

Before the Building Practitioners Board

	BPB Complaint No. CB26202
Licensed Building Practitioner:	Kiel Rangi (the Respondent)
Licence Number:	BP132493
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 Location	Wellington and by audio-visual link
Hearing Type:	In Person
Hearing Dates:	13 September 2023 and 29 February 2024
Decision Date:	24 April 2024
Board Members Present:	
	Mr M Orange, Chair, Barrister (Presiding)
	Mr D Fabish, LBP, Carpentry and Site AoP 2
	Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor

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), (d) and (da)(ii) of the Act.

The Respondent is fined \$2,500 and ordered to pay costs of \$2,500. 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 was engaged to carry out building work, including Restricted Building Work, on a labour-only subcontractor basis on a new residential build. A complaint was made about the quality and compliance of the cladding work, which was carried out under the Respondent’s supervision, and a failure to provide a Record of Work.

- [2] The Respondent accepted that he had not supervised the cladding work and because there were issues with the work, which required remediation, the Board decided that he had supervised building work in a negligent manner and in a manner that was contrary to a building consent. The Board also decided that the Respondent had failed to provide a Record of Work on completion of Restricted Building Work.
- [3] The Board fined the Respondent \$2,500 and ordered that he pay costs of \$2,500. A record of the offending will be recorded on the public Register for a period of three years. The fine and costs were reduced to acknowledge mitigating factors and to take into account that the matter was dealt with in a consolidated hearing.

The Charges

- [4] 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
- [5] 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;
 - (b) carried out or supervised building 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 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.
- [6] The Board gave notice that, in considering the allegations under sections 317(1)(b) and (d) of the Act, the Board would be investigating weatherboard installation and framing issues, as set out in paragraph 6 in the Complainant's email of 2 May 2023 (document 2.5.26 and 27, Pages 112 and 113 of the Board's file).

Consolidation

- [7] The Board may, under Regulation 13, consolidate two or more complaints into one hearing. As the Board had received another complaint from the same Complainant about the Respondent, it decided to deal with the two matters at one hearing.

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.

Procedure

- [8] A hearing was held on 13 September 2023. The Respondent did not attend. Evidence was received from the Complainant, and a transcript of the evidence was produced. The Respondent was offered the opportunity to have a further hearing so as to contest the evidence. A further hearing was held on 29 February 2024. At the conclusion of that hearing, the Board issued directions regarding further evidence to be obtained and submissions to be filed by the Respondent. The Complainant then filed the requested information and additional evidence. The Respondent did not.
- [9] A further Minute was issued, reminding the Respondent of the Board's directions. A deadline for filing was imposed. The Respondent did not meet it and has not engaged any further in the process. The Board noted a pattern of the Respondent failing to engage or indicating that he would provide evidence that was then not provided. Given the pattern, the Board decided that it would make a decision.

Evidence

- [10] 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.
- [11] The weatherboard issues raised by the Complainant were stated as:

Weatherboards needed to be removed and replaced due to not being installed as per manufacturers specifications. The builder did not carry out works in line with architect and engineering drawings particularly around the veranda posts, beams.

Examples provide by new builder on site:

Some of the weatherboard laps like 70mm

Kiel nailed the tops off with gib Neil's instead of brads and not to spec

Please see below break down of work carried out

-strip cladding already done (wasn't installed to manufacture specifications)

-remove 90% of cavity battens (battens were missing the studs.

-remove top strips of IBS board and pack trusses (20mm step in the frame)

-remove strand board to various walls to try pull plumb

-re frame 3 windows (openings were too tight) re tape then install windows/door

-silicone all head flashings and complete cavity closers

-install cladding, scribes and corner boxes

-we spent 30+ hours setting up veranda post for new detail then had the plan change again (30 hours wasted time)

-remove barge flashings and release fascia to pull front straight and level!

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

(Beam was 70mm out of level end to end)

There easily 3 days adjusting that veranda then installing the brackets. There was a day just in the fixings for this veranda!

-block out all around for soffits (trusses are not installed to measurements so every block was individually measured and cut!

The veranda posts are 100mm out of parallel to the building so we had to fluff around with soffit cuts etc

There's maybe another day and a half to finish off the soffit and the last of the boxed corners.

Verandah decking posts were not installed and cut level

[OMITTED] have had to provide all new weatherboards due to the way in which the installed, were left and stored on site.

- [12] The Board also received a signed written statement from the remedial builder. He stated:

We spent the first week stripping weather boards, cavity battens and sheets of the OSB RAB board. We found that all of the wall frames were terribly out of plumb (15mm over the 2.4 level was a good corner). We needed to strip the RAB so we could pull the frames plumb to most corners. There was a 30mm step in the framing, between the top of the trusses and the top plate of the external frames, over about a 300mm distance. This meant all RAB was removed above the frames so we could pack straight around the bulk of the building. 90% of the cavity batten fixings were missing the studs when they were nailed off, so we removed these and re fixed off. We had to re level all the WANZ bars as they were all out of level. No head flashings were installed yet, so we installed these and installed the cavity closers and battens above the windows. We installed all new weather boards, scribes and corner boxes. The weather boards we removed were not nailed off as per specifications, no corner flashings were installed and none of the cuts on the weather boards that were installed by the previous builder were primed. Luckily, there were only a few rows already installed before we turned up. We rectified all previous council failed inspections on this job.

We had to remove barge flashings to re straighten the fly rafters, there was an SED round beam designed for the front veranda, however the builder didn't allow for the tapered post so across the roof line it ran out of level 80mm end to end. This meant we had to pack the posts the beam sat on to re level the roof and pull the barges straight.

This was a very simple house to construct so in my professional opinion the work completed prior to us arriving was not anywhere near good enough. It took us more time fixing all the issues than the whole job should have taken start to completion.

- [13] At the first hearing, the Complainant affirmed her evidence and a transcript of the evidence received was provided to the Respondent.
- [14] At the second hearing, the Respondent stated that he had been engaged on a labour-only basis and that his contracted scope of work was approximately 80% complete when he ceased working on the project. He also stated that he carried out and supervised the building work together with four of his staff, two of whom were qualified. However, as regards the weatherboard cladding, the Respondent stated that the work was carried out by his staff, and he accepted that he had not adequately supervised their work. He noted he had been let down and that it was not good enough. He also accepted that WANZ bars had not been installed. He did apologise to the Complainant.
- [15] The Respondent did not contest the issues that had been noted in the evidence set out above, but did submit that they arose as a result of issues with the piles in and around a deck, which may have caused slumping. The Respondent stated he had engineering evidence to support him and that there may be evidence as regards the issue on the building consent file. The Board made inquiries with the Building Consent Authority, who advised that the Board had already been provided with all of the consent documentation. That documentation did not contain any of the evidence that the Respondent was referring to.
- [16] The Complainant gave evidence that the cladding work supervised by the Respondent was assessed a few weeks after the Respondent stopped working on the project and that there was no evidence of slumping or unusual movement in the sub-floor structure. The Respondent challenged the competence of the person who assessed his work. He was under the impression that he was a plasterer, whereas licensing records show that he is a Licensed Carpenter.

Negligence

- [17] The Board's finding is that the Respondent has supervised building work in a negligent manner.
- [18] 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

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)

- [19] A threshold test applies to both. Even if the Respondent has been negligent, the Board must also decide if the conduct fell seriously short of expected standards.⁷ If it does not, then a disciplinary finding cannot be made.

Has the Respondent departed from an acceptable standard of conduct?

- [20] 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 Code⁸ and any building consent issued.⁹ The test is an objective one.¹⁰
- [21] In this matter, it is the Respondent's supervision that is in question as the work complained about was not carried out by the Respondent, but it was supervised by him.
- [22] Supervision is a defined term in the Act.¹¹ There are various factors that the Board needs to consider when it determines whether a Licensed Building Practitioner's supervision has met an acceptable standard. The District Court has stated, albeit in the context of the Electricity Act, that at the very least, supervision 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 the compliance of the work with the requisite regulations.¹²
- [23] There are varying types of supervision. The Ministry of Business Innovation and Employment has issued a supervision guidance document.¹³ It notes the different types of supervision: direct, general and remote. It also provides a matrix to assist in determining the appropriate form of supervision to be used. Generally, the greater the complexity of the work, the higher the need for direct supervision. The skill level of the person being supervised also needs to be taken into consideration.
- [24] 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

⁷ *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".

⁸ Section 17 of the Building Act 2004

⁹ Section 40(1) of the Building Act 2004

¹⁰ *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.

¹¹ 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.

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

¹³ Practice Note: Supervision, August 2017, issued under section 175 of the Act.

to consider whether the work met the requirements of the building code and, if not, the level of non-compliance.

- [25] The Respondent accepted that the work had not been completed to an acceptable standard and that he had not provided the required supervision. As there was clear evidence of substandard work that had to be remediated, the Board finds that the Respondent's supervision was inadequate and that it did not meet an acceptable standard. It follows that he has conducted himself in a negligent manner.

Was the conduct serious enough?

- [26] The evidence was that the Respondent did not provide any supervision of the cladding phase of the project. As a direct result, issues with the work occurred, and the cladding had to be redone. He stated that this was out of character for him. He noted that he was new to contracting, was finding his feet and had been let down by others and was hit with the sudden departure of a key staff member, and money issues arose. Those may be mitigating factors, but they do not excuse the conduct. The simple fact is that the Respondent did not supervise, and the issues complained about arose because of that. On that basis, the Board finds that the conduct was serious enough.

Has the Respondent been negligent or incompetent?

- [27] The Respondent has negligently supervised building work.

Contrary to a Building Consent

- [28] 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.¹⁴ Once issued, there is a requirement that the building work be carried out in accordance with the building consent.¹⁵ Building consents also stipulate the number and type of inspections the issuing authority will carry out during the build.¹⁶ Inspections ensure independent verification that the building consent is being complied with.
- [29] 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.¹⁷ 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 Respondent's building work departed from the building consent, the Board must also

¹⁴ Section 49 of the Act

¹⁵ Section 40 of the Act

¹⁶ Section 222 of the Act

¹⁷ *Blewman v Wilkinson* [1979] 2 NZLR 208

decide if the conduct fell seriously short of expected standards.¹⁸ If it does not, then a disciplinary finding cannot be made.

Was there building work that differed from the building consent?

[30] The cladding work was not completed in accordance with the building consent, and WANZ bars were not installed as per the requirements of the consent. The evidence in relation to this has been set out above in relation to section 317(1)(b) of the Act.

Was the conduct serious enough?

[31] For the same reasons set out above in relation to negligence, the Board finds that the conduct was serious enough.

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

[32] The Respondent has carried out building work in a manner that was contrary to building consent.

Failure to Provide a Record of Work

[33] 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.¹⁹

[34] 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 Work²⁰ unless there is a good reason for it not to be provided.²¹

Did the Respondent carry out or supervise Restricted Building Work?

[35] The Respondent was engaged to carry out and/or supervise building work on a new residential dwelling under a building consent. His work included work on the primary structure and the external moisture management system of a residential dwelling.²² Both are Restricted Building Work for which a Record of Work is required.

Was the Restricted Building Work complete?

[36] The Respondent worked on the dwelling up until 29 November 2022. He did not carry out any further Restricted Building Work after that date. As such, 29 November 2022 is the completion date, and the date on which a Record of Work was due.

¹⁸ *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".

¹⁹ Section 88(1) of the Act.

²⁰ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

²¹ Section 317(1)(da)(ii) of the Act

²² Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Has the Respondent provided a Record of Work?

- [37] The Respondent did not provide a Record of Work on completion as per the section 88(1) requirements. A complaint about the non-provision was made on 2 February 2023. Notwithstanding the complaint and continued requests for a Record of Work from the Complainant, one was not provided.
- [38] The Respondent did, as part of the disciplinary hearing process, provide a Record of Work dated 4 March 2024 to the Complainant.

Was there a good reason for the Respondent to withhold his Record of Work?

- [39] The Respondent noted that, when completion occurred, he was not in a good place and that he had suffered a breakdown. He started to return to work about six weeks later and accepted that he should have provided a Record of Work when he started feeling better. He stated that he did not have a reason for not providing a Record of Work at that point in time.
- [40] The Board finds that whilst the Respondent may initially have had a good reason, the possible good reason ceased when he started feeling better.

Did the Respondent fail to provide a Record of Work?

- [41] The Respondent has failed to provide a Record of Work on completion of Restricted Building Work.

Board's Decisions

- [42] The Respondent has breached the following disciplinary sections of the Act:
- (a) Section 317(1)(b);
 - (b) Section 317(1)(d); and
 - (c) Section 317(1)(da)(ii).

Penalty, Costs and Publication

- [43] 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.
- [44] The Board heard evidence relevant to penalty, costs, and publication during the hearing and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [45] 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.²³ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁴

- (a) protection of the public and consideration of the purposes of the Act;²⁵
- (b) deterring other Licensed Building Practitioners from similar offending;²⁶
- (c) setting and enforcing a high standard of conduct for the industry;²⁷
- (d) penalising wrongdoing;²⁸ and
- (e) rehabilitation (where appropriate).²⁹

[46] 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 cases³⁰ and applying the least restrictive penalty available for the particular offending.³¹ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³² that is consistent with other penalties imposed by the Board for comparable offending.³³

[47] 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.³⁴

[48] The Respondent has committed three disciplinary offences. There is a degree of commonality in the section 317(1)(b) and 317(1)(d) matters, and. For the purposes of penalty, the Board will treat them as a single offence.

[49] The Board adopted a starting point of a fine of \$3,500, an amount that is consistent with penalties imposed by the Board for similar offences. There are some mitigating factors. Firstly, at the hearing, the Respondent did accept some responsibility. He also outlined some mental health issues. In recognition of those factors, the Board has decided to reduce the fine to \$2,500.

²³ *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]

²⁴ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁵ Section 3 Building Act

²⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁷ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁸ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁹ *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

³⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³¹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

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

³⁴ 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

- [50] 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.³⁵
- [51] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁶. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁷.
- [52] 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.
- [53] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,500 toward the costs of and incidental to the Board's inquiry. The amount has been reduced from the usual order for a matter of this type of \$3,500 on the basis that the hearing was consolidated with another matter. The Board decided that it would not increase the costs order because of the Respondent's failure to engage fully in the process and the additional costs incurred as a result. He is advised, however, to engage in a more productive and meaningful way in the future.

Publication

- [54] 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,³⁸ 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.
- [55] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁹ 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.⁴⁰
- [56] 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

³⁵ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁶ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁷ *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.

³⁸ Refer sections 298, 299 and 301 of the Act

³⁹ Section 14 of the Act

⁴⁰ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

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

[57] 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 \$2,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,500 (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.

[58] 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

[59] 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 **20 June 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

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

Signed and dated this 29th day of May 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—*

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- (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.*