Plumbers, Gasfitters and Drainlayers Board

JURY v SU

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/22)

Summary

Junxu (Jesse) Su, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer, was charged with carrying out gasfitting in a manner contrary to an enactment in relation to residential gasfitting carried out at a property in Auckland/Tāmaki Makaurau.

Mr Su pleaded guilty to the charge.

The Board considered Mr Su's offending was moderately serious as the mistakes with the work were basic errors and not what should be expected from an experienced certifying gasfitter. The Board recognised that Mr Su had pleaded guilty to the charge and cooperated throughout the proceedings. However, this was offset by his previous disciplinary offending.

The Board ordered Mr Su to pay a fine of $4,000, complete a course of training and pay $4,150 towards costs.

IN THE MATTER OF a disciplinary hearing pursuant to section 101 of the Plumbers, Gasfitters, and Drainlayers Act 2006

BETWEEN **MEGAN JURY**

Investigator

AND **JUNXU (JESSE) SU**
Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer, of Auckland/Tāmaki Makaurau

Registered Person

DECISION OF THE BOARD
23 January 2025

Hearing:	Held on the papers on 17 October 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Martin de Gouw, James Smith, Selwyn Hikuroa, Sue Simons
Counsel:	Elena Mok for the investigator Mr Su was self-represented
Legal advisor:	Juliet Philpott

Disciplinary hearing

1. On 17 October 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing on the papers to consider a complaint by Nicholas Ray against Junxu (Jesse) Su, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer. The complaint related to gasfitting work carried out at a residential property in Auckland/Tāmaki Makaurau.

Guilty plea

2. On 1 August 2024, Mr Su pleaded guilty to a single charge of carrying out gasfitting in a manner contrary to an enactment and signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr Su is a registered and licensed Certifying Plumber, Certifying Gasfitter, and Certifying Drainlayer.

    b. In or around November 2020, Mr Su carried out gasfitting work at a residential property in Auckland. The work involved the installation of a LPG station at the boundary fence, along with a regulator and associated pipework.

    c. Mr Su issued a gas certificate for the installation on 12 November 2020 certifying the installation as safe and compliant.

    d. Mr Ray, a registered and licensed certifying gasfitter, visited the property on 22 August 2023 to carry out unrelated gasfitting work. On his visit, Mr Ray identified issues with the installation. He obtained a copy of the gas certificate and identified Mr Su as the installer. Mr Ray subsequently made a complaint to the Board about Mr Su.

    e. Samuel Wood, a certifying gasfitter and technical advisor to the Board, identified the following issues with the work:

        i. the multilayer gas pipe was attached to the fence, which was contrary to clause 5.3.1(a) of AS/NZS 5601.1:2013 (**Standard**)

        ii. the installation did not have a label identifying the proprietary system which was contrary to clause 4.5.4 of the Standard

        iii. the gas pipework did not have sufficient protection from physical damage, which was contrary to clauses 2.4.1(c) and 5.3.17(b) of the Standard.

    f. Mr Wood assessed the installation as posing a moderate risk as the gas pipe could become damaged over time or be damaged in an accident such as through the use of garden equipment like a weed eater.

g. Mr Su stated that he thought there was an exception allowing gas pipework to be attached to a fence that was in sound condition. However, he acknowledged he had been mistaken and the exception only applies to brick fences.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Su had committed a disciplinary offence under section 89(a)(ii) of the Act.

Penalty and costs submissions

4. On behalf of the investigator, Ms Mok submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and to maintain proper industry standards. She submitted that the principles that were relevant to the assessment of penalty in disciplinary proceedings were the need to ensure rehabilitation, the importance of treating practitioners consistently where possible, and the need to impose the least severe penalty appropriate to ensure the principles and purposes of the disciplinary proceeding were met.

5. Ms Mok submitted that Mr Su's offending was moderately serious. The defects were assessed as posing a moderate risk of damage to the gas pipe, the work was carried at a residential property, and Mr Su had certified the work was safe and compliant when it was not. Ms Mok submitted that the quality of the work was of concern given Mr Su was a certifying gasfitter with over 10 years of experience. She submitted that his comments during the investigation had shown a poor understanding of the compliance requirements.

6. Ms Mok referred the Board to its previous decisions in the cases of *Cannell v Stokes* (2024/7), *Radovich v Mitchell* (2021/32), and *Thomas v Jaspers* (2018/28). In *Stokes*, Mr Stokes pleaded guilty to negligent or incompetent gasfitting in relation to the installation of a hot water heater, two gas fryers, and a gas grill at commercial premises. The Board considered Mr Stokes' offending was moderately serious and adopted a starting point for the fine of $4,000. Mr Stokes was also required to undertaken further training. In *Mitchell*, Mr Mitchell also pleaded guilty to negligent or incompetent gasfitting in relation to the conversion of a LPG gas installation to natural gas. Again, the Board considered Mr Mitchell's offending was moderately serious and adopted a starting point for the fine of $4,500. Finally, in *Jaspers*, Mr Jaspers pleaded guilty to carrying out gasfitting in a manner contrary to an enactment and without being authorised in relation to the installation of a water heater, hob, LPG bottle station and associated pipework at a residential property. Mr Jaspers was censured and fined $3,500.

7. Ms Mok submitted that Mr Su's offending was in a similar range to Mr Stokes but less serious than Mr Mitchell's where the defective gasfitting work was on a house. Mr Su's work had been on a boundary fence surrounding the property. She submitted that Mr Su's offending was also less serious than Mr Jaspers' as Mr Su was authorised to carry out gasfitting work.

8. Ms Mok submitted that a fine in the vicinity of $4,000 was consistent with the cases referred to. She submitted that Mr Su should also be required to undertake further training to mitigate the risk of him engaging in similar offending in the future.

9. In terms of personal factors, Ms Mok submitted that Mr Su could not rely on an unblemished disciplinary history. She referred to Mr Su's two previous disciplinary convictions for employing, directing, or permitting unauthorised people to carry out gasfitting work. In the first, in 2018, Mr Su had been ordered to pay a fine of $1,600 and in the second, in 2021, he had been ordered to pay a fine of $3,000. Ms Mok submitted that the investigator was not seeking an uplift to the proposed starting point for the fine in the present case because of this previous offending. However, she submitted that it was concerning that this was Mr Su's third time appearing before the Board in a relatively short timeframe.

10. Ms Mok accepted that a discount was available to reflect Mr Su's guilty plea and cooperation throughout the proceedings.

11. Ms Mok submitted that under section 107 of the Act, the Board could require Mr Su to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. She submitted that the usual starting point for an order of costs was half of the actual costs and acknowledged that Mr Su may be entitled to a reduction from this point to recognise his guilty plea and cooperation.

12. In his submissions on penalty, Mr Su asked the Board to waive any penalty. He submitted that the installation had been incorrect because he had not correctly remembered the compliance requirements. He submitted that the requirements had not been breached deliberately and there had been no consequences from the breach. He submitted that the initial plan had been to install the installation on the outside wall of the dwelling but the owner had installed a deck and narrow pathway and the location on the wall was no longer suitable.

13. Mr Su submitted that the installation created only a small risk as there was a concrete pad for the installation and the gas pipe had been protected by ducting pipe. The gas pipe connected directly to the regulator and he submitted that it was easy for people to identify that it was a gas component.

14. Mr Su submitted that he had contacted the property owner to fix the installation by installing a standalone post, protecting the gas pipe, and installing a label on the pipe. He submitted that he had also reviewed the Standard and when faced with an installation in an unusual position, he now double checked the Standard to make sure he complied with it. He submitted that he also regularly trained his gasfitters.

15. Mr Su described his personal circumstances for the Board and submitted that the economic environment was challenging with customers not paying for work but still having to pay suppliers.

Decision on penalty

16. When it comes to imposing penalties in disciplinary cases, the Board's primary considerations are the need to protect the health and safety of the public and maintain industry standards. Any disciplinary penalty should aim to ensure the competency of a practitioner by holding them to account for their offending, assist with their rehabilitation, and deter them and other practitioners from disciplinary offending.

17. Having considered the parties' submissions and the facts of the case, the Board determined that Mr Su's offending was moderately serious. The errors with the work were very basic mistakes and not things the Board's considered an experienced certifying gasfitter should be getting wrong. The Board also considered that Mr Su should be familiar with the Standard and should be consulting it regularly rather than leaving it until he had done something wrong.

18. With regard to Mr Su's previous disciplinary convictions, the Board considered that while the present case involved different offending to his previous cases, all of the cases seemed to suggest system failings on Mr Su's part. The Board considered that Mr Su may want to review his business systems and processes to ensure they were robust and he did not commit any further disciplinary offences in the future. The Board acknowledged that Mr Su was entitled to credit for his guilty plea, cooperation.

19. The Board determined that the appropriate penalty was a fine with a starting point of $4,000. The Board considered that any reduction in penalty to recognise Mr Su's guilty plea and cooperation was cancelled out by his previous disciplinary convictions and declined to make any change to the starting point. The Board also considered that Mr Su should have to complete a gasfitting refresher course in order to relicense.

Costs

20. Section 107 of the Act provides that, in addition to any penalty imposed, the Board may order a registered person to pay a reasonable sum towards the costs and expenses incidental to the investigation of the complaint, prosecution, and hearing. The Board was provided with a schedule of estimated costs for the investigation, prosecution and hearing amounting to $10,397.30.

21. The Board accepted that Mr Su's guilty plea and cooperation had helped to keep the costs down and determined that he should pay $4,150 towards costs which was around 40% of the total costs.

Publication

22. In accordance with the requirements of the Act, the Board ordered that details of the action taken against Mr Su should be recorded on the register of plumbers, gasfitters, and drainlayers in the usual way. Any other publication of the Board's orders would be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

23. Being satisfied that Mr Su was guilty of disciplinary offences under sections 89(g) and 89(b)(ii) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(f) of the Act, Mr Su pay a fine of $4,000.

    b. Pursuant to sections 106(1)(e) and 106(2)(c) of the Act, Mr Su must attend a gasfitting refresher course in order to renew his gasfitting practising licence after the 2024-2025 licensing year.

    c. Pursuant to section 107 of the Act, Mr Su pay $4,150 towards the costs of the investigation, prosecution, and hearing.

    d. Pursuant to section 74(1)(c)(viii) of the Act, details of the Board's orders in respect of Mr Su be published on the register.

Appeal

24. If Mr Su is dissatisfied with the whole or any part of this decision or these orders, he may appeal to the District Court under section 162(1)(f) of the Act. Any appeal must be brought within 20 working days from the date on which this formal written decision is received, or within any other timeframe the District Court may allow.

Dated 23 January 2025

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board