

## Before the Building Practitioners Board

	BPB Complaint No. CB25498
Licensed Building Practitioner:	Yixing Yuan (the Respondent)
Licence Number:	BP 120467
Licence(s) Held:	Site AOP 1

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### Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner

#### Under section 315 of the Building Act 2004

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Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	3 February 2021
Decision Date:	1 March 2021

#### Board Members Present:

Mr C Preston, Chair (Presiding)  
Mr D Fabish, LBP, Carpentry and Site AOP 2  
Mr R Dunlop, Retired Professional Engineer  
Mr B Monteith, LBP, Carpentry and Site 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’s conduct did not reach the threshold for the Board to take disciplinary action.

### The Charges

- [2] On 15 July 2020, the Board issued a Draft Decision in respect of a complaint made about the Respondent.
- [3] On 24 September 2020, the Board set aside the Draft Decision and resolved to proceed to a hearing. A Notice of Proceeding was issued. The grounds for discipline notified were that the Respondent may have 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) in that he may have obtained an unethical financial gain.

### Background to the Complaint

- [4] The Respondent was engaged by the Complainant to develop a design and building consent documentation for three new dwellings. He was to subcontract the work to others who were able to carry out the design work. A quote was provided by the Respondent, and an invoice issued. Payments totalling \$29,605.50 were made to the Respondent. Requests for additional funds were made. No documentation was produced.
- [5] After a four-month delay, the Complainant’s attempted to contact the Respondent to ascertain whether the design and building consent documents would be delivered. The Respondent did not respond. The Complainant described him as uncontactable.
- [6] The Respondent was served with the complaint. He did not respond.

### Complaint Withdrawal

- [7] On 25 September 2020, the Complainant in the matter contacted the Board. He stated:

*Mr. Yuan and I have agreed on a refund of some of the funds. This will be paid back over the next 8 weeks.*

*Our agreement is that I will withdraw my complaint against him.*

*I would therefore like to withdraw my complaint against him.*

- [8] The Board advised that the disciplinary process, and the Board's jurisdiction under the Act, are inquisitorial. This means that if a complainant does not wish to proceed with a complaint, then the Board may proceed with its investigations by way of a Board Inquiry.
- [9] The Board also noted, in a Board Minute, that whilst the Board encourages parties to resolve issues raised in complaints, it must be noted that the disciplinary regime in the Act is not designed as a means for parties to resolve commercial disputes. It is also important, from a public protection perspective and for the integrity of the licensing regime, that the Board deal with conduct that is brought to its attention which may contravene section 317 of the Act, irrespective of the outcome of any commercial dispute. It was on this basis, that the Board decided that it would accept the withdrawal, but that it would continue with the matter as a Board Inquiry.
- [10] The Board did, however, note that the matters the Board had resolved to investigate were related to the potential settlement between the Complainant and the Respondent. It further noted that if the funds were repaid, then further investigation of the Respondent's conduct may not be required.
- [11] At the time of the Complainant's withdrawal, it noted that the promised payments had not been paid and that there was no guarantee that they would be. The Board decided that it would adjourn the matter pending completion of the proposed settlement and that it would, if the payment was made, review whether it would proceed further with the investigation.
- [12] Prior to the hearing, the Complainant sent an email to the Ministry dated the 21 January 2021 stating that:

*Mr Yuan agreed to refund \$20,000 by the 11/12/2020. He has done so but is selective in when he wanted to make payments. Ultimately it went past the 11/12/2020. He has however still not been able to provide a detailed bill/invoice for the amount of \$9,605.50 he is keeping.*

### **The Hearing**

- [13] The Complainant, [Omitted], attended the hearing via a video link. The Respondent did not attend the hearing. Attempts were made to get hold of him prior to the start of the hearing.
- [14] At the hearing, the Board received confirmation from the Complainant of the amounts agreed to be paid as per [12] above and that the promised sums of money had, in fact, been repaid.

### Board's Conclusion and Reasoning

- [15] The Board has decided that the Respondent **has not** 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) and **should not** be disciplined.
- [16] The Board decided that the Respondent had not brought the regime into disrepute on the basis that he had repaid the amount that was agreed with the Complainant, and that the provision of further documentation for the balance of the money is a contractual issue.
- [17] The Respondent should note that the Board does not condone the Respondent's behaviour leading up to the repayment. He should have engaged with the Complainant to resolve issues far earlier. It is also disappointing that the Respondent did not respond to the complaint when it was brought to his attention and that it took the threat of disciplinary action being taken by the Board prior to him taking any positive steps to resolve the matter.
- [18] Whilst the Respondent's behaviour reflected poorly on the licensed building practitioner regime and it may have caused it to be held in low esteem by the public, the Board was mindful that the Courts have stated that the threshold for disciplinary complaints of disrepute is high and the Board notes that when the disciplinary provision was introduced to Parliament the accompanying Cabinet paper noted:
- This power would only be exercised in the most serious of cases of poor behaviour, such as repetitive or fraudulent behaviour, rather than for minor matters.*
- [19] Whilst the Respondent's conduct was poor, it did not meet the threshold required for a disciplinary outcome. The Respondent is cautioned that repeat or continued behaviour of this type may lead to it being considered by the Board as serious conduct for which the Respondent should be disciplined.

Signed and dated this 5<sup>th</sup> day of March 2021



**Mr C Preston**  
Presiding Member