

Before the Building Practitioners Board

BPB Complaint No. CB26470
Licensed Building Practitioner: Zayd Ali (the Respondent)
Licence Number: BP125212
Licence(s) Held: Design AoP 2

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: On the Papers
Decision Date: 10 October 2024

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mrs J Clark, Barrister and Solicitor, Legal Member
Mr G Anderson, 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** committed a disciplinary offence under section 317(1)(g) of the Act.

The Respondent is ordered to undertake training which is to be completed within 9 months of receipt of this decision. If the training is not completed within that timeframe, the Respondent's licence will be suspended until the training is completed. The Respondent is ordered to pay costs of \$1,700. 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 Auckland Council lodged a complaint about the Respondent’s behaviour in his interactions with various Council staff in relation to building consent applications. The Council alleged that his behaviour involved confrontational conduct, rudeness and derogatory comments.
- [2] The Board considered whether the behaviour met the high threshold of disrepute and /or whether he had breached the Code of Ethics principle that a Licensed Building Practitioner must behave in a professional manner and treat his colleagues with respect.
- [3] The Respondent accepted that his communications were, objectively, not professional or constructive. He advised that he did not want to have a hearing and asked that the matter be dealt with on the papers. His legal Counsel made submissions on his behalf.

- [4] The Board decided that there were aspects of the way the Respondent interacted with the Council staff which were not appropriate. It noted that there was a pattern of behaviour directed at different Council staff across multiple building consent applications.
- [5] The Board agreed with Counsel for the Respondent's submission that the conduct, when considered alongside previous Board decisions, did not reach the threshold for a finding of disrepute.
- [6] The Board did find that the Respondent's conduct was a breach of principle 19 of the Code of Ethics. He failed to treat his colleagues at the Council with respect and, as such, had behaved unprofessionally.
- [7] The Respondent was ordered to attend specified training within a 9-month time frame. If he fails to do so within the specified time frame, his licence will be suspended until the training is completed. The Respondent was ordered to pay costs of \$1700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

The Charges

- [8] 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.¹
- [9] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent, in respect of four building consent applications, may have –
 - (a) breached the Code of Ethics prescribed under section 314A of the Act, contrary to section 317(1)(g) of the Act; and/or
 - (b) 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 contrary to section 317(1)(i) of the Act.
- [10] The properties to which the building consent applications related are:
 - (a) [OMITTED]
 - (b) [OMITTED]
 - (c) [OMITTED]

¹ 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.

² 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.

(d) [OMITTED]

[11] With respect to the allegation that the Respondent breached the Code of Ethics, the specific provision of the Code that was further investigated was-

19. *You must behave professionally* – *In carrying out or supervising building work, you must act professionally and treat your clients and colleagues with respect.*

Procedure

[12] The matter was set down to be heard as an in-person hearing. The Respondent asked that the matter be dealt with on the papers. The Board granted the request.

[13] The Respondent advised, through his legal Counsel, that he accepted wrongdoing. On that basis, the Board considered the evidence in the investigation file, the submission from the Respondent dated 19 August 2024, legal submissions on behalf of the Respondent dated 13 September 2024, and the submission dated 19 August 2024 from the Complainant.

Evidence

[14] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed³. 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.

Code of Ethics

The Code within a disciplinary context

[15] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.⁴ It was introduced in October 2021 and came into force on 25 October 2022.

[16] The disciplinary provision in the Act simply states, “has breached the Code of Ethics”. The Board has taken guidance from other disciplinary regimes and, in particular, that the protection of the public is the central focus.⁵

[17] Most disciplinary regimes frame the charge as some form of malpractice or misconduct, and the Board has considered the allegations within such a framework and with reference to superior court decisions. Within this context, in

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁴ Building (Code of Ethics for Licensed Building Practitioners) Order 2021

⁵ *Z v Dental Complaints assessment Committee* [2009] 1 NZLR 1 at [128], McGrath J.

Dentice v Valuers Registration Board,⁶ Chief Justice Eichelbaum stated the purposes of disciplinary processes are to:

Enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practice the profession in question; to protect both the public, and the profession itself, against persons unfit to practice; and to enable the professional calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.

- [18] In light of the above, when looking at the Code of Ethics as a whole, it is clear that the intent behind them is to protect the consumer throughout a build process and raise the bar on Licensed Building Practitioner conduct.
- [19] The Board also notes that the courts have applied a threshold test to disciplinary matters, and the Board has applied those tests. In *Collie v Nursing Council of New Zealand*,⁷ the test was stated as:

[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

Clause 19

- [20] The provision the Board stated it would investigate was:

19 You must behave professionally

In carrying out or supervising building work, you must act professionally and treat your clients and colleagues with respect.

- [21] The provision is premised on “*building work*”. The Code adopts the same definition of the term as the Act, which includes “*design work (relating to building work)*”⁸ and that is further defined as “*design work (relating to building work) for, or in connection with, the construction or alteration of a building.*”⁹
- [22] The design work carried out by the Respondent in preparing and submitting the four building consent applications falls within this definition.
- [23] Principle 19 relates to behaviour with respect to “*clients and colleagues*”. In this matter, the Respondent’s interactions with Council staff are in question. The

⁶ [1992] 1 NZLR 720 at 724

⁷ [2001] NZAR 74

⁸ Section 5 Building (Code of Ethics for licensed Building Practitioners) order 2021

⁹ Section 3 Building (Design Work Declared to be Building Work) Order 2007

Board has previously decided that Council staff are colleagues for the purposes of this provision.¹⁰

[24] Clause 19 of the Code is part of the principle that Licensed Building Practitioners are expected to behave professionally.¹¹ It is drafted in a wider manner than the clauses that follow it. Those clauses all relate to specific types of behaviour.

Those provisions are:

- 20 *You must act in good faith during dispute resolution.*
- 21 *You must price work fairly and reasonably.*
- 22 *You must declare and manage actual or potential conflicts of interest appropriately.*
- 23 *You must maintain confidentiality of client details unless there is good reason for sharing information.*
- 24 *You must acknowledge and respect cultural norms and values of clients and colleagues; and*
- 25 *You must conduct your business in a methodical and responsible manner.*

[25] Clause 19 of the Code is, in effect, a catch-all provision. It stipulates that, in carrying out or supervising building work, an LBP must act professionally and treat clients and colleagues with respect.

[26] What is in question in this matter is whether the Respondent acted unprofessionally in his written interactions with Council staff when processing building consent applications.

The conduct complained about

[27] The Complainant described the Respondent as a “*difficult customer*” when dealing with requests for information (“RFIs”) on building consent applications he has submitted. “*When [the Respondent] does not agree with the processing officer’s interpretation or their requests for further information his attitude quickly changes to one of confrontation with correspondence [sic] back to Council staff and contractors deteriorating into derogatory comments, rudeness, accusations and constant threats to escalate matters within Council or to the Ombudsman.*”

[28] The Complainant provided numerous email communications with the Respondent, which, amongst other things, stated

- (a) a council officer was “*lazy*” and another was “*struggling to read plans*”

¹⁰ Curl 26204

¹¹ Clause 6(d) of the Code of Ethics.

- (b) *“what timber floor? it’s a concrete slab- you clearly don’t know the detail...”*
- (c) *“Isn’t maths fun? Also it is actually constant in every universe, so this would be the case...in every realm...in every universe...fun fact...so...If maths doesn’t work ... tell me please? what works for you...”(in upper case)*
- (d) *“I am not interested in yoru [sic] opinion or your bos’s [sic] opinion”*
- (e) *“Is your entire existence in council is to obstruct here”*
- (f) *“do you/they. any of you understand this?”*
- (g) *“why do you have to cause issues here??? Its just standard stuff or [sic] gods sake @!”*
- (h) *“it is unknown to us what is the concern here and we must assume as per the previous point you have issue reading plans wrong or if we are generous – you are incapable of conveying your concern...”*

[29] The Complainant demonstrated through the emails provided that the alleged conduct occurred with respect to many Council staff and contractors. The Board accepted that the evidence established a pattern of behaviour.

[30] The Respondent in his initial response to the Investigator gave detailed explanations of his interactions on all of the building consent applications. He further submitted that –

- (a) His actions were as a result of his dedication to act in his client’s best interests.
- (b) He fully acknowledged that on some occasions he was “hyperbolic” in his communications.
- (c) He was under extreme stress due to delays in the consenting process.
- (d) These were isolated incidents that occurred concurrently in a very stressful time that was he believed partly caused by the Council and thus they were equally to blame for how the events transpired.
- (e) *“it true that we were difficult, harsh in our communication, upset, stressed, hyperbolic and frustrated, and of course we wish that we could have been more smooth application, but I never resorted to physical violence, unwarranted threats to anyone safety and/or any other issue that would be considered unethical in a major way...I understand that our actions may have hurt*

some people's feelings, and that is not something we are happy about..."

- [31] The Board considers that this initial response shows some level of acceptance that his conduct was not acceptable. However, later, through Counsel, the Respondent accepted that his conduct was not appropriate. Counsel stated on his behalf that *"Noting that [the Respondent] had accepted wrongdoing..."* and *"On reflection [the Respondent] has accepted that his communications fell short of his own expectations of professional and constructive communications."*

Was the conduct serious enough

- [32] The conduct was serious. It was not an isolated incident. There was a pattern of behaviour that was directed at several different Council staff and contractors. It cannot be explained away as a one-off loss of control. The behaviour manifested itself over a considerable period of time.

Has the Respondent breached the Code of Ethics

- [33] Considering the above, the Board finds that the Respondent has breached Principle 19 of the Code of Ethics and the ground of discipline is upheld.

Disrepute

- [34] The Board gave notice that if it found that there had been a breach of the Code of Ethics, it would consider whether the conduct reached the threshold for a finding of disrepute. Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public.
- [35] The disrepute disciplinary provision in the Act is similar to legislation in other occupations, including medical professionals, teachers, lawyers and conveyancers, chartered accountants, financial advisors, veterinarians and real estate agents. The Board considered the disrepute provisions in Board Decision C2-01111¹² and discussed the legal principles that apply.
- [36] Turning to the conduct which brings or is likely to bring the regime into disrepute the Act does not provide guidance as to what is "disrepute". The Oxford Dictionary defines disrepute as "the state of being held in low esteem by the public"¹³.
- [37] The Courts have consistently applied an objective test when considering such conduct.¹⁴ The subjective views of the practitioner or other parties involved are

¹² Board decision dated 2 July 2015.

¹³ Online edition, compilation of latest editions of *Oxford Dictionary of English, New Oxford American Dictionary, Oxford Thesaurus of English and Oxford American Writer's Thesaurus*, search settings UK English, accessed 12/05/15`

¹⁴ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.¹⁵

- [38] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,¹⁶ that the Respondent has brought the regime into disrepute and that the conduct was sufficiently serious enough for the Board to make a disciplinary finding.¹⁷
- [39] Finally, the Board also notes that the Courts have stated that the threshold for disciplinary complaints of disrepute is high and 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”.

The conduct complained about

- [40] The conduct alleged to be disreputable is the same conduct as that considered under the Code of Ethics grounds for discipline.

Was the conduct serious enough

- [41] In considering this issue, the Board takes note of previous relevant decisions of the Board under section 317(1)(i).
- [42] Language described as “intemperate” was found not to have degenerated to the point where a finding of disrepute should be made.¹⁸ Behaviour, however, which included threatening language which was highly personal in nature, was upheld as constituting disrepute.¹⁹ Similarly, payment demands which threatened physical violence and included lewd sexual references were also held to be disreputable conduct.²⁰
- [43] The most relevant and closely aligned previous decision of the Board (Morgan)²¹ concerned the Respondent talking to a Council officer in relation to a building consent. His comments were that she did not know what she was talking about and that she was “*wasting his fucking time*”. In that matter, the Respondent apologised and stated it was said out of frustration with no malice intended. The

¹⁵ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

¹⁶ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. 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.

¹⁷ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

¹⁸ *Knight* [2019] BPB 24274

¹⁹ *Davies* [[2018] BPB 1883

²⁰ *Spence* [2018] BPB 1906

²¹ *Morgan* [2021] BPB 25824

Council officer concerned felt that the comments were directed at her and her competence but did not feel they were threats to her person.

- [44] In another decision concerning a Licensed Building Practitioner designer’s communication with a Council, ²² a comment about the Council Officer’s education was personal in nature and easily capable of a racist interpretation. That conduct was held to be disreputable and was distinguished from the conduct in Morgan (discussed above) due to its personal nature.
- [45] The Respondent’s legal Counsel submitted that the “*conduct falls far short of that warranting discipline for being likely to bring the regime into disrepute*” and is “*of quite a different nature to that*” in other Board decisions.²³
- [46] Counsel for the Respondent further submitted that the Respondent’s conduct did not feature the personal or offensive attacks that many of those which were held to be disreputable did. The Board agrees.
- [47] The Board also agrees with the Respondent’s Counsel’s submission that the Respondent’s conduct is significantly less serious than that considered in Morgan.²⁴
- [48] On that basis, the Board finds that the conduct complained about does not reach the high seriousness threshold required to establish disreputable behaviour.

Has the conduct brought the regime into disrepute

- [49] The conduct of the Respondent has not brought the regime under the Act into disrepute. The ground of discipline is not upheld.

Board’s Decision

- [50] The Respondent **has** committed a disciplinary offence under section 317(1)(g) of the Act.
- [51] The Respondent **has not** committed a disciplinary offence under section 317(1)(i) of the Act.

Penalty, Costs and Publication

- [52] 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.
- [53] The matter was dealt with on the papers. The Respondent gave a written submission dated 19 August 2024, and his legal Counsel also provided a

²² Dawson [2022] BPB 25842

²³ Horisk 26185, 26224, Elliot 26415

²⁴ Morgan [2021] BPB 25824

submission dated 13 September 2024 on penalty costs and publication. A submission dated 19 August 2024 on these three matters was also received from the Complainant. The Board has considered all of these submissions in reaching its decision.

Penalty

- [54] The Board has the discretion to impose a range of penalties.ⁱⁱ 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.²⁵ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁶
- (a) protection of the public and consideration of the purposes of the Act;²⁷
 - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;²⁸
 - (c) setting and enforcing a high standard of conduct for the industry;²⁹
 - (d) penalising wrongdoing;³⁰ and
 - (e) rehabilitation (where appropriate).³¹
- [55] 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 cases³² and applying the least restrictive penalty available for the particular offending.³³ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³⁴ that is consistent with other penalties imposed by the Board for comparable offending.³⁵
- [56] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.³⁶

²⁵ *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]

²⁶ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁷ Section 3 Building Act

²⁸ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁹ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

³⁰ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

³¹ *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

³² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³³ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁶ 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.

- [57] The Complainant submitted that this was not a one-off occurrence, that the Respondent's behaviour was unacceptable and *"a period of suspension should be considered as a minimum disciplinary measure"*.
- [58] The Respondent submitted that they were isolated incidents, that he has taken responsibility for his behaviour and has promised it will not happen again. He further explained that a suspension of licence would *"affect my life and livelihood of myself and family"*. He stated: *"Please show me compassion and do not suspend me from working...I accepted responsibility and understand now that I must not stress the council staff..."*
- [59] Respondent's legal Counsel made the following points in relation to penalty:
- (a) The communications are *"unprofessional and repetitive"* but are of a different complexion to those in previous Board decisions.
 - (b) The Respondent did not use *"profanities, personal threats, attempts to intimidate, destruction of property or vile personal attacks"*.
 - (c) The conduct was confined to a four-month period, against a long history of working with Councils in relation to building consent applications and having submitted over 100 building consent applications with this being the only complaint.
 - (d) The conduct was during a period of personal stress in his life.
 - (e) He was motivated by concerns that delays in receiving consent would impact his clients and his reputation.
 - (f) He has made changes to his practice to pro-actively manage concerns raised by Council in a professional manner, including educating his clients on possible delays and increasing collegial supports.
 - (g) *"...a finding of breach of section 317(1)(g) alone is adequate punishment to uphold the integrity of the profession. A penalty more severe would be disproportionate."*
- [60] The Board signalled that for a time after the introduction of the Code of Ethics it would take an educative approach in setting penalties for breaches of the Code. The Board considers that there has been a sufficient transition period and that Licensed Building Practitioners should now be well aware of their obligations under the Code.
- [61] In that regard, the Board notes that all Licensed Building Practitioners have to declare that they have completed mandatory skills maintenance each year. In terms of the Code, the skills maintenance was the compulsory reading of the following and the completion of a short quiz in relation to each:

Date Issued	Title	Source
01/06/2022	Licensed Building Practitioners Code of Ethics	Build 190, Codewords 107
01/02/2023	A new Code of Ethics for Licensed Building Practitioners	Build 194, Codewords 111
01/08/2023	The Code of Ethics and what it means to you	Build 197, Codewords 114
02/10/2023	The Code of Ethics and what it means to you – Part 2	Build 198, Codewords 115
8/2/2024	The Code of Ethics and what it means for you – Part 3	Codewords 117

- [62] There is, therefore, no excuse for the Respondent to be uninformed.
- [63] In this case, there has been more than one incident over a reasonable period of time, suggesting a pattern of behaviour from the Respondent. This is an aggravating factor.
- [64] There are also mitigating factors. The Board notes the early acceptance of responsibility for his behaviour and the clean record up to this point.
- [65] The Board has not upheld the disciplinary offence of bringing the regime into disrepute. This necessarily means that the penalty should sit below those where the Board has found that disreputable behaviour has occurred.
- [66] The Board considers that the suspension of licence penalty sought by the Complainant would not be consistent with other penalties imposed by the Board for comparable offending.
- [67] Taking into account the principle of rehabilitation and taking an educative approach, the Board decided that it would order the Respondent to undertake a course of training.
- [68] The training the Respondent is to complete is the unit standards relating to communication in the New Zealand Construction Related Trades (Supervisor) (Level 4) qualification. They are:
- Unit Standard 9704 – Manage interpersonal conflict; and
- Unit Standard 17516 – Write construction-related communications.
- [69] The Respondent is to complete the training at his own cost. He will have nine months to complete the training from receipt of this decision. If he fails to complete the training within that time frame, his licence will be suspended until the training is completed.

Costs

- [70] 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.³⁷

- [71] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁸. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁹.
- [72] 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 a moderate hearing on the papers. The usual tariff is \$1,700. Adjustments are then made.
- [73] The Respondent's Counsel submitted that the Respondent had minimised costs for all in seeking a hearing on the papers at the earliest opportunity known to him. The Respondent said, "*I accept that I will have to pay something as a penalty...I will ask for the minimum penalty -however I will leave it to the Board to decide the appropriate costs...*"
- [74] The Complainant submitted that "*all costs should be charged to [the Respondent]*" and suggested that the Council's costs should also be met for the time and effort in investigating the complaint and collecting evidence.
- [75] The Board can only order that the costs and expenses of, and incidental to, the inquiry by the Board be paid⁴⁰. It has no jurisdiction to award costs to Complainants.
- [76] Based on the above, the Board sees no reason to adjust the usual tariff and orders the Respondent to pay the sum of \$1,700 toward the costs of and incidental to the Board's inquiry.

Publication

- [77] 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,⁴¹ 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.
- [78] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.⁴² Further, as a general principle, publication may be required where the Board perceives a need for the public

³⁷ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁸ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁹ *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.

⁴⁰ Section 318(4) of the Act

⁴¹ Refer sections 298, 299 and 301 of the Act

⁴² Section 14 of the Act

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.⁴³

- [79] The Complainant wanted the Respondent's name published to ensure others were aware of the matters and to deter others from acting in a similar manner.
- [80] The Respondent said, "*in the matter of the publication, I am unclear on what is the publication-if there is a chance that a publication could misinform my clients and consultants then please do not do that to me...people will potentially think I may have done something more egregious than what I did, please do not let the public think false things about me...*"
- [81] Legal Counsel for the Respondent submitted –"*[the Respondent's] comparatively low -level conduct, which occurred during an isolated period of high stress, does not warrant publication. There is little chance of reoccurrence given the changes to his practice and therefore no need to alert the profession or the public.*"
- [82] 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 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

- [83] For the reasons set out above, the Board directs that:

Penalty: Pursuant to section 318(1)(e) of the Building Act 2004, the Respondent is ordered to undertake and complete at his cost the following training:

the unit standards relating to communication in the New Zealand in Construction Related Trades (Supervisor) (Level 4) qualification, being:

- **Unit Standard 9704 – Manage interpersonal conflict; and**
- **Unit Standard 17516 – Write construction-related communications**

The Respondent is to complete the training within 9 months of receipt of this decision, failing which his licence is to be suspended pursuant to section 318(1)(b) of the Act until such time as he completes the training as ordered.

⁴³ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,700 (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.

[84] 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

[85] The right to appeal Board decisions is provided for in section 330(2) of the Actⁱⁱⁱ.

Signed and dated this 23rd day of October 2024.



Mr M Orange
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:

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- (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.

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.*