

Before the Building Practitioners Board

	BPB Complaint No. 26530
Licensed Building Practitioner:	Yiroom Lee (the Respondent)
Licence Number:	BP 129675
Licence(s) Held:	Carpentry

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 Location:	Auckland
Hearing Type:	In Person
Hearing Dates:	4 March 2025 and 28 August 2025
Decision Date:	4 September 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr G Anderson, LBP, Carpentry and Site AoP 2
Ms E Harvey McDouall, Registered Architect

Appearances:

S Chung for the Respondent at the 4 March 2025

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

- [1] The Respondent supervised recladding work carried out under Schedule 1 of the Building Act. He used incorrect fixings and accessories and then applied pressure to obtain payments that were not due under the contract so that he could rectify his mistake. The Board decided that, whilst the Respondent had supervised building work that did not meet an acceptable standard and had conducted himself in a manner that was contrary to the Code of Ethics, as conduct did not reach the threshold, as outlined by the Courts, for the Board to make a disciplinary finding.

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.¹
- [3] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at [OMITTED], have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act, IN THAT, exterior cladding may not have been installed in a manner that complied with the Building Code and/or the manufacturer's specifications in respect of the nail fixings used and the manner in which flashings, soakers and scribes were installed; and

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.

- (b) breached the Code of Ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act, IN THAT, he may have demanded payment contrary to the terms of his agreement and used unethical pressure to obtain said payment.
- [4] With respect to the allegation that the Respondent breached the Code of Ethics, the Board gave notice that the specific provisions of the Code that would be further investigated at a hearing were:
- 15 You must be accountable; and
- 20 You must act in good faith during dispute resolution.

Procedure

- [5] A hearing was convened on 4 March 2025. The Respondent appeared with legal Counsel. During the hearing, it became apparent that the Respondent acquired the assistance of an interpreter. The hearing was adjourned to allow one to be present.
- [6] During the 4 March 2025 hearing, the Board was advised that an appeal against a Disputes Tribunal decision would be heard in the District Court on 1 April 2025. The Board directed that the hearing would not resume until after the District Court decision had been issued. The Board subsequently received a copy of the District Court decision.
- [7] At the 28 August 2025 hearing, not all of the Board Members who were present on 4 March 2025 were available. As such, the Board heard the matter afresh.

Evidence

- [8] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences 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.
- [9] The Respondent contracted to reclad some but not all of a residential dwelling. The work was carried out under Clause 1 of Schedule 1 of the Building Act without a building consent on the basis that it was the repair and maintenance of a building product, or an assembly incorporated in or associated with a building. The work was carried out by experienced employees who were not licensed. The Respondent supervised the work and ordered the materials.
- [10] The Respondent provided a quote for the work. The quote stipulated: "New James hardie 280x7.5mm cladding install". The payment terms were a deposit of \$10,000, a progress payment of \$10,000 and the balance of \$3,633 on completion.
- [11] The work progressed. When the cladding had been installed, the Complainant raised an issue with the fixings that had been used. The Respondent had affixed the cladding with galvanised nails. He stated he did so on the basis that the dwelling was in Sea

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

Spray Zone C. The dwelling was near the ocean and was in Zone D. The Complainant also raised issues with the materials used for flashings, soakers, and scribes and the manner of their installation. The Respondent, regarding the flashings, soakers, and scribes, stated that he had chosen products that would match the existing, which were galvanised rather than stainless steel products.

- [12] NZS 3604, an Acceptable Solution for compliance with the New Zealand Building Code, states that galvanised fixings can be used in Zone D. The James Hardie manufacturer's specifications, however, state that stainless steel fixings must be used. The James Hardie product meets the New Zealand Building Code by way of a CodeMark certification. That certification relies on fixings and accessories being installed in accordance with James Hardie specifications. As such, the use of galvanised fixings and accessories meant that the new cladding did not meet Building Code durability requirements. A failure to adhere to those specifications would also void any manufacturer's warranty.

- [13] The Respondent initially accepted he had made a mistake. On 5 April 2024, he wrote:

I hope this message finds you well. I am writing to address a discrepancy regarding the hardware used for Sea Spray Zone D. Upon a thorough inspection and confirmation, it has come to my attention that while stainless steel was intended for use, we inadvertently used Hot Deep Galvanised nails due to a mismatch in information provided from mitekzn.

I sincerely apologize for any inconvenience or concern this may have caused. Please rest assured that steps are being taken to rectify the situation promptly. I would like to propose two options for your consideration:

- [14] Various solutions were offered, including applying a Zinc C Type Primer, compensating the Complainant for the cost difference, and removing the galvanized nails and replacing them with stainless steel. The Respondent also stated he would provide a warranty letter.
- [15] The solutions were not accepted by the Complainant, who required that the cladding be replaced. The Complainant had received from James Hardie that the product would not be warranted with galvanised fixings and that the fixings could not be removed and replaced if the product was to be covered by a warranty. In essence, new cladding would have to be installed for the product to be covered by a manufacturer's warranty.
- [16] Negotiations followed, which centred on payment arrangements with the Respondent wanting to vary the payment terms so that he was paid the progress payment of \$10,000 before he undertook the work to remove and replace the cladding.
- [17] The Respondent later retracted the acceptance that the wrong fixings had been used and argued that the building work met Building Code requirements. On 30 April 2025, the Respondent's lawyer wrote to the Complainant setting out the reasons why the building work complied with the Building Code and demanding payment of two

invoices, one for \$10,000 (the progress payment) and the other for \$1,794. Five days were allowed for payment, with a threat of legal proceedings if payment was not received.

- [18] The matter was not resolved between the contracting parties. Proceedings were brought in the Disputes Tribunal by the Complainant, who succeeded in getting an order that the Respondent's company pay the Complainant and his partner \$28,761.50, the cost of repairing the cladding. The Respondent unsuccessfully appealed the decision to the District Court. The Respondent has, as a result of the Complainant engaging a debt collector, made staged payments of the amount owed. The Complainant has not yet replaced the cladding.
- [19] At the hearing, the Respondent accepted that he had used the wrong fixings. He stated that he determined what fixings to use through his own knowledge and experience but did not research the specific product to be used. He stated that the use of the wrong materials was an inadvertent mistake, that he had intended to do the right thing, and that it was unfortunate that the Complainant would not accept galvanised fixings and accessories. He submitted that the building was watertight and that what he had completed would have been as good as, if not better than, the cladding that had been replaced. He stated he had learnt from the matter.

Negligence or Incompetence

- [20] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁴ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*⁵ test of negligence.⁶ To find incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard.⁷ A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.⁸ If it does not, then a disciplinary finding cannot be made.

Has the Respondent departed from an acceptable standard of conduct

- [21] When considering what an acceptable standard is, the Board must consider the purpose of the Building Actⁱ as well as the requirement that all building work must

⁴ *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.

⁵ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁶ Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁷ In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as "a demonstrated lack of the reasonably expected ability or skill level". In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as "an inability to do the job"

⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74.

comply with the Building Code⁹ and any building consent issued.¹⁰ The test is an objective one.¹¹

- [22] Because of the use of galvanised fixings and accessories, the building work did not comply with the Building Code. The reason is that the product used, in order to meet Building Code requirements, had to be installed with stainless steel fixings and fittings within Sea Spray Zone D. It follows that the Respondent has supervised building work that did not meet an acceptable standard and that he has conducted himself in a negligent manner.

Was the conduct serious enough

- [23] As noted above, negligence has to reach a seriousness threshold before a disciplinary finding can be made. In *Collie v Nursing Council of New Zealand*,¹² the Court stated:

[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.

- [24] In *Pillai v Messiter (No 2)*,¹³ an Australian Court of Appeal decision that has been adopted by the Superior Courts of New Zealand, stated:

... the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.

- [25] Taking those tests into consideration, the Board decided that the conduct did not, by a narrow margin, reach the required threshold for it to take disciplinary action. The Board accepted that the error may have arisen through an inadvertent mistake and that the Respondent may not have intentionally used the wrong materials.
- [26] The Respondent should note that the Board is not condoning his conduct. He should have investigated the sea spray zone and researched the product specifications before undertaking the work. As the Respondent is now on notice, he should note that any future conduct may not result in the same sort of outcome.

Has the Respondent breached section 317(1)(b) of the Act

- [27] The Respondent has not breached section 317(1)(b) of the Act.

⁹ Section 17 of the Building Act 2004

¹⁰ Section 40(1) of the Building Act 2004

¹¹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent's subjective considerations.

¹² *Collie v Nursing Council of New Zealand* [2001] NZAR 74

¹³ (1989) 16 NSWLR 197 (CA) at 200

Code of Ethics

- [28] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.¹⁴ It was introduced in October 2021 and came into force on 25 October 2022. The obligations are new, but there was a transition period of one year to allow practitioners to become familiar with the new obligations. Whilst the Code of Ethics is new, ethics have been a part of other regulatory regimes¹⁵ for some time, and the Board has taken guidance from decisions made in other regimes.
- [29] The Code also differentiates between Licensed Building Practitioners who are in business and those who are employed in that some of the ethical obligations only apply to those who are in business. In this matter, the Respondent was in business.
- [30] The disciplinary provision in the Act simply states, “has breached the code of ethics”. 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 *Dentice v Valuers Registration Board*,¹⁶ 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.*
- [31] The Board also notes that the courts have applied a threshold test to disciplinary matters. The tests are the same as those outlined above in paragraphs [23 and [24].

The conduct complained about

- [32] The conduct under investigation related to the Respondent demanding payment contrary to the terms of his agreement and the use of unethical pressure to obtain said payment.
- [33] The Respondent’s contract set out the terms and conditions for payment, which included a progress payment on completion of the cladding. As a result of his mistake, he tried to vary those terms to obtain payment in advance of the work being completed and then threatened legal action when his new terms were not complied with. The Respondent had no legal right to unilaterally vary the terms and demand payment. His conduct was unethical, and it was a breach of clauses 15 and 20 of the Code of Ethics, which state:

15 *You must be accountable*

¹⁴ Building (Code of Ethics for Licensed Building Practitioners) Order 2021

¹⁵ Lawyers, Engineers, Architects and Accountants, for example

¹⁶ [1992] 1 NZLR 720 at 724

If building work carried out by you, or someone under your supervision, is or could be defective you must—

(a) *take all reasonable steps to communicate with your client about the problem in a way that—*

(i) *is honest; and*

(ii) *is responsive; and*

(b) *act with integrity in relation to the resolution of the problem.*

20 You must act in good faith during dispute resolution

If there is a dispute involving you and your client about building work (including, without limitation, the price, quality, or timing of the building work or your or the client's actions), you must—

(a) *attempt to resolve the dispute with your client; and*

(b) *ensure that you make yourself available to discuss the dispute with the client so that all parties (including you) have the opportunity to express their views and be heard; and*

(c) *ensure that at all times you act in a professional and respectful manner towards your client.*

Was the conduct serious enough

[34] Notwithstanding the breaches of the Code, as with the negligence finding, the Board has decided that the conduct did not reach the threshold for a disciplinary outcome.

[35] In coming to its decision, the Board has noted that whilst the Respondent adopted an intransigent position, he has now accepted that he was in the wrong and has started paying damages to the Complainant. But for that admission and the payments, the Board would have upheld the ground of discipline. Again, it was a close call. The conduct was only just below the threshold.

[36] The Respondent should use the events as a learning opportunity. When faced with contractual disputes in the future, he should bear in mind his ethical obligations as a Licensed Building Practitioner.

Signed and dated this 12th day of September 2025.



Mr M Orange
Presiding Member

ⁱ **Section 3 of the Act**

This Act has the following purposes:

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
 - (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) *people who use a building can escape from the building if it is on fire; and*
 - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*