

BUILDING PRACTITIONERS INQUIRY BOARD

Reasons for Decision

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| Building Practitioner: | GT Builders Pty Ltd |
| Building Practitioner Category: | Building Contractor Residential (Unrestricted) |
| Referred By: | Director of Building Control |
| Proceedings: | Referral of Inquiry to the Building Practitioners Board in accordance with s 34F(2)(b) of the <i>Building Act (1993)</i> NT |
| Inquiry Board: | Maria Savvas (Presiding Member) Paul Nowland (Member) Robert Cox (Member) |
| Date of Hearing: | 21 June 2021 |
| Date of Decision: | 1 August 2023 |

Background

1. On 26 May 2020 the Director of Building Control (**the DBC**) referred GT Builders Pty Ltd (**the Practitioner**) to the Building Practitioners Board for Inquiry pursuant to section 34F(2)(b) of the Act (**the Referral**).
2. The Referral was made following the re-audit of the Practitioner on 21 May 2020 on the basis that the DBC determined there was evidence that the Practitioner was guilty of professional misconduct. Specifically, the DBC asserts that the Practitioner is guilty of professional misconduct pursuant to s34S of the *Building Act (1993)* NT (**the Act**) as the Practitioner has committed the following offences against the Act and the Building Regulations (**the Regulations**):
 - (a) That contrary to regulation 41HF(1), the Practitioner issued an invoice, namely invoice number 00001725 dated 9 August 2019, that did not include a declaration by the Practitioner that the prescribed building work to which that invoice relates had been completed for permit 590/12699/1, and such conduct constitutes professional misconduct pursuant to section 34S(a) of the Act.; and

- (b) That the Practitioner had authorised or permitted another person, namely Liam Robert Megarrell and/or Mega Construction Group NT Pty Ltd (“Mega”) to work as a building practitioner in performing building works at 24 Calvert Street, Tiwi, without being registered to do so (“Licence Lending”), and such conduct constitutes professional misconduct pursuant to section 34S(c) of the Act.

(“the Alleged Offences”)

3. This is the decision of the Inquiry Board convened pursuant to s34J of the Act to hear and determine whether the Practitioner is guilty of the Alleged Offences, and the appropriate action to take in respect of such conduct.
4. By way written submissions provided to this Board dated 15 June 2021, and oral submissions made to the Board at the hearing, the Practitioner has admitted the conduct the subject of the Referral, and concedes that its conduct constitutes professional misconduct for under s 34S of the Act.
5. Accordingly, the Board is satisfied on the balance of probabilities that the Practitioner has committed the Alleged Offences and is therefore guilty of professional misconduct in accordance with s34S(a) and s34S(c) of the Act.
6. It is now a matter for this Board to evaluate the conduct of the Practitioner to assess the degree of seriousness of the offending and level of culpability of the Practitioner, in order to determine what constitutes an appropriate penalty under s 34T of the Act.
7. In order to undertake that assessment, this Board has had regard to the following relevant facts as outlined in the Affidavit of Michelle Anne Altaras of Building Advisory Services (“BAS”) affirmed 19 April 2021, and the Practitioner’s affidavit sworn by its sole director, Mr Pothitos (Paul) Tsougranis on 7 May 2021 (the “Tsougranis Affidavit”):
8. The Practitioner was registered as a Building Contractor Residential (Unrestricted) on 25 July 2006.
9. The Practitioner was subject to its first audit by BAS on 10 November 2014. The audit identified offences against the Act and/or the Regulations, specifically offences against regulation 41HF i.e. a failure to include a declaration on invoices for progress payments (“the first audit”).

10. Consequently, the DBC determined to develop a remedial program with the Practitioner with a re-audit to be undertaken in 2 years.
11. The re-audit was completed on 24 July 2017 (“the second audit”). The re-audit identified that the Practitioner had not fully remediated the matters the subject of the first audit. That is, for all 10 permits audited, the invoices for progress payment did not include the declaration required by regulation 41HF.
12. Again, the DBC determined to develop a remedial program with the Practitioner to provide the Practitioner further time to take steps to address the breaches of the regulations as identified in the second audit.
13. A re-audit commenced on 11 July 2019 (“the third audit”). There were some minor delays to this audit caused by the Practitioner’s failure to produce documents within the times specified.
14. During the course of this third audit, the Practitioner provided BAS with tax invoice no 00001725 dated 9 August 2019 for building permit 590/12/699/1, which did not include a declaration that the building work to which the invoice related had been completed. This is the invoice the subject of the Referral.
15. The Practitioner also delayed in making full disclosure of documents relating to 24 Calvert Street, Tiwi. In that regard, it is noted that:
 - a. The initial notice to produce documents was issued to the Practitioner on 11 July 2019.
 - b. The Practitioner sought an extension to produce documents which was granted by BAS, resulting in an extension to 5 September 2019.
 - c. BAS contacted the Practitioner on 6 September 2019 and requested the documents for 24 Calvert Street, Tiwi, by close of business that day.
 - d. On 7 September 2019, the Practitioner emailed BAS a copy of the Residential Building Contract for 24 Calvert Street, Tiwi, but failed to produce the progress payment invoices for the said property.
 - e. On 11 September 2019, BAS spoke with Mr Tsougranis and was informed that the Practitioner did not have any progress payment invoices for 24 Calvert Street, Tiwi.
 - f. On 13 September 2019, BAS emailed the Practitioner requesting the progress payment invoices for 24 Calvert Street, Tiwi by 17 September 2019.

- g. No such invoices were produced by 17 September 2019.
- h. BAS spoke with Mr Tsougranis and email the Practitioner requesting the said invoices or an explanation as to by the invoices could not be produced by 3 October 2019.
- i. On 2 October 2019, the Practitioner provided BAS copies of the progress payment invoices for 24 Calvert Street, Tiwi (“the Tiwi Invoices”).
- j. The Tiwi invoices were directed to Mega, not the Practitioner.
- k. Searches were undertaken by BAS as to whether Mega was a registered building practitioner, and those searches relevantly revealed that:
 - (i) neither Mega (a deregistered company) nor its director, Liam Robert Megarrell were registered as building practitioners;
 - (ii) the building permit dated 15 August 2017 for buildings work at 24 Calvert Street, Tiwi, was applied for and granted to the Practitioner;
 - (iii) The application for an occupancy permit was made by the Practitioner on 15 December 2017;
 - (iv) Various certificates, including a Certificate of Subterranean Termite Treatment, was completed by Mega; and
 - (v) Statutory declarations as to works completed were declared by Mr Megarrell.
- l. Following a request from BAS for an explanation as to the Practitioner’s relationship with Mega, the Practitioner sent BAS an email on 11 February 2020 stating as follows:

“In response to the required information regarding Liam Robert Megarrell formally of Mega Constructions Group NT. At the time Liam approached GT Builders to be the Building Contractor. Liam Megarrell worked for GT Builders as a Superintendent for many Years and as a favour we agreed to be the building contractor for this simple building extension and under a verbal arrangement he (Liam) was to undertake all works including all supervising, invoicing and progress payments to Lot 7285, 24 Calvert, Tiwi. GT Builders did not take any payments for this project.

I cannot provide evidence of GT Builders supervision for the project but as he worked for us previously on multimillion projects and apart of his job was to oversee the supervision, GT Builders in this instance did have complete faith he could oversee all areas of this small project.

In hindsight and for these auditing instances we understand this

is not the standard procedure, at the time it would have been purely based on the fact that he had worked for us and we trusted in his workmanship. Please let me know if anything else is required further.”

Decision on Inquiry

16. Section 34P provides as follows:

- (1) On completion of an inquiry, the Inquiry Board must:
 - (a) decide, in accordance with section 34S, whether or not a building practitioner the subject of the inquiry is guilty of professional misconduct; and
 - (b) if the practitioner is guilty – decide the action to be taken under section 34T and whether or not to take additional action under section 34U.

17. As indicated at paragraph 4 above, the Practitioner has admitted that it is guilty of professional misconduct, having breached regulation 41HF(1) and admitted to Licence Lending. The Inquiry Board finds that the Practitioner is guilty of professional misconduct.

18. Section 34T of the Act provides as follows:

If, on completion of an inquiry, the Inquiry Board decides under section 34P(1)(a) that a building practitioner is guilty of professional misconduct, the Board may take any of the following actions in relation to the practitioner:

- (a) reprimand the practitioner;
- (b) require the practitioner to pay all or a specified part of the reasonable costs of the Director in the inquiry;
- (c) require the practitioner to give an undertaking to do, or not to do, a specified thing:
 - (i) at any time or during any period; or
 - (ii) at a specified time or during a specified period;
- (d) require the practitioner to pay to the Territory a civil penalty not exceeding 40 penalty units;
- (e) suspend the practitioner's registration for a specified period (not exceeding 3 years);
- (f) cancel the practitioner's registration.

19. The objective of disciplinary proceedings are to promote the objects of the Act and to ensure adherence with the legislative framework by all building practitioners. The Inquiry Board endeavors to communicate to building practitioners its concerns regarding industry practices that don't comply with the Act. In particular, any intentional, reckless or negligent disregard of the statutory requirements of the Act is not acceptable and will likely attract serious penalties.

Invoice 00001725

20. It is conceded by the Practitioner that it has committed an offence against regulation 41HF(1), namely that it issued invoice number 00001725 without a declaration by the Practitioner that the prescribed building work to which that invoice relates had been completed for permit 590/12699/1.
21. In the Tsougranis Affidavit, the Practitioner has asserted that this was an oversight which has since been remedied, and all of the Practitioner's invoices now contain the prescribed declaration.
22. The Practitioner is entitled to consideration in its favour for remediating this issue. However, it is clear that the Practitioner was aware of its statutory obligation that its invoices required the prescribed declaration following the occurrence of the first and second audits.
23. While the failure may have been an oversight, it would appear that the Practitioner was reckless or indifferent to the findings of the first and second audit and failed to properly remediate these ongoing issues.

Licence Lending

24. By way of the Tsougranis Affidavit, the Practitioner has admitted that its conduct in relation to the work carried out by Mega at 24 Calvert Street, Tiwi, amounts to licence lending in that the Practitioner:
 - a. permitted Mr Megarrell and/or Mega to work as a building practitioner, knowing Mr Megarrell was not registered as a building practitioner; and
 - b. entered into an agreement with the owners of the Tiwi property knowing it would not be performing the building works, and that such works would be undertaken by Mr Megarrell and/or Mega without any supervision by the Practitioner.

25. While the Board is encouraged by the Practitioner's statement that this conduct will never be repeated, the Board regards this offending as very serious. The Board agrees with the DBC submission that licence lending deliberately undermines the regime of regulating and maintaining professional standards established by the statutory framework.
26. That framework is established to protect the public from persons carrying out building works when they are not authorised to do so. While the Practitioner's *faith* in Mr Megarell's abilities to carry out the building works explains the Practitioner's reasoning, it does not excuse its decision to lend its licence. The Practitioner acted in a dishonest manner and exposed the owner of the property to potentially defective works, such works having been carried out by an unlicensed person without any supervision by the Practitioner.
27. The dishonesty was perpetuated by the Practitioner in the making of untrue declarations under s59(1)(a) of the Act on 31 July 2017 and s69 of the Act of 15 December 2017.
28. The Board acknowledges that, unlike in the *Inquiry into Geoffrey Martin* (decision of 21 January 2021), the Practitioner:
 - a. did not receive a financial benefit from its involvement in the licence lending;
 - b. did not provide BAS with false or misleading information during the audit process;
 - and
 - c. did not have the relevant invoices to provide to BAS.
29. The Board acknowledges that the Practitioner has not previously been referred to the Inquiry Board for breaches of the Act or Regulations.
30. In determining the appropriate disposition, the Practitioner is entitled to consideration in its favour for:
 - a. Its early admissions;
 - b. There is a full and frank acceptance of the wrongdoing by Mr Tsougranis;
 - c. The explanation as to the circumstances leading to the agreement with Mr Megarell, and the insight by the Practitioner that the agreement should not have been entered into;
 - d. There was no financial benefit to the Practitioner from the agreement with Mr Megarell;
 - e. The scope of the Practitioner's business operations, including its staffing levels and workload and contractual obligations.

31. The DBC has submitted that it is open to the Board to impose a period of suspension of the Practitioner's registration in relation to the licence lending. The Board is not of the view that such a disposition is necessary for the protection of the public and having regard to the matters herein. The Practitioner has no history of offending and has demonstrated insight and understanding of its improper conduct, and is unlikely to re-offend.
32. In considering the appropriate action under section 34T, the Board has had regard to the seriousness of the breaches and mitigating factors submitted by the Practitioner. The Board has had regard to the DBC's submissions on penalty and the submissions made by the Practitioner.
33. The Inquiry Board had determined that the appropriate action to be taken pursuant to section 34T is as follows:
 - a. The Practitioner is reprimanded for breaching regulation 41HF(1) and for licence lending, and this reprimand is to be published.
 - b. The Practitioner is to pay a civil penalty of 5 penalty units for the offence against regulation 41HF(1) AC of the Act.
 - c. The Practitioner to pay a civil penalty of 35 penalty units for the offence of licence lending.
34. The Inquiry Board has determined that no further action be taken by the Director pursuant to s34U of the Act.
35. The Inquiry board directs that a copy of this decision be published and distributed to the parties.

Rights of Appeal and Procedure for Commencing an Appeal under Division 4 of the Act

36. Section 35(d) of the Act states that a decision under s. 34P that a building practitioner is or is not guilty of professional misconduct is an appealable decision.
37. Under s. 36 of the Act, an appeal is to be made to the Local Court within 30 days of being notified of the decision.
38. Under s. 36A of the Act, subject to s. 36A (2), the appeal is to be a re-hearing of the evidence, or review of the information, before the Practitioners Board.

39. Section 36A (2) states that the Local Court may admit evidence or information that was not before the Practitioners Board only if the Court is satisfied there were special circumstances that prevented its presentation before the Board.
40. Section 36B states:
- a) in determining the appeal, the Local Court may:
 - b) confirm the appealable decision; or
 - c) vary the appealable decision; or
 - d) set aside the decision and substitute another decision that could have been made instead of the appealable decision.
41. The Court may give orders it considers appropriate to give effect to its decision under subsection (1).
42. Section 36C states that the decision of the Local Court is final and is not subject to appeal.
43. Section 36D states:
- (1) Commencing an appeal does not affect the operation or implementation of the appealable decision.
 - (2) However, the Local Court may make an order staying or otherwise affecting the operation or implementation of so much of the appealable decision as the Court considers appropriate to effectively hear and decide the appeal.
 - (3) The order:
 - (a) is subject to the conditions specified in the order; and
 - (b) has effect:
 - (i) for the period specified in the order; or
 - (ii) if no period is specified – until the Local Court has decided the appeal.

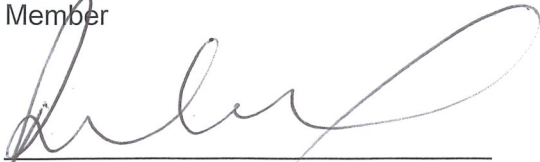
Dated 1 August 2023



Maria Savvas
Presiding Member



Paul Nowland
Member



Robert Cox
Member