

Before the Building Practitioners Board

	BPB Complaint No. CB26055
Licensed Building Practitioner:	Graham Scarfe (the Respondent)
Licence Number:	BP100429
Licence(s) Held:	Carpentry and Site 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	Board Inquiry
Hearing Location	Napier
Hearing Type:	In Person
Hearing Date:	30 October 2024
Decision Date:	5 December 2024

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
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor

Appearances:

M Parker and G Thompson 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 not** committed a disciplinary offence.

Contents

Summary	2
The Charges	2
Evidence	3
Decision	5

Summary

- [1] The Board decided that the Respondent was not the supervising licensed building practitioner for the building work under investigation. As such, it decided that the Respondent had not committed any disciplinary offences.

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], Hastings, have:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;
 - (b) carried out or supervised building work or building inspection work that does not comply with a building consent contrary to section 317(1)(d) of the Act; and
 - (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act.
- [4] The Board gave notice that in considering the allegations under sections 317(1)(b) and (d) of the Act, it would be investigating whether, in carrying out and/or supervising the set out (including the location of the datum peg), placement and concrete pour of the floor slab, the Respondent adequately and appropriately

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.

informed himself of and complied with the requirements of the building consent plans and responded appropriately to the Hastings District Council Site Notice dated 17 January 2020 (Document 3, Page 4995 of the Board's file) and the Hastings District Council inspection dated 18 February 2020 (Document 3, Page 4997 of the Board's file).

Evidence

- [5] 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.
- [6] The Board Inquiry arose out of a disciplinary hearing into the conduct of Mr [Omitted] (BP[Omitted]). In that matter, the Board found that the Licensed Building Practitioner (LBP) had carried out building work in a negligent manner and in a manner that was contrary to a building consent in relation to the foundation set out in that the completed foundation was not in accordance with the consented finished floor level. At the hearing, the Board heard evidence that the foundations had been constructed by the Respondent as a subcontractor. As the Respondent is an LBP, the Board resolved to investigate his conduct.
- [7] The evidence in the documentation obtained by the Board in relation to the building work at [Omitted] indicated that the Respondent was the LBP for the foundations. That evidence included a notation on a pre-floor inspection carried out by the Hastings District Council on 17 January 2020 that the LBP was Graham Scarfe. The Hastings District Council files also contained a record of work from the Respondent.
- [8] Prior to the hearing, Counsel for the Respondent filed submissions and additional evidence, including statements from persons employed by the Respondent at the time the building work was carried out. The Board also heard evidence from those persons at the hearing.
- [9] The central issue at the hearing was whether the Respondent had carried out or supervised any of the building work at [Omitted]. If the evidence established that he was not the supervising LBP, then the Board could not make any disciplinary findings.
- [10] The evidence disclosed in the statements filed and received at the hearing was that there was a contractual chain in place and that the Respondent's involvement was to provide the labour for the construction of the foundations but that he was not carrying out or supervising the work.
- [11] The main contractor for the build was Mr [Omitted]. He subcontracted the construction of the foundations to Formworks HB Limited.⁴ The Respondent owned 33% of the shares in that company and was a director of it. Formworks HB then

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

⁴ Formworks HB Limited was in liquidation from 26 March 2024 to 9 October 2024.

subcontracted G.A. Scarfe Builders Limited to supply the labour for the construction of the foundation. G.A. Scarfe Builders did not have any formal contractual relationship with Formworks, and there was no written contract in place between them for the building work at [Omitted].

- [12] Mr [Omitted] confirmed that he had contracted Formworks HB and stated that he had chosen them because he knew Mr [Omitted], an employee of Formworks, and because they did rib-raft foundations.
- [13] The Respondent stated that the relationship with Formworks HB was one whereby G.A. Scarfe Builders would provide the required labour for foundations being constructed by Formworks but that the project management and supervision of the building work, including any restricted building work, would be undertaken by Formworks, who had an LBP in their employ ([Omitted] BP[Omitted]). Mr [Omitted]'s name had not previously been brought to the Board's attention. His name did not appear in any of the Council's documentation.
- [14] The Respondent described G.A. Scarfe Builders Limited as one of the largest labour-hire companies in the region. He stated that it had approximately 100 staff but that the majority of them were engaged in commercial work. He estimated that 15 to 20% of the staff would have been engaged in restricted building work. The Respondent was the only LBP in G.A. Scarfe Builders.
- [15] With regard to on-site arrangements at [Omitted], the Respondent and other witnesses described Mr [Omitted] from [Omitted] as the project manager. He had priced the job, was organising the construction of the foundations, and called for Council inspections. Mr [Omitted] is not an LBP. G.A. Scarfe Builders provided Formworks HB with a site foreman who was overseeing a number of sites, a site team leader, and labour resources, none of whom were LBPs. The team leader was on-site at all times, and the foreman would periodically check in with him. Both the foreman and team leader considered that Mr [Omitted] was in charge of the job. They were not aware of Mr [Omitted].
- [16] The Respondent did not receive copies of any Council inspection notices. He did not know why his name was on Council inspection notices, and Counsel witnesses were not able to assist with why his name appeared.
- [17] The Respondent attended the site when the foundations were being constructed. He described his visits as welfare visits to check on his staff. He maintained that he did not attend the site to check on the building work or as the supervisor of the restricted building work.
- [18] With regard to the record of work, the Respondent submitted that Mr [Omitted] should have provided one, not him. The Respondent also gave evidence that he had no knowledge of the preparation or submission of the record of work. He stated that his normal process was to provide a record of work when a Code Compliance Certificate was being sought.

[19] Following the hearing, the Respondent and his Counsel made unsuccessful inquiries to obtain further information from Mr [Omitted] to support the evidence and submissions put forward by and on behalf of the Respondent.

[20] Counsel also filed closing submissions, which have been taken into consideration.

Decision

[21] The Board accepts that the Respondent was not the supervising licensed building practitioner. However, the Board considers that the arrangements between G.A. Scarfe Builders and Formworks HB created a risk of confusion about who was supervising the restricted building work. Ultimately, what transpired is that there is no clarity about who the supervising LBP was. Given those circumstances, the Respondent is cautioned regarding future conduct. When providing labour-only resources, he should ensure, before the work starts, that it is clear who the supervising LBP will be. In this respect, the Respondent should note that LBPs are now covered by a Code of Ethics, which allows for a wider range of conduct to be investigated.

Signed and dated this 7th day of January 2025.



Mr M Orange
Presiding Member