

## Before the Electrical Workers Registration Board

CE No. 22793

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Flavio Galvao a registered and licensed electrical worker) (EE269724. EW142800)  
(the Respondent)

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### Decision of the Board in Respect of the Conduct of an Electrical Worker Under s147G and s147M of the Electricity Act 1992

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Hearing Location:

Wellington

Hearing Type:

In Person (Respondent attended remotely)

Hearing Date:

17 October 2024

Decision Date:

29 October 2024

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Ms S Cameron, Registered Electrician

Mr J Hutton, Registered Inspector

Ms L Wright, Barrister

Mr T Tran, Barrister

Appearances: Ms S Calderwood for the Investigator, Mr Galvao (self-represented).

**Procedure:**

The matter was considered by the Electrical Workers Registration Board (the Board) under the provisions of Part 11 of the Electricity Act 1992 (the Act), the Electricity (Safety) Regulations 2010 (the Regulations) and the Board's Disciplinary Hearing Rules.

**Board Decision:**

The Respondent has committed disciplinary offences pursuant to s143(b)(ii) and s143F of the Act, relating to work carried out on or about 2 December 2023.

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### Summary of the Board’s Decision

- [1] The Board has determined that the Respondent has committed disciplinary offences, related to work carried out on or about 2 December 2023, as follows.
- a. one offence in breach of s143(b)(ii) of the Act and
  - b. one offence in breach of s143(f) of the Act.
- [2] The Respondent accepted that he had committed the three disciplinary offences, as charged, but the Board determined that the Respondent had not committed the second offence, as he was not licenced, on the date that the offence was alleged to have been committed, and therefore he was not able to certify work and provide a return. Accordingly, the second disciplinary offence, dated on or about 25 March 2023, was dismissed.
- [3] The Board determined that pursuant to s147M(1)(c)(i) of the Electricity Act 1992, the Respondent's licence is restricted for a period of 3 months. The restriction on the Respondent’s licence is that, any general or high-risk Prescribed Electrical Work that the Respondent carries out or supervises, must be verified for compliance with the appropriate legislation, by another electrical worker who is authorised to carry out that work prior to it being connected and livened.
- [4] The Respondent was also ordered to pay costs of \$250.00. A record of the disciplinary offending will be recorded on the public Register for a period of three years. The Respondent will be named in the decision and an article, naming the Respondent, will be published in the Electron. The Registrar will record the Board’s action in the Register of Electrical Workers in accordance with section 128(1)(c)(viii) of the Act. The Respondent will be named in this decision, which will be publicly available on the Board’s website.

## Introduction

- [5] The hearing resulted from a complaint about the conduct of the Respondent and a report under s147G (1) of the Act from the Investigator that the complaint should be considered by the Board.
- [6] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. Those allegations were subsequently amended, and a revised notice was issued on 1 October 2024. The revised charges were:

### First Alleged Disciplinary Offence

- [7] On or around 2 December 2023 at [Omitted], Mr Flavia Galvao has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out Prescribed Electrical Work being an offence under s 143(b)(ii) of the Act, IN THAT; he failed to ensure all live parts of the electrical installation (AC Isolator) were suitably covered or enclosed to prevent accidental contact with exposed conductive and live parts.

### Second Alleged Disciplinary Offence (Certification of original installation)

- [8] On or around 25 March 2023 at [Omitted], Mr Flavia Galvao has provided a false or misleading return being an offence under s 143(f) of the Act, IN THAT, he:
- a. Failed to verify through electrical testing and visual inspection that Prescribed Electrical Work was lawful and safe, and/or,
  - b. Falsely declared that Prescribed Electrical Work was lawful and safe when the Prescribed Electrical Work was unlawfully carried out and was electrically unsafe.

### Third Alleged Disciplinary Offence (Certification of remediation of installation)

- [9] On or around 2 December 2023 at [Omitted], Mr Flavio Galvao has provided a false or misleading return being an offence under s 143(f) of the Act, IN THAT, he falsely declared that Prescribed Electrical Work was lawful and safe when the Prescribed Electrical Work was unlawfully carried out and was electrically unsafe.

## Function of Disciplinary Action

- [10] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*<sup>1</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>2</sup>.

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<sup>1</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>2</sup> [1992] 1 NZLR 720 at p 724

- [11] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,<sup>3</sup> Collins J. noted that:

*“... the disciplinary process does not exist to appease those who are dissatisfied ... . The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”*

- [12] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in s143 of the Act. It does not have any jurisdiction over contractual matters.

### **Procedure**

- [13] The matter proceeded on the basis of an Agreed Statement of Facts. The Respondent accepted that he had committed the disciplinary offences as outlined above.
- [14] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his power or possession.
- [15] The Board proceeded to consider whether the Respondent had in fact committed the offences as outlined above. The Board then determined the appropriate action to take under s147M of the Act.

### **Evidence**

- [16] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>4</sup>. The Board notes, as regards evidence in proceedings before it, that the provisions of s147W of the Act apply. This section states:

*In all proceedings under this Part, the Board may, subject to s 156, receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not it would be admissible as evidence in a court of law.*

- [17] The general rule is that all facts in issue, or relevant to the issue in a case, must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence, but the Board did discuss the elements of each offence, to ascertain whether or not they were made out on the facts.
- [18] The Respondent was registered at all material times and therefore is subject to the disciplinary provisions under the Act.

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<sup>3</sup> [2016] HZHC 2276 at para 164

<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

### **First Alleged Disciplinary Offence**

- [19] In December 2023, the Respondent was registered and licenced.
- [20] The respondent attended the property in **[Omitted]**, on 2 December 2023, to remedy some issues with installation work. The installation work had been originally completed by an associate of the Respondent. The Respondent had purported to certify that this work was safe but had not attended the property or inspected the work.
- [21] The respondent accepts that, while at the **[Omitted]** property, on 2 December 2023, he conducted Prescribed Electrical Work. He further accepts that he created a serious risk of harm, by failing to ensure that all live parts of the electrical installation (AC Isolator) were suitably covered or enclosed to prevent accidental contact with exposed conductive and live parts.
- [22] The Respondent told the Board that he rushed the work, to catch a flight, and did not have the resources with him, required to do the work safely.

### **Second Alleged Disciplinary Offence (Certification of original installation)**

- [23] The second alleged offence relates to certification of an installation. On 25 March 2023, at the time when the second disciplinary offence was alleged to have occurred, the Respondent was not licenced. Regulation 68 of the Regulations outlines who may issue a certificate of compliance as follows:

#### **68 Who may issue a certificate of compliance**

A person may issue a certificate of compliance only if—

the person is **authorised** to certify the prescribed electrical work to which the certificate relates.....

- [24] Section 98 of the Act, explains that a person must be both registered and licenced to be authorised to undertake prescribed electrical work.

#### **98 Practising licence required**

(1) A registered person is not authorised to do, or assist in doing, prescribed electrical work that the person is otherwise authorised to do by virtue of that person's registration unless that person is the holder of a current practising licence issued under this subpart that authorises the person to do, or assist in doing, the work.

- [25] In s 2 of the Act, the definition of prescribed electrical work includes the testing or certification or inspection or supervision of prescribed electrical work. In this case, the work was the installation of a PV system, that is prescribed electrical work.

- [26] It follows that the Respondent needed to be licenced to complete the certification, as this was prescribed electrical work. He was not. Therefore, he could not issue a

valid certificate of compliance or electrical safety certificate. It further follows that, the document that the Respondent purported to complete was not certification in accordance with the requirements of the Act. Therefore, the Respondent did not commit the offence alleged.

- [27] It is however, an offence under regulation 69 of the Regulations, to purport to certify prescribed electrical work when the certificate of compliance does not comply with the requirements of [regulation 66\(1\)](#) and to issue a certificate of compliance in relation to particular prescribed electrical work when not authorised to certify that work. If prosecuted under regulation 69, an individual may be fined up to \$10,000. The Respondent has not been charged with breaching regulation 69 and the Board does not have jurisdiction to determine a possible breach of regulation 69.

### **Third Alleged Disciplinary Offence (Certification of remediation of installation)**

- [28] This allegation relates to 2 December 2023, when the Respondent falsely declared that the Prescribed Electrical Work was lawful and safe when the Prescribed Electrical Work was electrically unsafe and unlawfully carried out. The Respondent accepts this allegation. The Respondent was registered and licenced when he committed this disciplinary offence.

### **Board's Decision**

- [29] The Board has determined that the Respondent failed to comply with one offence in respect of s143(b)(ii) and one offence in respect of s143(f) of the Act
- [30] The second alleged disciplinary offence was dismissed, for the reasons outlined at [23] to [26] of this decision. The parties were advised of the fact that the Board was considering dismissing the charge. Counsel for the Investigator did not wish to be heard in relation to the proposed dismissal.

### **Penalty, Costs and Publication**

- [31] Having found that one or more of the grounds in s143 applies, the Board must, under s147M of the Act<sup>1</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [32] The Respondent was invited to make submissions at the hearing as regards penalty, costs and publication.
- [33] The Respondent explained that he is the only income earner for this family and that he has limited funds and is not able to pay a fine. He expressed a preference for community service. It is noted that this is not something that the Board has the power to impose.

## Penalty

- [34] The Board has the discretion to impose a range of penalties, which are set out in s147M of the Act. Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.<sup>5</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>6</sup>
- (a) protection of the public and consideration of the purposes of the Act;<sup>7</sup>
  - (b) deterring the Respondent and other Electrical Workers from similar offending;<sup>8</sup>
  - (c) setting and enforcing a high standard of conduct for the industry;<sup>9</sup>
  - (d) penalising wrongdoing;<sup>10</sup> and
  - (e) rehabilitation (where appropriate).<sup>11</sup>
- [35] Overall, the Board should assess the conduct against the range of penalty options available in s147M of the Act, reserving the maximum penalty for the worst cases<sup>12</sup> and applying the least restrictive penalty available for the particular offending.<sup>13</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>14</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>15</sup>
- [36] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.<sup>16</sup>
- [37] Based on the above, the Board adopted a starting point of 6 months licence restriction. Taking into account the Respondent's early guilty plea, remorse,

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<sup>5</sup> *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

<sup>6</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>7</sup> Section 3 Building Act

<sup>8</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>9</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>10</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>11</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

<sup>12</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>13</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>14</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>15</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>16</sup> In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

cooperation with the investigation and previous good character, the Board's penalty decision is that the Respondent's licence is restricted for a period of 3 months, pursuant to s147M(1)(c)(i) of the Electricity Act 1992. The restriction on the Respondent's licence is that any general or high-risk prescribed electrical work that the Respondent carries out or supervises, must be must be verified for compliance with the appropriate legislation by another electrical worker who is authorised to carry out that work prior to it being connected and livened.

- [38] The Board did indicate to the Respondent, at the hearing, he may be required to attend specific training. The Board has decided not to impose any training requirements.

#### Costs

- [39] Under s147N of the Act, the Board may require the Respondent to pay the Board any sum that it considers just and reasonable towards the costs and expenses of, and incidental to the investigation, prosecution and the hearing.

- [40] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case.<sup>17</sup>

- [41] In *Collie v Nursing Council of New Zealand*,<sup>18</sup> where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:

*But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*

- [42] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>19</sup> the High Court noted:

[46] *All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members*

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<sup>17</sup> *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

<sup>18</sup> [2001] NZAR 74

<sup>19</sup> CIV-2011-485-000227 8 August 2011



*should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.*

[47] *Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.*

[43] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings, simple, moderate and complex. The current matter was simple. Adjustments based on the High Court decisions above are then made.

[44] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$250.00 toward the costs of and incidental to the matter. In setting the amount of costs the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

#### Publication

[45] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register as required by the Act<sup>20</sup>. The Board can, pursuant to s147Z of the Act, also order publication over and above the public register notation. Under s147Z the Board may, if no appeal is brought within 20 working days of its decision, direct the Registrar to cause a notice stating the effect of the decision or order, the reasons for the decision or order, and (unless the Board directs otherwise) the name of the person in respect of whom the decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.

[46] As a general principle, such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.

[47] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>21</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>22</sup>. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>23</sup>. The High Court provided

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<sup>20</sup> Refer sections 128 of the Act

<sup>21</sup> Section 14 of the Act

<sup>22</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>23</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*<sup>24</sup>.

- [48] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest<sup>25</sup>. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [49] Based on the above, the Board will publish a general article in the *Electron* summarising the matter but will not order further publication. The Respondent will be identified in the *Electron*. The Registrar will record the Board's action in the Register of Electrical Workers in accordance with section 128(1)(c)(viii) of the Act. The Respondent will be named in this decision, which will be publicly available on the Board's website.
- [50] The Respondent should also note that the Board has not made any form of order under s153(3) of the Act which allows for prohibition of publication.

#### **Penalty, Costs and Publication Orders**

- [51] For the reasons set out above, the Board directs that:

**Penalty:** Pursuant to s147M(1)(c)(i) of the Electricity Act 1992, the Respondent's licence is restricted for a period of 3 months. The restriction placed on the Respondent's licence is that any general or high-risk Prescribed Electrical Work that the Respondent carries out or supervises, must be verified for compliance with the appropriate legislation by another electrical worker who is authorised to carry out that work prior to it being connected and livened.

**Costs:** Pursuant to s147N of the Act, the Respondent is ordered to pay costs of \$250.00 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

**Publication:** The Registrar shall record the Board's action in the Register of Electrical Workers in accordance with s128(1)(c)(viii) of the Act.

The Respondent will be named in this decision, which will be publicly available on the Board's website.

A summary of the matter will be published by way of an article in the *Electron* which will focus on the lessons to be learnt from the case. The Respondent will be named in the publication.

In terms of s147Z of the Act, there will be no further action taken to publicly notify the Board's decision.

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<sup>24</sup> *ibid*

<sup>25</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- [52] The Respondent should note that the Board may refuse to relicense an electrical worker who has not paid any fine or costs imposed on them.

The right to appeal Board decisions is provided for in s147ZA and s147ZB of the Act<sup>ii</sup>.

Signed and dated this 6<sup>th</sup> day of November 2024.



R Keys  
Presiding Member

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<sup>i</sup> **Section 147M of the Act**

- (1) *If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—*
- (a) *do 1 or more of the following things:*
    - (i) *order that the person's registration or practising licence (or both) be cancelled:*
    - (ii) *order that the person's provisional licence be cancelled:*
    - (iii) *order that the person may not apply to be reregistered or re-licensed before the expiry of a specified period:*
  - (b) *order that the person's registration or practising licence (or both), or the person's provisional licence, be suspended—*
    - (i) *for any period that the Board thinks fit; or*
    - (ii) *until that person does 1 or more of the things specified in subsection (2):*
  - (c) *order that the person's registration or practising licence (or both), or the person's provisional licence, be restricted for any period that the Board thinks fit, in either or both of the following ways:*
    - (i) *by limiting the person to the work that the Board may specify:*
    - (ii) *by limiting the person to doing, or assisting in doing, work in certain circumstances (for example, by limiting the person to work only on approved premises or only in the employ of an approved employer):*
  - (d) *order that the person be disqualified from doing or assisting in doing prescribed electrical work that the person would otherwise be authorised to do in that person's capacity as a person to whom this Part applies—*
    - (i) *permanently, or for any period that the Board thinks fit; or*
    - (ii) *until that person does 1 or more of the things specified in subsection (2):*
  - (e) *order the person to do 1 or more of the things specified in subsection (2) within the period specified in the order:*

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- (f) order the person to pay a fine not exceeding \$10,000:
  - (g) order that the person be censured:
  - (h) make no order under this subsection.
- (2) The things that the person can be required to do for the purposes of subsection (1)(b), (d), and (e) are to—
- (a) pass any specified examination:
  - (b) complete any competence programme or specified period of training:
  - (c) attend any specified course of instruction.
- (3) The Board may take only 1 type of action in subsection (1) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b), (c), (e) or (g).
- (4) No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an—
- (a) offence for which the person has been convicted by a court; or
  - (b) infringement offence for which the person has been issued with an infringement notice and has paid an infringement fee.
- (5) The Board must not exercise any authority conferred by this section in respect of any offence committed by any person before the date of that person's registration or, as the case may be, the date on which that person's provisional licence was issued if at that date the Board was aware of that person's conviction for that offence.
- (6) If a person is registered under Part 10 in respect of more than 1 class of registration, the Board may exercise its powers under subsection (1)(a) to (e) in respect of each of those classes or 1 or more of those classes as the Board thinks fit.]

**<sup>ii</sup> Section 147ZA Appeals**

- (1) A person who is dissatisfied with the whole or any part of any of the following decisions, directions, or orders may appeal to the District Court against the decision, direction, or order:
- (e) any decision, direction, or order under any of sections 108, 109, 120, 133, 137, and 153 or Part 11 (except section 147C).

**Section 147ZB Time for lodging appeal**

An appeal under section 147ZA must be brought within—

- (a) 20 working days after notice of the decision, direction, or order was given to, or served on, the appellant; or
- (b) any further time that the District Court may allow on application made before or after the expiration of that period.