

Before the Building Practitioners Board

	BPB Complaint No. CB26310
Licensed Building Practitioner (LBP):	Tony Russell Songhurst (the Respondent)
Licence Number:	BP129264
Licence(s) Held:	Carpentry and Site AoP 1

Penalty Decision of the Board under section 318 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Location	by audio-visual link
Hearing Type:	In Person
Hearing Date:	7 March 2024
Substantive Decision Date:	18 March 2024
Penalty Decision Date:	1 May 2024

Board Members:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design 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 a disciplinary offence under section 317(1)(b) of the Act.

The Respondent is fined \$2,000 and ordered to pay costs of \$1,000. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

The Respondent **has not** committed offences under sections 317(1)(d) or (g) of the Act.

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Summary

- [1] The Respondent was the main contractor and supervising Licensed Building Practitioner (LBP) for an alteration to a residential dwelling. Changes were made to the construction methodology of a concrete block wall. The Building Consent showed the wall as having a void between it and an adjacent existing blockwork foundation retaining wall. During the build, on-site conditions were different from those shown on the plans, and the concrete block wall to be constructed was changed to one that had a moisture barrier membrane backfilled with drainage material. The change was not approved by the Building Consent Authority (BCA) prior to it being implemented. Nor was it brought to the BCA's or the designer's attention in advance of the work taking place.
- [2] The membrane installation was not completed in accordance with the manufacturer's instructions, and the correct type of protective membrane was not installed.
- [3] The Board found that the Respondent had been negligent regarding the failure to follow a building consent change process. He was fined \$2,000 and ordered to pay costs of \$1,000.

The Charges

- [4] This penalty decision arises out of the Board's substantive decision in which it found that the Respondent had breached section 317(1)(b) of the Act.
- [5] 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.
- [6] In its substantive decision, the Board set out its indicative position regarding penalty, costs, and publication and invited the Respondent to make written submissions on those matters.
- [7] On 13 April 2024, the Board received the Respondent's submissions. It has considered them and made the following decisions.

Penalty

- [8] The Board's initial view was that a fine of \$2,000 was the appropriate penalty for the disciplinary offence.
- [9] The Respondent's submissions on penalty challenged the Board's findings. The Respondent should note that the appropriate way to challenge the Board's substantive decision is to appeal it to the District Court.
- [10] The Respondent did not raise any new mitigating factors. On this basis, the penalty is confirmed.

Costs

- [11] The Board's initial view was that \$2,625 in costs was appropriate. The Board's scale for a simple matter heard by an audio-visual link is \$1,500, and for a moderately complex matter is \$2,625.
- [12] The Respondent has noted that at a prehearing conference, an indication of costs for an audio-visual hearing was given as \$1,000. That oral advice was incorrect. However, as the advice was given, the order will reflect it. Costs are set at \$1,000.

Publication of Name

- [13] The Board did not make any publication orders. The Respondent did not make any submissions on publication.
- [14] 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

- [15] 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 \$2,000.
- Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,000 (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. The Respondent will be named in this decision, which will be published on the Board's website.
- [16] 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.

Right of Appeal

[17] The right to appeal Board decisions is provided for in s 330(2) of the Actⁱⁱ.

Signed and dated this 12th day of June 2024.



Mr 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 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.*