Plumbers,
Gasfitters and
Drainlayers Board

PIDGEON V RUDOLPH

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/9)

Summary

Robin Rudolph, Certifying Plumber, Certifying Gasfitter, was charged with negligently creating a risk of serious harm to any person or significant property damage through having caused gasfitting to be carried out. The charge related to gasfitting work carried out at a residential address in Auckland and involved the installation of a gas fire.

Mr Rudolph pleaded guilty to the charge.

The Board considered Mr Rudolph's conduct was at a high level of seriousness. The work was defective and some damage to property had occurred. He was responsible for the work carried out by the person he had engaged to complete it. The Board noted that Mr Rudolph had previous disciplinary offending but this offending postdated the offending in the present case. It also recognised that Mr Rudolph was entitled to credit for pleading guilty, being cooperative throughout the process, being remorseful, and taking proactive steps to change his practices.

The Board ordered Mr Rudolph to pay a fine of $4,500 and pay $4,700 towards costs.

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

BETWEEN **MICHAEL PIDGEON**

Investigator

AND **ROBIN JOEL RUDOLPH**
Certifying Plumber, Certifying Gasfitter of Auckland/Tāmaki Makaurau

Registered Person

DECISION OF THE BOARD
23 May 2024

Hearing:	Held by Zoom in Wellington/Te Whanganui-a-Tara on 27 March 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Barry Willcox, James Smith, Selwyn Hikuroa, Ming-chun Wu
Counsel:	Milan Djurich for the investigator Mr Rudolph represented himself
Legal advisor:	Sarah Leslie

Disciplinary hearing

1. On 27 March 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing by Zoom to consider a complaint by Hannah Hamling against Robin Rudolph, Certifying Plumber, Certifying Gasfitter. The complaint related to gasfitting work carried out by a person under Mr Rudolph's direction at 57 Clarence Street, Devonport, Auckland/Tāmaki Makaurau (**property**).

Guilty plea

2. On 27 November 2023, Mr Rudolph pleaded guilty to one charge of negligently creating a risk of serious harm to any person or significant property damage through having caused gasfitting to be carried out and signed an agreed summary of facts, the materials parts of which were:

    a. In July 2016, Mr Rudolph was engaged by Hannah Hamling, owner of the property, to install a Gazco Logic HE gas fire in an existing brick fireplace and chimney at the property. Mr Rudolph engaged another certifying gasfitter to carry out the installation.

    b. Mr Rudolph arranged for a builder to line the fire cavity prior to the installation of the fire and provided the required appliances clearances for this to be done.

    c. Mr Rudolph supplied the gas fire and all other materials required for the installation.

    d. On 2 December 2016, the certifying gasfitter engaged by Mr Rudolph went to the property to install the fire. He stated that the fire surround was already painted and finished, both inside and outside the cavity. The cavity was lined with a compressed sheet.

    e. The certifying gasfitter removed the existing steel flue and checked the chimney's condition, noting there was no soot or combustion products on the inside of the brickwork. He vacuumed the chimney to remove cobwebs and loose plaster, then installed the fire and the pipework for the fire from the gas meter.

    f. After installing the fire, the certifying gasfitter completed a gas pressure test, a measured ventilation of the room, and a spillage test, and commissioned the installation.

    g. At the end of July 2017, Ms Hamling noticed smoke coming out of the upper portion of the stainless-steel box of the fire. She also noted that the gib board seemed 'very hot'. Ms Hamling reported the issues to Mr Rudolph who instructed the certifying gasfitter to return to the property. He performed a

comprehensive check of the fireplace and completed remedial work on the installation which included adding silicone to the top of the fireplace.

h. On 20 October 2022, another certifying gasfitter was engaged to remove a bird trapped in the fireplace. On arrival he turned off the gas supply and upon inspection of the installation noticed a large amount of debris behind the fireplace. He determined that the chimney had not been swept before the gas fire was installed, the fire had been fitted directly onto wood, and the fireplace surround had been on fire at one point and had turned to charcoal. He also noted that a flue liner had not been installed within the chimney. This gasfitter advised Ms Hamling that the installation was dangerous and could not be used until it had been made safe.

i. Mr Rudolph was responsible for negligently creating a risk of serious harm to any person or significant property damage through having caused gasfitting to be carried out because:

   i. The installation had the following issues:

      A. The compressed sheet installed around the fireplace opening had been screwed in place rather than glued resulting in heat from the fire transferring through the screws into the timber frame causing charring of the timber.

      B. The zero-clearance box and flexi flue were not installed providing protection to the surrounding materials by channelling any excess heat into the flexi flue for safe discharge.

   ii. The issues specified above meant that the installation did not comply with the manufacturer's instructions and was unsafe contrary to regulation 9 of the Gas (Safety and Measurement) Regulations 2010.

   iii. Mr Rudolph was responsible for the state of the installation and how the work was carried out because he did not inspect the pre-installation work carried out by the builder or by the certifying gasfitter in installing the gas fire.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Rudolph had committed a disciplinary offence under section 89(b)(ii) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**).

Penalty and costs submissions

4. On behalf of the investigator, Mr Djurich submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and maintain proper industry standards. He 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. Mr Djurich submitted that Mr Rudolph's conduct in this case was moderately serious He submitted that his negligence in respect of the gasfitting risked the safety of the property owners as well as significant property damage, and that some damage had actually occurred. He noted that several years had passed since the conduct took place.

6. Mr Djurich referred the Board to its previous decisions in the cases of *Radovich v Hale and Cartwright* (2020/30), *Radovich v Kench* (2022/6), and *Radovich v Watkins* (2021/3). In the case of Mr Cartwright, he pleaded guilty to charges of negligently creating a risk of serious harm through gasfitting work and filing a false or misleading gas certificate after his supervisee installed a gas hot water heater inside a bathroom which was not designed for indoor use and signed off the work without inspecting it. The starting point of $8,000 was applicable in his case. In *Kench*, Mr Kench pleaded guilty to carrying out negligent or incompetent gasfitting and filing a false or misleading gas certificate. The work involved installing a gas hot water cylinder. There was no ventilation where cylinder was located risking unsafe levels of carbon monoxide and the cupboard overheating. The Board adopted a starting point for a fine of $6,000 in his case. In *Watkins*, Mr Watkins pleaded guilty to a charge of carrying out negligent or incompetent gasfitting work when he failed to follow proper health and safety standards in completing the work resulting in a fire that injured him requiring hospitalisation. The Board adopted a starting point of $5,500.

7. Mr Djurich submitted that the present case was most comparable to the *Kench* case, as, while there was no false certification of the work, some property damage did occur as a result of Mr Rudolph's negligence. He submitted that *Cartwright* was more serious than the present case given that carbon monoxide could enter the confined space. He submitted that *Watkins* was also comparable though slightly less serious than the present case.

8. Mr Djurich drew the Board's attention to Mr Rudolph's previous disciplinary history, *Thomas v Rudolph* (2018/16), citing it as a potential personal aggravating factor in this case. Mr Rudolph had installed a gas water heater with insufficient clearance below an opening and had filed a false or misleading gas certificate stating the work was safe or compliant. The Board had ordered Mr Rudolph to complete a course of training in commissioning domestic gas appliances and had fined him $2,800. He submitted that while it was concerning Mr Rudolph had previously been involved with another defective gas installation, it was relevant that the conduct in this current case pre-dated the conduct in his previous case and Mr Rudolph had

undertaken training in the intervening period. He further submitted that the offending was distinct from the present case where he had carried out the defective gasfitting himself, while in the present case he had negligently failed to inspect work carried out by others.

9. Mr Djurich submitted that the investigator would have sought a training order in this case had Mr Rudolph not already undertaken training as part of his previous disciplinary proceeding. He submitted that a fine with a starting point of $5,000 to $6,000 was therefore the appropriate penalty. He submitted that the Board might have considered increasing the fine on account of Mr Rudolph's previous disciplinary history, however an increase may not be appropriate given the previous offending post-dated this matter. He submitted that Mr Rudolph was entitled to credit for his guilty plea and cooperation.

10. Mr Djurich submitted that the Board could require Mr Rudolph to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. He submitted that the usual starting point for an order of costs was half of the actual costs. Mr Djurich submitted that the Board may wish to consider a reduction from the starting point for Mr Rudolph's cooperation and acceptance of responsibility for the offending.

11. Mr Rudolph accepted there was a serious risk to property and persons as a result of the offending. He expressed remorse for what had occurred and had accepted there would be consequences. He submitted that he had also learned from this experience. He stated that he did not understand why the chimney had not been swept on this job since this was something which always occurred in other fire installations. He stated that he had overlooked that the builder had screwed the panels on instead of gluing them but accepted full responsibility for this happening. He submitted that he would carry out work himself in future and ensure that any work carried out by other trades was properly inspected and checked. He submitted that if the fire place had been serviced sooner this issue may have been picked up but accepted this was not a justification for the work having been carried out incorrectly in the first place.

12. He touched on his difficult personal circumstances at the time of the offending. He stated that he did not have ability to pay a fine or costs up front.

13. In response to Board questioning he stated that the training he had completed following his previous disciplinary offending had been useful.

14. Mr Rudolph sought name suppression on the grounds that publication of the offending might result in reputational damage to himself and could affect his future employment prospects.

15. Mr Djurich referred the Board to the principle of open justice contained in section 113 of the Act. He recognising that the Board did have the power under section 113 to make a non-publication order if it considered it was proper to do so having regard

to the interests of any person and the public interest. However, Mr Djurich submitted that the default position was one of open justice and the threshold for name suppression was high.

16. Ms Djurich submitted that the grounds put forward by Mr Rudolph for seeking name suppression were insufficient to displace the principle of open justice and the investigator opposed name suppression in this case. He submitted that reputational damage was an ordinary consequence of disciplinary proceedings. He submitted that it was significant that name suppression was not granted in Mr Rudolph's previous disciplinary case and that Mr Rudolph's disciplinary history was already in the public domain.

17. In reply, Mr Rudolph submitted that he did not apply for name suppression in the first case because he was not aware that he could do so.

Decision on penalty

18. 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.

19. The Board considered Mr Rudolph's conduct in this case was at a high level of seriousness. The Board noted that there had already been some damage to property, due to the charring of the surround, and there had been the potential risk of more serious damage to property or harm to persons.

20. The Board noted Mr Rudolph's previous offending and that it post-dated the offending in the present case. It recognised that Mr Rudolph's early guilty plea and cooperation were mitigating factors in his favour. It also accepted that Mr Rudolph was remorseful and had taken proactive steps to change his practices. The Board noted that Mr Rudolph had successfully completed the training from his previous disciplinary matter. It also noted his difficult personal circumstances at the time of the offending.

21. The Board considered a fine was an appropriate penalty in this case and determined that the starting point should be $6,000. Recognising the mitigating factors, the Board reduced the fine to $4,500.

Costs

22. 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 $11,885.85.

23. The Board accepted that Mr Rudolph's guilty plea and cooperation had avoided the costs of a full hearing and determined that he should pay $4,700 towards costs which was around 40% of the total costs.

Name suppression

24. The Board did not consider that Mr Rudolph's personal interests in this case outweighed the public interest in open justice and his application for name suppression was declined.

Publication

25. The Board determined that the details of Mr Rudolph'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

26. Being satisfied that Mr Rudolph was guilty of a disciplinary offences under section 89(b)(ii) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(f) of the Act, Mr Rudolph pay a fine of $4,500.

    b. Pursuant to section 107 of the Act, Mr Rudolph pay $4,700 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

28. If Mr Rudolph 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