

## Before the Building Practitioners Board

	BPB Matter No. CB26347
Licensed Building Practitioner:	Dean Ellis (the Respondent)
Licence Number:	BP127314
Licence(s) Held:	Carpentry

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### Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

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Complaint or Board Inquiry	Board Inquiry
Hearing Location	Wellington
Hearing Type:	In Person
Hearing and Decision Date:	12 April 2024

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2  
Mr D Fabish, LBP, Carpentry and Site AoP 2

#### Appearances:

J Pietras of Duncan Cotterill

#### 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's work did not relate to the matters under investigation, and he has not committed a disciplinary offence.

## The Charges

- [2] The prescribed investigation and hearing procedure is inquisitorial. The Board sets the charges and decides what evidence is required.<sup>1</sup>
- [3] In this matter, the disciplinary charges the Board resolved to further investigate<sup>2</sup> were that the Respondent may, in relation to building work at [OMITTED], Wellington, have carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act, AS DETAILED IN the report of the Special Advisor dated 10 November 2023.

## Consolidation

- [4] The Board may, under Regulation 13, consolidate two or more complaints into one hearing. The Board sought and received agreement for consolidation of this matter with complaint number [OMITTED] and Board Inquiry number [OMITTED].

## Evidence

- [5] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>3</sup>. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.
- [6] The Board Inquiry resulted from a complaint made about a roofer, Mr [OMITTED]. The complaint related to remedial work carried out on a dormer window. The building work complained about was on a circa 1970 building, and it included the replacement of timber framing and a fascia board. It was not carried out under a building consent.

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<sup>1</sup> Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

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

<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [7] Mr [OMITTED], when he responded to the complaint, stated that the Respondent carried out the carpentry work. On that basis, the Board resolved to initiate an inquiry into the Respondent's conduct. It also resolved to appoint an expert to carry out a site visit and produce a report on the quality and compliance of the building work complained about. The report identified issues with the building work. A copy of it was provided to the Respondent.
- [8] Before the Board considered whether to proceed to a hearing, the Respondent was provided with an opportunity to respond to the allegations and evidence obtained, including the expert's report. He did not provide a detailed response. The Board resolved to proceed to a hearing.
- [9] Prior to the hearing, the Respondent engaged legal counsel who filed submissions and a brief of evidence from the person who had carried out the carpentry work under the Respondent's direction. Both the Respondent and the person who produced the brief of evidence appeared at the hearing and gave evidence.
- [10] The brief of evidence and the evidence received at the hearing from other witnesses established that the Respondent's involvement was limited and did not relate to the issues identified by the expert. On that basis, the Board decided that it would not proceed any further with its investigations into the Respondent.
- [11] The Board did note at the hearing, and it reiterates the point, that if the Respondent had provided a more detailed and considered response prior to the Board making a decision on whether or not to proceed to a hearing, it may well have been that a hearing would not have been necessary. The Respondent is encouraged, in the future, to take the time to respond to disciplinary allegations.

**Board's Decisions**

- [12] The Respondent has not committed a disciplinary offence.

Signed and dated this 21<sup>st</sup> day of May 2024.



**Mr M Orange**  
Presiding Member