

Before the Building Practitioners Board

	BPB Complaint No. CB26319
Licensed Building Practitioner:	Ahmed Parkar (the Respondent)
Licence Number:	BP139105
Licence(s) Held:	Design AoP 1

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 proceeding as a Board Inquiry
Hearing Type:	On the Papers
Decision Date:	26 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

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)(b) of the Act.

The Respondent is censured and ordered to pay costs of \$1,500. 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 supervised design work for a building consent application. After the building consent application had been lodged, the Council issued two Requests for Information (RFI). The Respondent had not ensured that he would be kept informed of the consent process after lodgement. He did not take any steps to supervise responses to the RFIs even though he was informed by the Council that RFIs had been issued. The Board decided that the failure to supervise amounted to negligent conduct.
- [2] The Board accepted that the person who was mostly responsible for what had occurred was the person who was being supervised. As such, and notwithstanding that the Respondent’s lack of supervision systems and processes allowed the essentially unsupervised person to act as he did, the Board decided it would reduce the penalty from a fine to a censure. The Board also ordered the Respondent to pay costs of \$1,500. A record of the disciplinary offence will be recorded on the public Register for a period of three years.

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] Auckland, have carried out or supervised building work (design work) in a negligent or incompetent manner contrary to section 317(1)(b) of the Act, IN THAT, the Respondent may have failed to provide any or adequate supervision of design work both before and after a Certificate of Design Work had been provided and up until a building consent was granted.

Complaint Withdrawal

- [5] The Complainant sought to withdraw the complaint. The disciplinary process and the Board's jurisdiction under the Act are inquisitorial. They do not rely on a Complainant to present or prosecute a case against a Respondent. This is provided for in the Act and in the Complaints Regulations, which state that if a Complainant does not wish to proceed with a complaint, then the Board may proceed with its investigations by way of a Board Inquiry. As the Board retains a discretion, it must consider whether it will accept a withdrawal or proceed with a complaint as a Board Inquiry. In coming to a decision, the Board needs to take various matters into consideration, including the sufficiency of evidence, the seriousness of the alleged offending, and whether an inquiry would further the purposes of Part 4 of the Building Act. Having considered those matters, it decided that it would continue the matter as a Board Inquiry.

Procedure

- [6] The matter was set down to be heard as an in-person hearing. The Respondent asked that the matter be dealt with on the papers. The Board granted the request.

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 relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.
- [8] The Complainant engaged a design business, [OMITTED], to develop a design and building consent. The principal of [OMITTED], [OMITTED], who is not a Licensed Building Practitioner (LBP), dealt directly with the Complainant alongside his co-

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

shareholder and director in [OMITTED] , [OMITTED]. A [OMITTED] “Instruction Confirmation Letter” included with the building consent application stated:

***Instruction:** Provisions of building consent service including application preparation, lodgement and response of any relevant further information request, amendment and questions.*

- [9] Because neither of the owners of [OMITTED] are LBPs, and [OMITTED] does not employ an LBP, they contracted a Design LBP to supervise design work that is restricted building work and to provide the Certificate of Design Work that must accompany an application for a building consent. The person who was contracted was the Respondent, who holds a Design AoP 1 Licence.
- [10] The building consent application noted the agent as [OMITTED]. The contact person and first point of contact was listed as Mr [OMITTED] . The Respondent was listed as the LBP. He was not noted as a person who would receive communications in relation to the building consent application. The Respondent provided a Certificate of Design Work (CoDW) dated 2 May 2022. It stated that he had supervised the restricted building work (design work).
- [11] On 15 June 2022, after the design had been lodged for a building consent, the Auckland Council issued a Request for Further Information (RFI). It was addressed to Mr [OMITTED] . It raised a number of issues that need to be addressed and resolved. The Respondent was not a party to the correspondence. Mr [OMITTED] and Ms [OMITTED] dealt with the RFI and provided responses to it.
- [12] On 11 October 2022, Chloe Li, Building Surveyor, Building Consents at Auckland Council, emailed Mr [OMITTED] and the Respondent by way of his company, Archiform Limited. The email followed a telephone call from her to the Respondent in which she raised the RFI’s. Her email stated:
- Hi [OMITTED]*
- Thank you for your RFI response, I tried calling you to go over the remaining item but couldn’t get through, so have called Ahmed, please have a look at the remaining items with him. Ahmed, please find attached first and second RFI letter, and revised drawings received on 7/10/2022.*
- [13] That email shows that the Respondent was on notice from 11 October 2022 that additional design work was being undertaken in relation to the building consent design and application that he had supervised.

- [14] On 2 November 2022, a further CoDW was submitted. It was purported to be from the Respondent. It had the same declaration date on it (2 May 2022). Its contents had been changed as regards the notation for “Walls” as follows:

Original CoDW of 2 May 2022	Revised CoDW of 2 November 2022
90x45 H1.2 SG8 timber framing	90x45 H1.2 SG8 timber framing. GIB fire rated system and post stability for fire wall

- [15] The Respondent denied any knowledge of the revised CoDW. In response to the complaint, he stated:

Of particular concern was the adjustment made to the memorandum, which occurred without my prior knowledge or consent. This unexpected modification became the basis for [OMITTED]’s complaint, as he believed that I had personally endorsed these changes during the council processing phase.

Subsequent discussions with [OMITTED] clarified that I had not endorsed or approved the alterations made during the building consent process while it was under review by the council.

- [16] Email correspondence between the Complainant and the Respondent in July 2023 stated the same:

Complainant:

Hi Ahmed,

I would appreciate it if you could clarify for me if the Form 2A attached to this email was signed and submitted by you? Or was it done by [OMITTED] without consultation with you and without your knowledge?

The form was about the reduction for the scope of work to “Proposed fire door in existing basement” and the stamp states that it was received by Council on 20-03-2023.

Additionally, the Date on this form states 2/05/2022 which I assume was taken from the old original form submitted in 2022 for the Minor Dwelling. Please let me know.

Respondent:

Hi [OMITTED],

as mentioned to you over the phone, i did sign the initial form which was on 2/05/22 the form attached has some changes which i didnt do, and im not sure when and who did those changes, but i can confirm it wasn’t done by me.

as discussed also, that with response to this email, you would remove the complaint made to the LBP board on me. can you please confirm you will go ahead with this.

- [17] The question for the Board was the extent of the Respondent's duties as the supervising Licensed Building Practitioner for the changes that were made to the building consent application after it had been lodged.

Negligence

- [18] The Board's finding is that the Respondent has negligently supervised building work (design work).⁴ The Board did not consider the conduct amounted to incompetence, which is the lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard,⁵ as it was the Respondent's supervision processes that fell below an acceptable standard.
- [19] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁶ 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*⁷ test of negligence.⁸ Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.⁹ If it does not, then a disciplinary finding cannot be made.

Supervision

- [20] The term supervise is defined in section 7 of the Act.¹⁰ The courts have not yet considered supervision in the context of the Building Act. It has, however, been considered in relation to the Electricity Act 1992.¹¹ The definition of supervision in that Act is consistent with the definition in the Building Act, and as such, the

⁴ Under the definitions in the Building Act, design work forms part of the wider definition of building work, and, as such, in respect of section 317(1)(b), it comes within the Board's jurisdiction.

⁵ 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"

⁶ *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.

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁸ 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)

⁹ *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".

¹⁰ Section 7:

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.

¹¹ *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

comments of the court are instructive. In the case, Judge Tompkins stated, in paragraph 24:

“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.”

- [21] As it is design work that is under consideration, the above has to be adapted to an environment where on-site circumstances, such as health and safety, do not play a part. The key aspects are knowledge of the design work being undertaken and a compliance assessment to ensure it complies with the building code.

Has the Respondent departed from an acceptable standard of conduct?

- [22] 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 comply with the Building Code.¹² The test is an objective one.¹³

- [23] Looking at the Respondent’s conduct. He noted, in his response to the complaint:

Firstly, I have supervised a few of [OMITTED]’s projects under [OMITTED] Limited. I can confidently attest to his competence and extensive experience in the industry, which spans over five years.

In the case of [OMITTED] ’s project, my involvement extended up to the point where the building consent application was formally lodged. Following this milestone, there was a notable silence, and I received no further communication from either [OMITTED] or [OMITTED] for nearly a year.

In an effort to understand the situation better, I initiated conversations with both parties involved. [OMITTED] indicated that there had been ongoing discussions between himself, the council processor, and [OMITTED] regarding certain modifications to the project. Unfortunately, these alterations led to a significant deviation from the initial project scope that had been originally discussed.

- [24] The statements regarding his knowledge of the building consent after it had been lodged are inconsistent with the evidence before the Board. The evidence shows that, as of 11 October 2022, the Respondent knew changes were being made and

¹² Section 17 of the Building Act 2004

¹³ *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.

the nature of those changes because, on that date, he had phoned and had been sent the two RFI letters that had been issued.

- [25] In submissions made by the Respondent when he asked that the matter be dealt with on the papers, he stated:

In order to provide context regarding my professional relationship with [OMITTED], I have overseen his involvement in approximately seven building consent applications. Throughout these applications, my supervision of William's work was consistently thorough. Notably, several of the applications were approved without RFIs, and others incurred minimal RFIs.

As [OMITTED] consistently demonstrated proficiency in his role, my confidence in his capabilities grew. Regrettably, due to constraints on my time, I was unable to provide the usual level of oversight for [OMITTED] 's application. Although I discussed necessary adjustments to certain drawings with [OMITTED] before issuing the memorandum, my limited availability impeded more extensive supervision.

Following the submission of the application, I received communication from Chloe regarding an RFI. Upon speaking with [OMITTED], he assured me that the matter had been resolved satisfactorily, and I consequently did not pursue further inquiries. I presumed the RFI had been adequately addressed.

- [26] The submission shows that the Respondent took a hands-off approach to supervision and placed a high degree of reliance and faith in the supervised person's skills and capability. The question for the Board is whether, in the circumstances, that equates to adequate supervision or is more needed.

- [27] Looking at the Respondent's supervision processes up until the consent application was lodged, he has not disclosed how the contractual relationship with [OMITTED] worked or how he was supervising, other than noting his reliance on Mr [OMITTED] skills and capability, stating he was "consistently thorough" and that he had "discussed necessary adjustments". When supervising a design, the Board would, at a minimum, expect a competent supervisor would review the entire building consent package to ensure compliance and consistency between the various portions of it. There is no evidence that the Respondent completed a quality and compliance review, and it appears that this did not occur because the Respondent did not have the time to do it.

- [28] Irrespective of whether the Respondent actually reviewed the building consent application before it was lodged, he did not take any steps to ensure that he was kept informed once it had been lodged. Rather, he relied on Mr [OMITTED] to let him know if there were issues with the application or if any RFIs were issued. Whilst that may be what had been agreed, it came with a significant risk to the Respondent as he was the person who was taking accountability for the design work and who would have to answer to the Board if a complaint was made about the quality or compliance of the design work. The Board would expect that a prudent Design LBP

would put systems or processes in place to ensure that they were kept informed, such as ensuring they were included in all Council correspondence in relation to the building consent application once it had been lodged. In this respect, the Respondent, as a Design LBP, should appreciate that lodging a building consent application does not guarantee that a building consent will be issued. He should have anticipated that RFIs would more than likely be issued and that further design work may be required.

- [29] Because the Respondent did not put any processes or systems in place, he was not initially aware that RFI's had been issued. That changed on 11 October 2022, when he was informed that two RFIs had been issued and that the Council needed further detail and design input. Notwithstanding being on notice, the Respondent did not take any steps to involve himself in the RFI process or consider whether a further CoDW would have to be issued. Rather, he relied on an assurance from Mr [OMITTED] that it had been sorted. That Board considers that the Respondent's reliance without taking steps to satisfy himself that the RFIs had been appropriately dealt with was not reasonable and that the Respondent has been negligent.
- [30] The Respondent needs to understand that design work supervision does not come to an end when a building consent is lodged unless the LBP who provided a CoDW takes steps to disassociate him or herself from it. That did not occur. As far as the Council was concerned, the Respondent was still actively involved and was the person taking statutory responsibility for the design work.
- [31] The Board notes that primary responsibility for what occurred lies with [OMITTED] and Mr [OMITTED], who did not keep the Respondent informed and who produced a false and misleading document. That will be taken into account in the Board's penalty considerations. The key factor, however, is that the Respondent's failings allowed Mr [OMITTED] to act in the way that he did. If the Respondent had put systems and processes in place to ensure he was kept informed or if he had involved himself when he was informed of the RFIs, then Mr [OMITTED] would not have been able to act in the manner that he did.

Was the conduct serious enough?

- [32] The conduct is serious. The Respondent, when it came to the RFI process, abdicated his responsibilities, and, as noted above, that abdication resulted in a false CoDW being filed and RFI responses being lodged that the Respondent, as the responsible Design LBP, had not reviewed and approved.

Board Decision

- [33] The Respondent has conducted himself in a negligent manner.

Penalty, Costs and Publication

- [34] Having found that 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.

- [35] 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

- [36] 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.¹⁴ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹⁵
- (a) protection of the public and consideration of the purposes of the Act;¹⁶
 - (b) deterring other Licensed Building Practitioners from similar offending;¹⁷
 - (c) setting and enforcing a high standard of conduct for the industry;¹⁸
 - (d) penalising wrongdoing;¹⁹ and
 - (e) rehabilitation (where appropriate).²⁰
- [37] 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 cases²¹ and applying the least restrictive penalty available for the particular offending.²² In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty²³ that is consistent with other penalties imposed by the Board for comparable offending.²⁴
- [38] 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.²⁵

¹⁴ *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]

¹⁵ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁶ Section 3 Building Act

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

¹⁸ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹⁹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁰ *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

²¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

²³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁵ 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.

[39] In this matter, the Board adopted a starting point of a fine to send a message to the Respondent and other Design LBPs that supervision must be taken seriously and that a hands-off approach where you place overreliance on those being supervised is not acceptable.

[40] The Respondent's approach to the investigation of the complaint is both an aggravating and a mitigating factor. The aggravating feature is a statement made to the Complainant in an email dated 4 July 2023 that:

From the outset, I made it clear to [OMITTED] that I did not wish to be involved in the dispute between you and them. However, now that a complaint has been lodged against me, I will have to allocate my time and resources to address this matter. Consequently, if the complaint is deemed unsuccessful, I will regrettably have to charge you for the time invested in this process.

[41] The Respondent, as an LBP, is subject to the disciplinary process in the Act. That is one of the prices he has to pay for the exclusive right to carry out and supervise restricted building work that is design work. Stating that he is going to charge for time spent on a complaint if it is not successful is bordering on disreputable conduct.

[42] The mitigating factor is that the Respondent has, to a limited extent, accepted that he did not provide the level of supervision that he should have in relation to the initial application for a building consent. He has not, however, taken responsibility for the failings in respect of the RFI process.

[43] The predominant mitigating factor, however, is Mr [OMITTED]'s conduct. Whilst the Respondent's hands-off approach allowed him to act in the way that he did, the fact remains that, but for his failure to engage the Respondent for the RFI responses and his deceptive conduct in falsifying a CoDW, the matter would not be before the Board.

[44] Taking both the mitigating and aggravating factors into account, the Board has decided that the Respondent should be censured for his conduct. A censure is a public expression of disapproval, and it records the Board's condemnation of the Respondent's conduct.

Costs

[45] 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.²⁶

²⁶ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

- [46] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²⁷. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case²⁸.
- [47] 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 moderately complex. Adjustments are then made.
- [48] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$1,750 toward the costs of and incidental to the Board's inquiry, which is the Board's scale amount of costs for a moderately complex matter that has been dealt with on the papers.

Publication

- [49] 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,²⁹ 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.
- [50] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁰ 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.³¹
- [51] Based on the above, an educative summary of the decision is to be published by the Registrar. The Respondent is not to be named in the Board-ordered publication, which is to focus on the requirement for a Design LBP to supervise a design work through until a building consent is granted.
- [52] Whilst the Board will not name the Respondent in the publication referred to in paragraph [51] above, there will be a record on the Register, and the Respondent will be named in this decision, which will be published on the Board's website. The Respondent should also note 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.

²⁷ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²⁸ *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.

²⁹ Refer sections 298, 299 and 301 of the Act

³⁰ Section 14 of the Act

³¹ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Section 318 Order

[53] For the reasons set out above, the Board directs that:

Penalty: Pursuant to section 318(1)(d) of the Building Act 2004, the Respondent is censured.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,750 (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.

[54] 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.

Submissions on Penalty, Costs and Publication

[55] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **5 July 2024**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

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

Note to the Registrar

[57] The Board has noted that Mr [OMITTED] may have breached one or more of the provisions of the Building Act. He is not a person who comes within the Board's jurisdiction. The prosecuting authority for breaches of the type that may have occurred is the Ministry of Business Innovation and Employment. The Board recommends that the file be referred to the Ministry for it to consider whether further investigation and action should be taken.

Signed and dated this 13th day of June 2024.



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.*

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:*
 - (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.*