

Before the Building Practitioners Board

	BPB Complaint No. 26293
Licensed Building Practitioner:	Christopher Neil Cox (the Respondent)
Licence Number:	BP134455
Licence(s) Held:	Foundations – Concrete or timber pile foundation

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	Whangarei
Hearing Type:	In Person
Hearing and Decision Date:	25 October 2024

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor

Appearances:

J Dawson for the Respondent

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 disciplinary offences under sections 317(1)(b) and (d) of the Act.

The Respondent **has not** committed a disciplinary offence under section 317(1)(g) of the Act.

The Respondent is ordered to undertake training and to pay costs of \$2,950. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary

- [1] The Respondent was contracted to repile a dwelling. The work was carried out by the Respondent together with his employees, whom he supervised. Photographs of the completed work and a failed building inspection showed non-compliant building work. The non-compliance arose as a result of the Respondent's failure to adequately supervise. On that basis, the Board found the Respondent had supervised building work in a negligent manner and had supervised building work that was contrary to a building consent. The Respondent was ordered to undertake training to address the supervision failings and was ordered to pay costs of \$2,950. A record of the disciplinary offending will be recorded on the public Register for a period of three years.
- [2] The Board also investigated whether the Respondent had breached the Code of Ethics. The investigation was based on advice given by the Respondent that the owner could carry out restricted building work, which, if the work had been done by

the owner, would have been a breach of the Building Act. The Board found that whilst there had been a breach of the Code, the conduct was not serious enough for the Board to make a disciplinary finding.

The Charges

- [3] 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
- [4] 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, the subfloor structure may have been constructed in a substandard or non-compliant manner as set out in the complaint and photos and photos provided;
 - (b) carried out or supervised building work that does not comply with a building consent contrary to section 317(1)(d) of the Act, IN THAT, the subfloor structure may have been constructed in a substandard or non-compliant manner as set out in the complaint and photos provided; and
 - (c) breached the code of ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act.
- [5] With respect to the allegation that the Respondent breached the Code of Ethics, the specific provisions of the Code that the Board gave notice that it would be further investigating at a hearing were:
- 10 You must comply with the law;
 - 13 You must explain risks to your client; and
 - 14 Your duty to inform and educate client.
- [6] The Board also noted the conduct that would be further investigated in relation to the Code of Ethics was in relation to the Respondent contracting out of completing pile-to-bearer connections on the basis that it is restricted building work that must be carried out or supervised by a Licensed Building Practitioner.

Evidence

- [7] 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

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.

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

relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

- [8] The Respondent contracted to repile an existing dwelling under a building consent. The repiling and the connections between the dwelling and the new piles were restricted building work (work on the primary structure of a residential dwelling) and had to be carried out or supervised by a Licensed Building Practitioner (LBP). The Respondent was that LBP.
- [9] The Respondent completed some but not all of the building work. As a result of a commercial dispute, another contractor completed the work. Prior to the second contractor undertaking any work, a Building Consent Authority (BCA) inspection was carried out. It noted an absence of anchor pile connection kits to some but not all of the anchor piles. The second contractor installed those kits and completed the remaining building work required to obtain a Code Compliance Certificate (CCC).
- [10] A complaint about the Respondent's building work was made on 27 May 2023. Included with the complaint were photographs of subfloor construction and connections that appeared to be non-compliant.

Negligence or Incompetence

- [11] 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 make a finding of 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

- [12] 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 - [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".

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

- [13] Looking at the building work, the Respondent stated he both carried out and supervised it. He accepted that the subfloor connections shown in photographs provided to the Board were completed by him and his employees. A sample of the photographs provided follows:



- [14] The building work shown does not meet Building Code requirements. The building consent made reference to NZS 3604:2011,¹² an acceptable solution,¹³ as a means of compliance. Clause 6.12.6 of NZS 3604 stipulates:

6.12.6 Landing

Bearers shall have a minimum landing on their supports of:

- (a) Where bearers are butted over the support: 45 mm;*
- (b) In all other cases: 90 mm.*

Any packing necessary beneath bearers shall be of a material as durable and as incompressible as the bearer itself.

- [15] The bearers shown in the photographs above do not meet those requirements. Further, with respect to the photograph of the fixing shown placed at an angle, it would not have met compliance requirements because the screw fixings would not have achieved the level of kN fixing required. Also, some of the packers installed were non-compliant as incorrect-treated timber had been used, and the packers were placed with the grain running in the wrong direction.
- [16] In addition to the above, during the hearing, the Complainant gave evidence that an inspection of the subfloor by the BCA had been carried out after the Respondent's engagement had ceased but prior to any further building work being undertaken by other contractors. She provided copies of the inspection records and evidence that

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 New Zealand Standard: timber framed buildings.

¹³ Under section 22 of the Building Act 2004, an acceptable solution is a deemed means of compliance with the Building Code.

they had been provided to the Respondent at or about the time inspections were completed. The correspondence chain was as follows:

25 July 2023, Complainant to Respondent:

I had the council inspector over on Monday for the 217 subfloor framing inspection.

This inspection failed due to some anchor piles being missing and some being I. The wrong places compared to the plans.

I have attached the report from the inspector.

What will be done to remedy this?

28 July 2023, Respondent to Complainant:

We have taken a look and will be giving the inspector a call to see what exactly the issues are and will touch base with you once this is complete.

9 August 2023, Complainant to Respondent:

Can I have an update about this?

We are planning to sell the house so want this sorted asap.

9 August 2023, Respondent to Complainant:

You want us to fix something that you never paid for is that correct?

9 August 2023, Complainant to Respondent:

I want you to fix something that was on the plans and therefore covered by your quote and invoicing.

[17] The inspection, which was carried out on 24 July 2023, noted the following failed items:

Base Boards in place and rubbish under house does not allow for simple/safe/efficient inspection. Minimumly remove sharp rubbish to make safe. Complete inspection was not conducted due to rubbish and decision that plans were not followed enough which necessitates minor variation requirement and subfloor reinspection requirement. Follow already consented plans or book minor variation. With either option also book subfloor frame reinspection next with clean subfloor.

Further rectifications:

5)See photos where for anchor piles where NOT placed as per plan. Circled indicate missing anchor piles. CORNER ANCHOR PILE LOCATIONS CAN BE IMPORTANT PER DEDIGN.

- [18] An accompanying marked-up photograph of the floor layout from the consented plans showed four anchor piles that required rectification.



Example of anchor in wrong place.



Ordinary pile screw nail is required to NZ S3604. Fixings above also required

- [19] The Respondent gave evidence that the work shown in the photographs above was undertaken by his foreman, who no longer works for him. He stated that he trusted and relied on his foreman, who had let him down. The Respondent also stated he had not been aware of the compliance failings, notwithstanding that the failed inspection had been forwarded to his business. The Respondent's expert, a building surveyor, accepted that the correct installation of anchor piles was required for Building Code compliance.
- [20] As the Respondent did not carry out the non-compliant work, the Board must look at the adequacy of his supervision. The term "supervise" is defined in section 7 of the Act:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

(a) is performed competently; and

(b) complies with the building consent under which it is carried out.

- [21] When considering supervision, the Board needs to consider what type of supervision was required and how well that supervision was undertaken. The Board also needs to consider whether the work met the requirements of the Building Code and, if not, the level of non-compliance.
- [22] Supervision in the context of the Building Act has not yet been considered by the courts. It has, however, been considered in relation to the Electricity Act 1992.¹⁴ The definition of supervision in the Electricity Act is consistent with the definition in the Building Act, and, as such, the comments of the court are instructive. In the case, Judge Tompkins stated in paragraph 24:

¹⁴ *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

“As is made apparent by the definition of “supervision” in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.”

- [23] On the basis of the above, the Board did not consider the Respondent’s supervision had met an acceptable standard. He had not checked the completed work, and whilst his foreman had let him down, he should have attended the site and carried out a visual check to ensure the building work being completed in accordance with the building consent. Because he did not, compliance issues were not identified or dealt with.

Was the conduct serious enough

- [24] The Board found that the conduct was serious and that a distant finding should be made. The non-compliance was evident and could have been identified through a site visit and check of the work. Further, the plans and specifications contained detail on how the work could be completed in a compliant manner, and the non-compliance was significant in that it related to the primary structure of the dwelling.

Has the Respondent been negligent or incompetent

- [25] The Respondent has supervised building work in a negligent manner.

Contrary to a Building Consent

- [26] Building consents provide detailed plans and specifications for building work. They are issued by Territorial or Building Consent Authorities on the basis that the building work will meet the provisions of the Building Code.¹⁵ Once issued, there is a requirement that the building work be carried out in accordance with the building consent.¹⁶ Building consents also stipulate the number and type of inspections the issuing authority will carry out during the build.¹⁷ Inspections ensure independent verification that the building consent is being complied with.
- [27] If building work departs from the building consent issued, the Board can find that a disciplinary offence under section 317(1)(d) of the Act has been committed. The Board does not have to find that departure was deliberate or a result of negligent conduct.¹⁸ The Board does, however, consider that the seriousness of the conduct under investigation does have to be taken into account. As such, even if the

¹⁵ Section 49 of the Act

¹⁶ Section 40 of the Act

¹⁷ Section 222 of the Act

¹⁸ *Blewman v Wilkinson* [1979] 2 NZLR 208

Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.¹⁹ If it does not, then a disciplinary finding cannot be made.

Was there building work that differed from the building consent

[28] The building work identified in relation to the Board's finding of negligent supervision was building work that was not in accordance with the building consent. It follows that there was building work that was contrary to the building consent.

Was the conduct serious enough

[29] As with the Board's findings in relation to negligence, the conduct was serious. It was not mere inadvertence error, oversight or carelessness.

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

[30] The Respondent has breached section 317(1)(d) of the Act.

[31] The Board does note the commonality between the findings under sections 317(1)(b) and (d) of the Act. That has been taken into consideration when determining the appropriate penalty.

Code of Ethics

[32] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.²⁰ 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 regimes²¹ for some time, and the Board has taken guidance from decisions made in other regimes.

[33] 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.

[34] 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*,²² Chief Justice Eichelbaum stated the purposes of disciplinary processes are to:

¹⁹ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [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".

²⁰ Building (Code of Ethics for Licensed Building Practitioners) Order 2021

²¹ Lawyers, Engineers, Architects and Accountants, for example

²² [1992] 1 NZLR 720 at 724

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.

[35] The Board also notes the courts have applied a threshold test to disciplinary matters, and it has applied those tests.²³

[36] The Board's investigations regarding a possible breach of the Code related to the following statement made by the Respondent in his response to the complaint:

We found ourselves in a disagreement with the client regarding the payment for securing the house to the new foundations, a service costing \$3,500 + GST. This process, although crucial for the house's stability following its adjustment to the new foundations, was not included in the contract. I had explained to Paul (Mika's partner) via a phone discussion that this exclusion was designed to offer clients an opportunity to save money, should they wish to undertake this aspect of the work themselves, given the high cost of living in New Zealand. However, Paul agreed to have us carry out the tie-down work.

[37] Section 84 of the Act provides:

All restricted building work must be carried out or supervised by a licensed building practitioner [who is licensed] to carry out or supervise the work.

[38] The connection of the subfloor to the piles was building work on the primary structure of a residential dwelling. As such, under clause 5 of the Building (Definition of Restricted Building Work) Order 2011, it was restricted building work.

[39] Given the work was restricted work and the legal requirement that it be carried out or supervised by an LBP, the Respondent should not have been providing advice that the work could be carried out by the owner.

[40] The Code stipulates in clause 10 that when carrying out or supervising building work, an LBP must comply with the Building Act. By giving the advice that he did, the Respondent was encouraging the owner to breach that Act. In this respect, section 85 of the Act makes it an offence to carry out restricted building work when not licensed. Further, the Respondent's advice, had it been taken, may have meant that the Respondent had committed an offence under section 86 of the Act, under which a person can commit an offence if they engage another person to carry out restricted building work knowing that they are not licensed.

[41] Clauses 13 and 14 of the Code are related to explaining the risks and informing and educating clients. Whilst not as directly applicable as clause 10, the Respondent, by

²³ [2001] NZAR 74

giving the advice that he did, was not fully informing his client so that an informed decision could be made.

- [42] On the basis of the facts before it, the Board found that the Respondent's actions had amounted to breaches of clauses 10, 13, and 14 of the Code.

Was the conduct serious enough

- [43] As matters transpired, the offer was not taken up, and the Respondent completed the restricted building work. On that basis and taking into consideration that the Code was new at the time of the advice, the Board has decided that the conduct was not serious enough. On that basis, it will not make a disciplinary finding. The Respondent is, however, cautioned about future conduct and reminded that he needs to be familiar with and apply the Code of Ethics.

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

- [44] The Respondent has not committed a distant offence under section 317(1)(g) of the Act.

Board Decisions

- [45] The Respondent **has** committed disciplinary offences under sections 317(1)(b) and (d) of the Act.
- [46] The Respondent **has not** committed a disciplinary offence under sections 317(1)(g) of the Act.

Penalty, Costs and Publication

- [47] Having found one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [48] The Respondent made submissions at the hearing regarding penalty, costs, and publication.

Penalty

- [49] The Board has the discretion to impose a range of penalties.ⁱⁱⁱ 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.²⁴ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁵

²⁴ *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]

²⁵ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

- (a) protection of the public and consideration of the purposes of the Act;²⁶
 - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;²⁷
 - (c) setting and enforcing a high standard of conduct for the industry;²⁸
 - (d) penalising wrongdoing;²⁹ and
 - (e) rehabilitation (where appropriate).³⁰
- [50] 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 cases³¹ and applying the least restrictive penalty available for the particular offending.³² In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³³ that is consistent with other penalties imposed by the Board for comparable offending.³⁴
- [51] 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.³⁵
- [52] Counsel for the Respondent submitted that a training order may be the appropriate form of penalty. The Board agreed. The Board decided that it would order the Respondent to successfully complete the Level 4 New Zealand Certificate in Construction Related Trades (Supervisor). The Respondent will have two years within which to complete the training which will be undertaken at his own cost.
- [53] The Respondent should note that if he fails to successfully complete the training specified in this order, then the Board will, pursuant to s 318(1)(b) of the Act, suspend the Respondent's licence until such time as the training has been completed.
- [54] The Board also recommends that the Respondent undertake his own further training in relation to regulatory compliance, acceptable solutions (and in particular NZS 3604), and the payment processes set out in the Construction Contracts Act.

²⁶ Section 3 Building Act

²⁷ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁸ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

³⁰ *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

³¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

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

³⁵ 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.

Costs

- [55] 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.³⁶
- [56] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁷. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁸.
- [57] 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 moderate. Adjustments are then made.
- [58] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,950 toward the costs of and incidental to the Board's inquiry. This is significantly less than 50% of actual costs.

Publication

- [59] 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,³⁹ 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.
- [60] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.⁴⁰ 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.⁴¹
- [61] 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.

³⁶ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁷ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁸ *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.

³⁹ Refer sections 298, 299 and 301 of the Act

⁴⁰ Section 14 of the Act

⁴¹ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Section 318 Order

[62] 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 successfully complete the following training within two years of the date of this order: Level 4 New Zealand Certificate in Construction Related Trades (Supervisor) and if the Respondent fails to successfully complete the training then, pursuant to section 318(1)(b) of the Act, his licence will be suspended until the training is completed.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,950 (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.

[63] 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

[64] The right to appeal Board decisions is provided for in section 330(2) of the Act^{iv}.

Signed and dated this 04th day of December 2024.



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.*

ii 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.”*

iii 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:*

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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 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.*

^{iv} 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.*