issues with the hearing, he has a right of appeal to the District Court. The Respondent has also put forward evidence in addition to that which was given at the hearing or which was at variance with the evidence he gave at the hearing. It is noted that this unsworn evidence was put forward once the Board’s decision had been published and in response to it. As such,

the Board considers it has little credibility. It appears calculated to exculpate the Respondent from the conduct that the Board decided was negligent. In this respect, it is also noted that the Board did not find the Respondent to be a reliable witness at the hearing.

- [9] The Respondent submits that he has been dealt with harshly. No mitigating circumstances or factors have been put forward. The Respondent continues to deny any wrongdoing and to take issue with the Board's decision. Again, he is reminded that he is entitled to appeal.
- [10] The Respondent did raise what he submitted was a disparity in penalty between this case and another case before the Board<sup>1</sup>. In that case, there were significant mitigating factors that are not present in this case.
- [11] Having considered the submissions received the Board has decided to uphold its initial view. The fine of \$4,000 is affirmed.

#### **Costs**

- [12] The Board's initial view was that \$3,500 in costs was appropriate. That remains the case.

#### **Publication of Name**

- [13] The Board's initial view was there were good reasons to further publish the matter but that the Respondent would not be named in the publication. No submissions were made on the point. The Board sees no reason to change its order.

#### **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 \$4,000.

**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 by way of an article in Code Words. The Respondent will not be named but no order for suppression is made.**

- [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.

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<sup>1</sup> Graham [2020] BPB 25040

## Right of Appeal

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

Signed and dated this 14<sup>th</sup> day of September 2020



**Mel Orange**  
Presiding Member

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### <sup>i</sup> **Section 318 of the Act**

- (1) *In any case to which section 317 applies, the Board may*
  - (a) *do both of the following things:*
    - (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
    - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
  - (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
  - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:*
  - (d) *order that the person be censured:*
  - (e) *order that the person undertake training specified in the order:*
  - (f) *order that the person pay a fine not exceeding \$10,000.*
- (2) *The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
- (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
- (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit."*

### <sup>ii</sup> **Section 330 Right of appeal**

- (2) *A person may appeal to a District Court against any decision of the Board—*
  - (b) *to take any action referred to in section 318.*

### **Section 331 Time in which appeal must be brought**

*An appeal must be lodged—*

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.*