

Before the Building Practitioners Board

	BPB Complaint No. CB26350
Licensed Building Practitioner:	Shaoneng Zhang (the Respondent)
Licence Number:	BP123619
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	Board Inquiry
Hearing Location	Auckland
Hearing Type:	In Person
Hearing and Decision Date:	4 September 2024
Board Members Present:	
	Mr M Orange, Chair, Barrister (Presiding)
	Mrs J Clark, Barrister and Solicitor, Legal Member
	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 not** committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

Contents

Summary	<input type="checkbox"/>
Evidence	<input type="checkbox"/>
Failure to Provide a Record of Work	<input type="checkbox"/>
Did the Respondent carry out or supervise restricted building work?	<input type="checkbox"/>
Board's Decision	<input type="checkbox"/>

Summary

- [1] The Board received a complaint from a homeowner about another Licensed Building Practitioner, Mr [OMITTED], that related to the failure to provide records of work. In investigating that matter, the Respondent was identified as he was noted in two council inspections as the responsible Licensed Building Practitioner.
- [2] The Board initiated an Inquiry to determine the Respondent's role (if any) in the project and, accordingly, his obligation (if any) to provide a record of work.
- [3] The Respondent denied all knowledge of and involvement in, the building work.
- [4] The Board received evidence from Mr [OMITTED], the Council building consent officers and the homeowner. There was no evidence to establish that the Respondent had any role in the project.
- [5] The Board, therefore, accepted the Respondent's position and did not uphold the ground of discipline against him.

The Charges

- [6] 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
- [7] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work [OMITTED], Auckland, have failed, without good reason, in respect of a building consent that relates to restricted building work that he 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.

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] This matter was consolidated with the hearing for another Licensed Building Practitioner, Mr [OMITTED], which related to the same project ([OMITTED]).
- [9] A separate decision has been issued in respect of that matter.
- [10] An Interpreter attended the hearing to assist the Board.

Evidence

- [11] 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.

Failure to Provide a Record of Work

- [12] 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.⁴
- [13] 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 work⁵ unless there is a good reason for it not to be provided.⁶
- [14] The Board needed to determine whether the Respondent had carried out or supervised any restricted building work on this project.

Did the Respondent carry out or supervise restricted building work?

- [15] The Respondent denied all knowledge of and involvement in the building work on this project. He stated in a written response provided to the Investigator by an authorised person on his behalf -

“[The Respondent] received a letter from you regarding his alleged involvement in a construction site at [OMITTED], Auckland where he has never worked before. [The Respondent] wants to firmly state that he has no association whatsoever with the mentioned site or any construction project.

It has come to his attention that someone has been impersonating him to utilising his LBP license. This is a clear illegal action. ...”

- [16] Mr [OMITTED] is the sole director and shareholder of [OMITTED]. His company was engaged by the homeowners to construct the new three storey dwelling. The

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

⁴ Section 88(1) of the Act.

⁵ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

⁶ Section 317(1)(da)(ii) of the Act

evidence presented at the hearing established that Mr [OMITTED] was the project manager. All aspects of the building work were subcontracted by his company to others.

- [17] Mr [OMITTED] explained that before the Council postline inspection on 23 May 2022, he contacted the company – [OMITTED], to which the plasterboard boardwork (including bracing elements) had been subcontracted. He asked who the Licensed Building Practitioner was who had done the work for their company. In response, he was sent a text (a copy of which was provided to the Board at the hearing) which stated –“LBP: [OMITTED], [Chinese characters]; [OMITTED]”
- [18] Mr [OMITTED] supplied these details to the Council building consent officer at the 23 May 2022 postline inspection.
- [19] Mr Xiangtao Zheng, a building consent officer for Auckland City Council, undertook the remote postline inspection of the site on 23 May 2022. Mr Zheng explained that a remote inspection involves a person on site via his phone showing the relevant aspects of the building work to the inspector, who is not present on site.
- [20] Mr Zheng gave evidence that he could not identify anyone who was present in the hearing room as being on site during that remote inspection. As the Respondent was present in the hearing room, this necessarily meant that Mr Zheng could not confirm the Respondent had, on that day, been present on site. However, Mr Zheng went on to explain that during the remote inspection he was not able to see the faces of any of the workers on site.
- [21] Another Auckland Council Building consent officer, Mr Finau attended the site for the 27 May 2022 postline inspection. Mr Finau identified Mr [OMITTED] as the person whom he met on site for the inspection.
- [22] Mr Finau acknowledged that the inspection report for that visit recorded the Respondent as the Licensed Building Practitioner for the project. Mr Finau could not recall whether Mr [OMITTED] had provided these details to him. He did not recall seeing the Respondent on site.
- [23] Mr Finau did confirm, though, that his usual practice was to ask for the name of the relevant Licensed Building Practitioner each time in case it had changed but that on this occasion he could not remember whether that had happened. He stated that it was possible that the inspection report was prepopulated with the Respondent’s name from the previous 23 May inspection.
- [24] Mr [OMITTED], who had acknowledged giving the Respondent’s details at the previous inspection, also could not recall whether he gave the details again to Mr Finau. Mr [OMITTED] also stated that it was possible that the inspection record had been prepopulated from the previous week’s inspection.
- [25] The homeowners, Mr [OMITTED] and his brother, Mr [OMITTED], stated that they dealt with Mr [OMITTED] on the project and could not recall whether they had seen

the Respondent on site. Mr [OMITTED] also stated that he had never seen the Respondent on site.

- [26] The Respondent gave evidence that he had worked for one of the “bosses” at [OMITTED] “a long time ago”. He now had no association with, nor did work for [OMITTED], or any of its associated company entities and people which were named and put to him at the hearing.
- [27] The Board accepted the Respondent’s evidence that he had no involvement in the project. There was no evidence from Mr [OMITTED], as project manager, the homeowners, or Council officers, to challenge this position.
- [28] On this basis, the Board finds that the Respondent did not carry out or supervise any restricted building work on this project, and therefore, there was no requirement on the Respondent to provide a record of work on the project
- [29] The ground of discipline under section 317(1)(da)(ii) of the Act is not established.

Board’s Decision

- [30] The Board does not uphold the ground of discipline under section 317(1)(da)(ii) of the Act against the Respondent.

Signed and dated this 1st day of October 2024.



Mr M Orange
Presiding Member