Plumbers, Gasfitters and Drainlayers Board

CANNELL v GELDERMAN

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/6)

Summary

Christiaan Gelderman, Certifying Drainlayer, was charged with carrying out negligent or incompetent drainlaying work. The charge related to the installation of a septic system at a residential property in Auckland/Tāmaki Makaurau.

Mr Gelderman pleaded guilty to the charge.

The Board considered Mr Gelderman's conduct was moderately serious. Leaching effluent from the system posed a risk to public health and Mr Gelderman was responsible for ensuring the installation complied with the Code. The Board accepted there were no aggravating factors in the case and that Mr Gelderman was entitled to credit for pleading guilty, being cooperative throughout the process, and having no previous disciplinary offending.

The Board ordered Mr Gelderman to pay a fine of $2,250 and pay $7,400 towards costs.

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

BETWEEN **MELISSA CANNELL**

Investigator

AND **CHRISTIAAN MAURITS GELDERMAN**
Certifying Drainlayer of Auckland/Tāmaki Makaurau

Registered Person

DECISION OF THE BOARD
23 May 2024

Hearing:	Held on the papers in Wellington/Te Whanganui-a-Tara on 27 March 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Barry Willcox, James Smith, Selwyn Hikuroa, Deborah Cranko
Counsel:	Elena Mok for the Investigator Jon Beck for the Registered Person
Legal advisor:	Sarah Leslie

Disciplinary hearing

1. On 27 March 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing on the papers to consider a complaint by Rick Duggan against Christiaan Gelderman, Certifying Drainlayer. The complaint related to drainlaying work carried out by Mr Gelderman at 138 Forest Hill Road, Henderson, Auckland/Tāmaki Makaurau (**property**).

Guilty plea

2. On 30 January 2024, Mr Gelderman pleaded guilty to one charge of carrying out negligent or incompetent drainlaying work and signed an agreed summary of facts, the materials parts of which were:

    a. Mr Gelderman is a certifying drainlayer and is the sole director of Helensville Drainage Ltd.

    b. Mr Duggan, engaged Helensville Drainage to repair the effluent disposal system on his property.

    c. Mr Gelderman and other employees from Helensville Drainage carried out the work between 4 December 2020 and 19 December 2020. The quoted work was to install a new soakage field, distribution box outlet, inspection riser and inspection lid on the existing septic tank system, add 100mm of topsoil on the back section, and storm water nova drains with cesspit to the back of the property.

    d. In the second half of 2021, sometime after the installation was complete, Mr Duggan noticed effluent pooling in the garden.

    e. Mr Duggan called Mr Gelderman numerous times to raise his concerns about the work, however Mr Gelderman advised he was not interested in looking at the issues with the soakage field.

    f. Mr Duggan engaged another certifying drainlayer to inspect the work. The certifying drainlayer identified that the distribution box outlets were not even resulting in effluent not being distributed evenly, and the soakage field was undersized.

    g. On 30 March 2022, Mr Duggan made a complaint to the Board about the work carried out at the property by Mr Gelderman.

    h. The drainlaying work carried out was negligent or incompetent because:

        i. The undersized effluent disposal system did not comply with clause G13.3.4(a) of the New Zealand Building Code (**Code**)

ii. The effluent disposal system was leaching effluent contrary to clause G13.3.4(f) of the Code, which in turn caused loss of amenity contrary to clause G13.1(b) of the Code.

i. Mr Gelderman stated that there were no design or engineer plans for the work he carried out at the property as this was not required for maintenance works of the system.

j. Mr Gelderman acknowledged he should have installed longer trenches but explained he maximised the area suitably available for soakage trenching in the 30 metres of trenching he did install. Mr Gelderman was of the view it was not possible to add an extra effluent soakage field at the section due to it being close to a small natural spring and because of the stormwater runoff on the section.

k. Mr Gelderman added 150mm of topsoil to the soakage field as he had tested the soil and noticed it was of poor quality.

l. Mr Gelderman attributed some of the problems with the effluent system to Mr Duggan's use of the town water supply, an unlimited water source, which meant it was easier to overload the old septic tank and soakage field. The old septic tank had poor structural integrity, was weak, and was leaking into the ground.

m. Mr Gelderman acknowledged he had refused to return to the property because he had not had a good experience when he completed the work.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Gelderman had committed a disciplinary offence under section 89(a)(i) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**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 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, treat practitioners consistently where possible, and to impose the least severe penalty appropriate in the circumstances.

5. Ms Mok submitted that Mr Gelderman's conduct in this case was moderately serious. She submitted that Mr Gelderman had a responsibility to ensure the drainlaying work was carried out in accordance with design or engineer plans and he should not have carried out the work in the absence of these. She also submitted that Mr Gelderman was responsible for ensuring the effluent disposal system complied with the Code. She submitted that Mr Gelderman should not have agreed to carry out the work if

insufficient space to extend the effluent soakage field, poor soil quality, and the poor structural integrity of the existing septic system meant he could not install a compliant drainage system. She submitted that the work he had done had resulted in an installation that was leaking effluent.

6. Ms Mok referred the Board to its previous decisions in the cases of *Thomas v Huband* (2020/19) and *Wood v Bartlett & Bartlett* (2021/4). In the *Huband* case, Mr Huband pleaded guilty to negligent or incompetent drainlaying in relation to a wastewater system that was not installed in accordance with a site suitability report and failed to meet the requirements of the Code. The Board adopted a starting point for the fine of $3,000. In *Bartlett & Bartlett*, both practitioners pleaded guilty to negligent or incompetent drainlaying work which involved the installation of an undersized drainage pit at a new build. One practitioner's offending was deemed to be low to moderate in seriousness and attracted a starting point for a fine of $2,500. The supervisor's offending was deemed moderately serious, and the Board adopted a starting point of $3,000.

7. Ms Mok submitted that Mr Gelderman's case was comparable to both *Huband* and *Bartlett & Bartlett*. She submitted that the offending in Mr Gelderman's case was more serious because the negligent or incompetent work resulted in leaching effluent onto the property creating a loss of amenity and risk of a biohazard. She accepted that Mr Gelderman remedied the issues before any risk of harm or loss occurred.

8. Ms Mok submitted that the appropriate penalty in this case was a fine with a starting point of $3,000 to $3,500. She submitted the investigator was not aware of any aggravating factors in this case and Mr Gelderman was entitled to credit for his guilty plea, cooperation, and lack of previous disciplinary offending.

9. Ms Mok submitted that the Board could require Mr Gelderman 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. She submitted that the level of costs ordered is a matter for the Board, taking into account factors such as any evidence of the registered person's financial circumstances and steps that parties have taken in the proceedings that have reduced or added to costs.

10. Ms Mok submitted that the Board may wish to consider a reduction from the starting point depending on its assessment of the extent of Mr Gelderman's cooperation and acceptance of responsibility for the offending. However, she submitted that while Mr Gelderman had pleaded guilty to the charge, his approach to the proceedings had increased the costs.

11. Mr Beck began his submissions by submitting that the appropriate penalty was a fine of $2,500. He submitted that Mr Gelderman was entitled to credit for his guilty plea and lack of any previous disciplinary offending.

12. Mr Beck accepted the Board's right to order costs and the general approach to ordering costs. However, he rejected the investigator's suggestion that Mr Gelderman's conduct had had the effect of increasing the costs.

13. Mr Beck submitted that Mr Gelderman was in a difficult financial position and provide information to support this claim.

14. Mr Beck submitted that owing to these factors Mr Gelderman was willing to make a contribution of $2,000 towards costs, even though this would be difficult for him to pay.

Decision on penalty

15. 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.

16. The Board considered Mr Gelderman's conduct in this case was moderately serious. The Board noted that the leaching effluent posed a risk to public health. The Board also noted that Mr Gelderman was responsible for ensuring the installation complied with the Code and he should not have agreed to carry out the work in circumstances where the site of the installation and the condition of the existing system were not appropriate for the solution he ultimately employed.

17. The Board considered that there were no personal aggravating factors in this case and Mr Gelderman's guilty plea, cooperation, and lack of previous disciplinary offending were mitigating factors in his favour.

18. The Board considered a fine was an appropriate penalty in this case and determined that the starting point should be $3,000. Recognising the mitigating factors in the case, the Board reduced the fine to $2,250.

Costs

19. 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 $18,666.95.

20. The Board accepted that Mr Gelderman's guilty plea and cooperation had avoided the costs of a full hearing and determined that he should pay $7,400 towards costs which was around 40% of the total costs.

Publication

21. The Board determined that the details of Mr Gelderman's disciplinary offending should be entered on the register. Any other publication of the Board's orders should be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

22. Being satisfied that Mr Gelderman was guilty of a disciplinary offence under section 89(a)(i) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(f) of the Act, Mr Gelderman pays a fine of $2,250.

    b. Pursuant to section 107 of the Act, Mr Gelderman pays $7,400 towards the costs of the investigation, prosecution, and hearing.

23. In accordance with section 74(1)(c)(viii) of the Act, the Registrar must publish the details of the action taken against Mr Gelderman on the register of plumbers, gasfitters, and drainlayers.

Appeal

24. If Mr Gelderman 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 May 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board