

Before the Building Practitioners Board

	BPB Complaint No. 26508
Licensed Building Practitioner:	Harvindra Singh (the Respondent)
Licence Number:	BP138648
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 Type:	On the Papers
Hearing and Draft Decision Date:	16 August 2024
Final Decision Date:	4 October 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

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)(da)(ii) of the Act.

The Respondent is fined \$1,000 and ordered to pay costs of \$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 Final Decision

- [1] The Respondent failed to provide a record of work on completion of restricted building work. He is fined \$1,000 and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the public Register for a period of three years.
- [2] The Respondent may apply to the Registrar for time to pay the fine and costs.

The Charges

- [3] Under regulation 10 of the Complaints Regulations, the Board must, on receipt of the Registrar’s Report, decide whether to proceed no further with the complaint because regulation 9 of the Complaints Regulations applies. Having received the report, the Board decided that regulation 9 applied to some but not to all of the allegations.

Regulation 10 Decision

- [4] In this matter, the disciplinary charges the Board resolved to further investigate¹ were that the Respondent may, in relation to building work at [omitted], Dunedin, have failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out 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.

Regulation 9 Decisions

- [5] The complaint to the Board also contained allegations that the Respondent had:
- (a) carried out or supervised building work in a negligent or incompetent manner (s 317(1)(b) of the Act); and
 - (b) breached the code of ethics prescribed under section 314A of the Act (s 317(1)(g) of the Act).
- [6] The building work complained about related to an alteration to a dwelling in Dunedin under a building consent. The Respondent was a subcontractor. He initially denied any knowledge of the building work but, when pressed, accepted that he had supervised some structural work. The Respondent, who resides in Christchurch, stated he spent one day supervising restricted building work (work relating to the primary structure, which he supervised on 27 July 2023).
- [7] The Code of Ethics allegation was that the Respondent lied about his involvement in the building work when he was interviewed about it. The negligence or incompetence allegation was related to comments made by a Building Surveyor who expressed an opinion that there might be issues with bracing element fixings.
- [8] Dealing with the negligence or incompetence allegation, it is noted that the Building Surveyor was not able to confirm the allegation, and there was no other supporting evidence. As such, the Board decided that there was insufficient evidence to warrant further investigation and that regulation 9(e) of the Complaints Regulations applied. It provides:

Complaint not warranting further investigation

A complaint does not warrant further investigation if—

- (e) there is insufficient evidence to warrant the investigation of the complaint;*

¹ 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.

- [9] With respect to the Code of Ethics allegation, the Board decided that it did not come within the ground for discipline and that regulation 9(a) applied. It states:

Complaint not warranting further investigation

A complaint does not warrant further investigation if—

- (a) *it does not come within the grounds for discipline;*

- [10] The reason the Board made that decision is that the Code provisions that were alleged to have been breached require that the conduct occur whilst carrying out or supervising building work. As the conduct work did not relate to building work, the Code provisions do not apply.

Draft Decision Process

- [11] In this instance, the Board decided that a formal hearing was not necessary. The Board considered that there was sufficient evidence before it to allow it to make a decision on the papers. It noted, however, that there may have been further evidence in relation to the matter that the Board was not aware of. To that end, it issued a Draft Decision. The Respondent was provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. The Board further noted that if the Respondent requested an in-person hearing, then the Draft Decision would be set aside, and a hearing would be scheduled.

Evidence

- [12] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed². 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.

Further Evidence and Submissions Received

- [13] Following the Board issuing its Draft Decision, it received a submission from the Respondent. In it, he accepted the Board's findings and asked for time to pay the fine and costs ordered by the Board.
- [14] The payment process is managed by the Registrar and the Ministry of Business Innovation and Employment. The Respondent can request a payment plan. To do so, they need to engage with the Registrar. The Board recommends that the Respondent does.

Failure to Provide a Record of Work

- [15] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.³

² *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

³ Section 88(1) of the Act.

- [16] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work⁴ unless there is a good reason for it not to be provided.⁵

Did the Respondent carry out or supervise restricted building work

- [17] The Respondent was engaged to carry out and/or supervise building work on a residential dwelling under a building consent. His work included the installation of structural elements (a steel beam and bracing), which is restricted building work.⁶

Was the restricted building work complete

- [18] The Respondent's work occurred on 27 July 2023. He stated he only supervised for one day. As such, his restricted building work was complete on 27 July 2023, and that is when a record of work was due.

Has the Respondent provided a record of work

- [19] A record of work was not provided until 14 March 2024. It was provided after a complaint had been made. It follows that it was not provided on completion as required under section 88(1) of the Act.

Was there a good reason

- [20] The Respondent stated that he had not provided a record of work because KB Construction, the main contractor, had not asked him for it, and they owed him money. Once he had been paid, he issued a record of work. Neither of the reasons are good reasons. Firstly, the legal requirement is that the Respondent provide a record of work of his own accord. He should not wait for others to remind him of his obligations. Secondly, a record of work is a statutory requirement, not a negotiable term of a contract. It cannot be withheld for payment reasons.

Board's Decision

- [21] The Respondent **has** failed to provide a record of work on completion of restricted building work.

Unlicensed Work

- [22] The complaint arose as a result of a complaint that restricted building work may have been carried out by an unlicensed person. As a result of the Respondent being identified, that matter was not pursued. It is noted, however, that the building work that the Respondent has taken responsibility for was not the only restricted building work within the building consent. There was also the installation of a hySPAN beam, the construction of a structural footing and the installation of a window, which were

⁴ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

⁵ Section 317(1)(da)(ii) of the Act

⁶ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

all restricted. It appears that those aspects may not have been carried out or supervised by a Licensed Building Practitioner as required by section 84 of the Act.

- [23] The Board does not have any jurisdiction over unlicensed restricted building work, which is an offence under section 85 of the Act. The Ministry of Business Innovation and Employment does. As such, a copy of this decision is to be provided to the Registrar for further consideration.

Penalty, Costs and Publication

- [24] 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.

- [25] The matter was dealt with on the papers. Included was information relevant to penalty, costs, and publication. The Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [26] 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.⁷ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:⁸
- (a) protection of the public and consideration of the purposes of the Act;⁹
 - (b) deterring other Licensed Building Practitioners from similar offending;¹⁰
 - (c) setting and enforcing a high standard of conduct for the industry;¹¹
 - (d) penalising wrongdoing;¹² and
 - (e) rehabilitation (where appropriate).¹³
- [27] 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 cases¹⁴ and applying the least restrictive penalty available for the particular

⁷ *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]

⁸ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

⁹ Section 3 Building Act

¹⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹¹ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹³ *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

¹⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

offending.¹⁵ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty¹⁶ that is consistent with other penalties imposed by the Board for comparable offending.¹⁷

- [28] 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.¹⁸
- [29] Record of work matters are at the lower end of the disciplinary scale. The Board's normal starting point for a failure to provide a record of work is a fine of \$1,500, an amount which it considers will deter others from such behaviour. There are no aggravating factors present. The late provision of a record of work is a mitigating factor. On the basis that one has now been provided, the Board has reduced the fine by \$500 to a fine of \$1,000.

Costs

- [30] 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.¹⁹
- [31] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²⁰. The starting point can then be adjusted up or down, depending on the particular circumstances of each case²¹.
- [32] 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 simple. Adjustments are then made.
- [33] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$700 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a simple matter that has been dealt with by way of a Draft Decision. It is significantly less than 50% of actual costs.

¹⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

¹⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁷ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁸ 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.

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

²⁰ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²¹ *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.

Publication

- [34] 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,²² 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.
- [35] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.²³ 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.²⁴
- [36] 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

- [37] For the reasons set out above, the Board directs that:
- Penalty:** Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$1,000.
- Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$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(I)(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.**
- [38] 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.
- [39] As noted, the Respondent can seek time to pay the fine and costs by making a request to the Registrar.

²² Refer sections 298, 299 and 301 of the Act

²³ Section 14 of the Act

²⁴ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Right of Appeal

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

Signed and dated this 16th day of October 2024.



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:*
 - (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:*

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- (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.*