

BUILDING PRACTITIONERS INQUIRY BOARD

Reasons for Decision

Building Practitioner:	Mr Constantine Giannakas
Referred by:	Director of Building Control
Proceedings:	Referral of Inquiry to the Building Practitioners Board (the Board) in accordance with section 34G of the <i>Building Act</i> .
Inquiry Board:	Patrick McIntyre (Presiding Member) Robert Cox Adam Aitken
Date of Decision:	14 March 2018

Background

1. On 20 November 2017 the Director of Building Control referred a matter to the Building Practitioners Board (the Board) for inquiry under section 34(10(a) of the *Building Act (the Act)*. The matter relates to allegations that the Building Practitioner committed an offence pursuant to section 34(E)(2)(a) of the Act in failing to comply with a reasonable request of the auditor to produce documents.
2. Ms Monk, appearing on behalf of the Director of Building Control, and the Building Practitioner (*Mr Giannakas*), jointly tendered to the Inquiry Board a written list of agreed facts in a signed document, dated 14 February 2018, headed 'Summary of Agreed Facts' which was marked Exhibit One. Exhibit One is annexed to these reasons.
3. Mr Giannakas entered a plea of guilty to a breach of Section 34E(2)(a) of the *Act*. He did so on the basis of the agreed facts and the Inquiry Board concluded that the plea of guilty and Exhibit One were sufficient to compel a finding by the Inquiry Board pursuant to section 34S(a) of the Act on the balance of probabilities that the Building Practitioner had committed an offence pursuant to section 34(2)(a) of *the Act*.

Submissions on Penalty

4. The Parties were invited to make submissions about the action appropriate to be taken by the Inquiry Board pursuant to section 34T and 34U of the Act.
5. Ms Monk, appearing on behalf of the Director of Building Control, submitted that the Inquiry Board should such action, pursuant to section 34U of *the Act*, as would ensure that the Building Practitioner cooperated with the auditor and that the auditor would be able to conclude an audit report in relation to Mr Giannakas.
6. The Building Practitioner submitted that in the period leading up to the service of the Notice to Produce Documents-Audit on the 27 April 2017 (*Notice to Produce*) and including the second half of 2016 he had experienced a family breakup and was in the process of shutting down his business as well as experiencing financial hardship. He mentioned that he had been let down by a major client whose breach of contractual

conditions undermined the capacity of Mr Giannakas to continue to trade in his usual way

7. Mr Giannakas tendered (with the consent of Ms Monk) a brief report of his treating psychologist, Ms Helen Stathis, dated 29 March 2017 (Exhibit Two), in support of his submission that he was suffering severe depression and anxiety at the relevant time. He further submitted that his symptoms were the reason for his failure to comply with the Notice to Produce.
8. When the Inquiry Board pointed out to him that the report of Ms Stathis pre-dated the Notice to Produce, the Building Practitioner submitted that he continued to suffer symptoms through the remainder of 2017.
9. Mr Giannakas informed the Inquiry Board that he understood the importance of audits being undertaken by the Director of Building Control and that he would now be able to comply with the Notice to Produce and would do so within 6 weeks if ordered to do so.
10. He submitted that issues concerning consumer protection, in his case, are lessened because he had not undertaken any building work other than on his own home in the 12 months prior to the 14 March 2018.
11. Mr Giannakas submitted that although he has continued to suffer financial hardship he has the capacity to pay a fine if given time to pay; provided monthly instalments did not exceed \$500.00.

Consideration of Submissions

12. The objects of the Act are set out in section 3 of the Act and it is worthwhile setting out that section in full.

'The objects of this Act are:

- (a) to establish, maintain and improve building standards; and*
- (b) to facilitate the adoption and efficient application of national uniform building standards; and*
- (c) to facilitate national uniform accreditation of building products, construction methods, building designs, building components and building systems; and*
- (d) to maintain, enhance and improve the safety, health and amenity of people using buildings; and*
- (e) to promote and provide for the construction of environmentally efficient buildings; and*
- (f) to provide an efficient and effective system for granting building permits and occupancy certification, administering building matters and resolving building disputes; and*
- (g) to reform aspects of the law relating to the legal liability of regulatory agencies and building practitioners; and*
- (h) to facilitate national uniformity in the training and qualifications of certain building practitioners and the recognition of qualifications on a national basis; and*
- (ha) to provide for the registration of building practitioners; and*
- (hb) to provide for the investigation, audit and disciplining of building practitioners; and*

(hc) to establish a scheme relating to residential building consumer protection and the provision of residential building insurance or fidelity certificates; and
 (j) to facilitate the cost effective construction of buildings; and
 (k) to aid the achievement of an efficient and competitive building industry.

13. Sections 34E, 34S, 34T and 34U of the Act were introduced into the Act as part of a raft of amendments made in 2005. Clearly, Parliament intended by these and other amendments to strengthen the implementation of the objects of the legislation.
14. The failure of Building Practitioners to provide the cooperation specified in section 34E undermines the operation of the Act and seriously interferes with its objects; particularly given sub-sections 3(ha), 3(hb) and 3(hc).
15. Accordingly, this Inquiry Board concludes that the offence for which Mr Giannakas is guilty is far from a minor breach of his responsibilities under the Act.
16. It is apparent on its face that the report of Ms Helen Stathis, dated 29 March 2017, upon which Mr Giannakas relies was not brought into existence specifically for the consideration of this Inquiry Board. Indeed, it pre-dates the Notice to Produce. Nor does it provide obvious support for the submission of Mr Giannakas that his health issues are responsible for his failure, for a period of almost 12 months, to comply with the Notice to Produce.
17. Mr Giannakas provides no other explanation for that extraordinary delay.
18. Nevertheless, the report of Ms Helen Stathis, dated 29 March 2017, does provide support for submissions from Mr Giannakas that he has been burdened with difficult personal circumstances and this Inquiry Board is prepared to accept that he has suffered financial difficulties arising from significant and unexpected bad debts.
19. Mr Giannakas cooperated with the Director of Building Control in the negotiation and preparation of Exhibit One and entered a plea of guilty without requiring further evidence to be put before this Inquiry Board.
20. This Inquiry Board is satisfied that it is appropriate in these circumstances to, and does treat Mr Giannakas, as having entered an early guilty plea and takes that into account. In other circumstances this Inquiry Board may well have imposed a far greater fine and period of suspension than that which it has decided to impose.
21. Prior to entering formal decisions on the 14 March 2018 this Inquiry Board sought and received confirmation from the parties that they consented to the timeframes inherent in the Decisions set out in paragraphs 1 and 2 below.
22. Immediately prior to the conclusion of the hearing this Inquiry Board sought and obtained from Mr Giannakas the undertaking referred to in paragraph 5 below.

Decision

23. That Mr Constantine Giannakas produce the relevant records and documents required to be produced by the Notice to Produce Documents-Audit served on him on 27th April 2017 pursuant to ss 34A & 34D(1) of the Act on or before the 11 April 2018 to the Auditor for the Director of Building Control. Section 34 T (c) and 34 U of the *Building Act*.

24. That the Auditor for the Director of Building Control perform the audit on or before the 11 May 2018.
25. That a penalty of 8 penalty units be paid by Mr Constantine Giannakas in instalments over 8 months, totalling in the amount of \$1,232.00. Section 34 T (d) of the *Building Act*.
26. That registration of Mr Constantine Giannakas as a Building Practitioner be suspended from 14 March 2018 to 12 May 2018. Section 34T(e) of the Building Act.
27. That Mr Constantine Giannakas give forthwith to this Inquiry Board an undertaking to comply with the decision set out in paragraph 1 above. Section 34T(c) of the Building Act.



Patrick McIntyre
Presiding Member

11 April 2018