

## Before the Building Practitioners Board

	BPB Complaint No. 26818
Licensed Building Practitioner:	Yury Shamonin (the Respondent)
Licence Number:	BP 120433
Licence(s) Held:	Carpentry

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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 Type:	In Person
Hearing and Decision Date:	5 February 2026

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mr C Lang, Building Surveyor and Quantity Surveyor  
Ms S Chetwin CNZM, Barrister and Solicitor, Professional Director

#### 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)(da)(ii) of the Act.

The Respondent is fined \$1,000 and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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## Summary of the Board’s Decision

[1] The Respondent failed to provide a record of work on completion of restricted building work. He is fined \$1,000 and ordered to pay \$700 in costs. The fine was reduced from a starting point of \$1,500 on the basis that a record of work was provided after the complaint had been made. The disciplinary finding will be recorded on the public Register for a period of three years.

## The Charges

- [2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.<sup>1</sup>
- [3] In this matter, the disciplinary charges the Board resolved to further investigate<sup>2</sup> were that the Respondent may, in relation to building work at [OMITTED], have failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be), to provide the persons specified in section 88(2)

<sup>1</sup> 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. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

<sup>2</sup> The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

with a record of work, on completion of the restricted building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act.

- [4] The Board<sup>3</sup> initially dealt with the complaint by way of a Draft Decision. The Respondent disputed the findings. The Draft Decision was set aside and a hearing was scheduled.

#### **Evidence**

- [5] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences have been committed.<sup>4</sup> 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.

#### **Failure to Provide a Record of Work**

- [6] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority (TA) on completion of their restricted building work.<sup>5</sup>
- [7] 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 TA on completion of restricted building work<sup>6</sup> unless there is a good reason for it not to be provided.<sup>7</sup>

#### **Did the Respondent carry out or supervise restricted building work**

- [8] The Respondent was engaged to carry out building work on residential dwellings under building consents. His work included work on their primary structure, which was restricted building work.<sup>8</sup> The Respondent was obliged to provide a record of work for his restricted building work on its completion.

#### **Was the restricted building work complete**

- [9] The Respondent accepted that he had carried out restricted building work. He stated that his involvement in the work came to an end when he was made redundant. That occurred in or about May 2024.
- [10] Because the Respondent's involvement in the building work had come to an end and he would not be carrying out any further restricted building work, his restricted building work was complete in May 2024, and a record of work was due.

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<sup>3</sup> The Board is a statutory body established under section 341 of the Act.<sup>3</sup> 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.

<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

<sup>5</sup> Section 88(1) of the Act.

<sup>6</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

<sup>7</sup> Section 317(1)(da)(ii) of the Act

<sup>8</sup> Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Has the Respondent provided a record of work

- [11] The Respondent provided a record of work to his employer. That record of work was not passed on to the owner or the TA because of a financial dispute between the owner and the main contractor. Whilst it may be common practice in some quarters of the building industry for records of work to be provided to main contractors or employers, it is a practice that carries with it the risk that the record of work will not be passed on to the required recipients, the owner and the TA, which is what occurred.
- [12] The Respondent did not provide his record of work to the owner or to the TA as per the requirements of section 88 of the Act. He stated he did not know the owner's contact details and asked why he had not been contacted by the owner and asked to provide one. There is no requirement in section 88 of the Act for a record of work to be requested. The section simply states that it is to be provided on completion. Also, the Respondent did not make any inquiries as to who the owner was, and there were no impediments to his providing a record of work to the TA.
- [13] It was clear the Respondent was not aware of his obligation to provide a record of work directly to the owner and the TA, or that he had to provide a record of work without waiting for one to be requested. In short, he did not know what his obligations under section 88 of the Act were.
- [14] After the complaint was made and before the hearing, the Respondent provided the Complainant with a record of work dated 23 January 2025.

Was there a good reason

- [15] Other than what has been outlined above, which were not good reasons, there were no good reasons for the Respondent not providing his record of work to the owner and the TA on completion of his restricted building work.

**Board's Decision**

- [16] The Respondent **has** failed to provide a record of work on completion of restricted building work.

**Penalty, Costs and Publication**

- [17] 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.
- [18] The Respondent made submissions at the hearing regarding penalty, costs, and publication.

Penalty

- [19] The Board has the discretion to impose a range of penalties.<sup>ii</sup> Exercising that discretion and determining the appropriate penalty requires that the Board balance

various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.<sup>9</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>10</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>11</sup>
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>12</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>13</sup>
- (d) penalising wrongdoing;<sup>14</sup> and
- (e) rehabilitation (where appropriate).<sup>15</sup>

[20] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases<sup>16</sup> and applying the least restrictive penalty available for the particular offending.<sup>17</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>18</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>19</sup>

[21] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.<sup>20</sup>

[22] Record of work matters are at the lower end of the disciplinary scale. The Board's normal starting point for a failure to provide a record of work is a fine of \$1,500, an amount which it considers will deter others from such behaviour.

[23] The Respondent did provide a record of work after the complaint had been made. The Board has taken that into consideration as a mitigating factor and has reduced the penalty to \$1,000.

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<sup>9</sup> *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

<sup>10</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>11</sup> Section 3 Building Act

<sup>12</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>13</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>14</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>15</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

<sup>16</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>17</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>18</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>19</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>20</sup> In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

[24] The Board recommended that the Respondent obtain and study the LBP Regulatory Handbook that the Ministry of Business Innovation and Employment has published so that he can familiarise himself with his regulatory obligations.

### Costs

[25] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.<sup>21</sup>

[26] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.<sup>22</sup> The starting point can then be adjusted up or down, depending on the particular circumstances of each case.<sup>23</sup>

[27] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was simple. Adjustments are then made.

[28] The Board's normal costs order for a simple in-person hearing is \$2,100. The Board accepted the Respondent may have been confused about what the Board had set out in its Draft Decision. It decided to impose only the costs that apply to a Draft Decision, being \$700.

### Publication

[29] 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,<sup>24</sup> and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.

[30] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>25</sup> Further, as a general principle, publication 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, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.<sup>26</sup>

[31] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the

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<sup>21</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

<sup>22</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>23</sup> *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.

<sup>24</sup> Refer sections 298, 299 and 301 of the Act

<sup>25</sup> Section 14 of the Act

<sup>26</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

### Section 318 Order

[32] 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 \$1,000.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$700 (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, the Respondent will be named in this decision, which will be published on the Board's website.**

[33] 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

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

Signed and dated this 19<sup>th</sup> day of February 2026.



**Mr M 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."

**ii Section 318 Disciplinary Penalties**

- (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 1 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.

**iii 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.

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**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.*