

Before the Building Practitioners Board

	BPB Complaint No. CB26208
Licensed Building Practitioner:	Vance Wang (the Respondent)
Licence Number:	BP135451
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	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 sections 317(1)(da)(ii) and (i) of the Act.

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Summary

- [1] The Complainant alleged that the Respondent had failed to provide a record of work for restricted building work in the construction of his new residential dwelling.
- [2] The Respondent advised the Board that he was the project manager for the project and that all building work had been subcontracted to other companies. He stated that he had not carried out or supervised any restricted building work.
- [3] The Board had to consider the Respondent's involvement in the project and, accordingly, whether he had a statutory obligation to provide a record of work.
- [4] In addition, the Board investigated whether the Respondent had supplied or caused to be supplied to the Council, the details of another Licensed Building Practitioner when he knew or ought to have known that the Licensed Building Practitioner had not carried out or supervised any restricted building work.
- [5] The Board determined that the Respondent's role was that of project manager only, he had not carried out or supervised any restricted building work and, as such, he had no obligation to provide a record of work.
- [6] Further, the Board considered that the circumstances in which the Respondent was given, and then supplied, the name of the other Licensed Building Practitioner to the Council were justifiable and did not constitute disreputable conduct.
- [7] The grounds of discipline were not upheld.

The Charges

- [8] 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
- [9] 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:
- (a) failed, without good reason, in respect of a building consent that relates to restricted building work that he is to carry 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; and
 - (b) conducted himself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute contrary to section 317(1)(i) of the Act, in that he may have presented or cause to be presented [OMITTED] ([OMITTED], Respondent in matter [OMITTED]) licensing details to the Building Consent Authority at the following inspections when he knew or ought to have known that Mr [OMITTED] had not carried out or supervised any restricted building work:
 - Postline inspection of 23 May 2022; and
 - Postline inspection of 27 May 2022.

Procedure

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

Evidence

- [13] 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

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

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

- [14] 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
- [15] The Respondent is the sole director and shareholder of VM Construction Ltd. His company was engaged by the Complainant to construct a new three-storey dwelling. The Respondent, in writing to the Investigator and at the hearing, said that his role was solely that of a project manager. All aspects of the building work were subcontracted by his company to others. He confirmed that he did not carry out or supervise any restricted building work.
- [16] The Building Control Officers from Auckland City Council and the Complainant confirmed that they dealt with the Respondent on the project. There was no evidence before the Board to contradict the Respondent's position as project manager only and no evidence to establish he had carried out or supervised any restricted building work.
- [17] The Board is satisfied, on the evidence before it, that the Respondent did not carry out or supervise any restricted building work.
- [18] Accordingly, he had no statutory obligation to provide a record of work and the ground of discipline under section 317(1)(da)(ii) of the Act is not upheld.

Disrepute

- [19] Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public.
- [20] The Courts have consistently applied an objective test when considering such conduct.⁵ The subjective views of the practitioner, or other parties involved, are irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.⁶
- [21] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,⁷ that the Respondent has brought the regime into disrepute and that conduct was sufficiently serious enough for the Board to make a disciplinary finding.⁸

⁴ Section 88(1) of the Act.

⁵ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

⁶ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

⁷ *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.

⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

The conduct complained about

- [22] The details of another Licensed Building Practitioner carpentry licence holder were recorded on the Council postline inspections of 23 and 27 May 2022. This Licensed Building Practitioner, Mr [OMITTED], denied all knowledge of the project and stated, *“he has no association whatsoever with the mentioned site or construction project”*.
- [23] The circumstances in which Mr [OMITTED]’s name came to be recorded on the Council inspection records were investigated by the Board at the hearing.
- [24] Mr Xiangtao Zheng, a building consent officer for Auckland City Council, undertook a 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. The Respondent confirmed that he was on site and conducted this remote inspection with Mr Zheng. The building consent officer confirmed that through the Council system, they can see who booked the council inspection and that it was, in this case, booked by the Respondent. The Respondent confirmed this.
- [25] The Respondent also gave evidence that he supplied Mr [OMITTED]’s Licensed Building Practitioner details to Mr Zheng so that they could be recorded in the inspection report.
- [26] 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 Mr [OMITTED], was present in the hearing room, this necessarily meant that Mr Zheng could not confirm Mr [OMITTED] 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.
- [27] Another Auckland Council Building consent officer, Mr Finau, attended the site for the 27 May 2022 postline inspection. Mr Finau identified the Respondent as the person whom he met on site for the inspection.
- [28] Mr Finau acknowledged that the inspection report for that visit recorded Mr [OMITTED] as the Licensed Building Practitioner for the project. Mr Finau could not recall whether the Respondent had provided these details to him. He did not recall seeing Mr [OMITTED] on site.
- [29] 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 Mr [OMITTED]’s name from the previous 23 May inspection.
- [30] The Respondent, who had acknowledged giving Mr [OMITTED]’s details at the previous inspection, also could not recall whether he gave the details again to Mr Finau. The Respondent also stated that it was possible that the inspection record had been prepopulated from the previous week’s inspection.

- [31] The Complainant and his brother, Mr [OMITTED], joint homeowners, stated that they dealt with the Respondent on the project and could not recall whether they had seen Mr [OMITTED] on site.
- [32] The Respondent stated that he had never seen Mr [OMITTED] on site.
- [33] The Board accepted Mr [OMITTED]'s evidence that he had no involvement in the project. There was no evidence from the Respondent, homeowners, or Council officers to challenge this position.
- [34] The Respondent then explained to the Board how and why he came to use Mr [OMITTED]'s licensing details with the Council officers and on the inspection reports.
- [35] The Respondent contracted [OMITTED] to carry out the plasterboard work (including bracing elements). He had worked with this company on many previous occasions. On the inspection day, the Respondent phoned a staff member at the company and 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]”.
- [36] The Respondent further confirmed that he did not ask for a copy of the Licensed Building Practitioner's licence as he had worked with [OMITTED] for many years, and this was the same name supplied by the company on other occasions.
- [37] Mr [OMITTED] gave evidence that he had worked for one of the “bosses” [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.

Was the conduct serious enough?

- [38] It is not necessary for the Board to discuss whether the conduct reached the seriousness threshold, because, as explained further below, the Board finds that the conduct was not disreputable.

Has the conduct brought the regime into disrepute?

- [39] The conduct of the Respondent that was in question was the action of supplying Mr [OMITTED]'s Licensed Building Practitioner details in circumstances where he may have known that Mr [OMITTED] was not the relevant Licensed Building Practitioner on site.
- [40] The Board accepted the explanation given by the Respondent as to how and why that name was used by him.
- [41] The Board is satisfied that the Respondent was provided with the name by [OMITTED] and in the circumstances, it was reasonable of him to rely on and use that information.
- [42] On that basis, the conduct has not brought the regime into disrepute, and the disciplinary offence under section 317(1)(i) is not established.

Board's Decisions

[43] The Board is not upholding the grounds of discipline under sections 317(1)(da)(ii) or 317(1)(i) of the Act against the Respondent.

Signed and dated this 1st day of October 2024.

A handwritten signature in black ink, appearing to be 'M Orange', written in a cursive style.

Mr M Orange
Presiding Member