

BPB Appeal No. A1202

IN THE MATTER OF

the Building Act 2004 (the Act)

AND

IN THE MATTER OF

an Appeal to the Building Practitioners Board under Section 330(1)(a) by **[the Appellant]** against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	11 March 2014 at [omitted]
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Appeal heard by:	Chris Preston, Deputy Chairman Richard Merrifield, Board Member Colin Orchiston, Board Member Mel Orange, Board Member
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Appearances by:	[The Appellant] [Omitted] (Witness) [Omitted] (Witness) [Omitted] (Support Person)
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1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for a Carpentry Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007¹ ("the Rules").
- 1.2 The Registrar of Licensed Building Practitioners ("the Registrar") declined the Appellant's application and notified his decision by letter dated 24 September 2013. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board ("the Board").
- 1.3 On 23 October 2013 the Appellant lodged an appeal to the Board against the Registrar's decision.

2.0 Licensing scheme

- 2.1 To become licensed, a person must satisfy the Registrar that they can meet all the applicable minimum standards for licensing.² The minimum standards are set out as "competencies" in Schedule 1 to the Rules. In determining whether a person meets a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1³.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁴

3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁵. However, the Board will not review matters outside the scope of the appeal⁶.
- 3.2 The appeal seeks the following relief:

The grant of a Carpentry Licence

- 3.3 In light of s335(4) and the Registrar's decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 2, 3, and 4 for a Carpentry Licence.

Carpentry Licence Competencies:

- Competency 2: Demonstrate knowledge of current building and trade practice.*
- Competency 3: Carry out planning and scheduling for carpentry work.*
- Competency 4: Carry out carpentry work.*

¹Incorporating amendments for 2008, 2009 and 2010.

²S286 of the Act and rule 4 of the Rules.

³Clause 4(2) of the Rules

⁴S330(1)(a) of the Act.

⁵S335(2) of the Act

⁶S335(4) of the Act

4.0 Registrar's report

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation⁷. The Board's Appeals Procedures require the Registrar to provide a report which includes all evidence used to reach the decision, including the assessors' recommendation.

4.2 The Registrar's report notes, at paragraph 20, the following from the Assessor's recommendations:

- "[The Appellant] provided certified copies of his Certificate of Due Completion of Apprenticeship (Carpentry) and Trade Certificate (Carpentry) which had been granted in 1975 and 1976 respectively.
- The two original referees provided were clients and not technical referees. The assessor requested replacement referees who had witnessed the applicant carrying out carpentry work within the past five years. A formal request was sent to provide him time to seek this further information.
- The two technical referees provided were both vague on when they had last seen [the Appellant] undertake carpentry work, and neither could confirm they had observed him carrying out a sufficient scope of work within the last five years.
- [Omitted] is a trade qualified carpenter and was a building inspector, but has been retired for the past four years. He can recall seeing [the Appellant's] work on one project, which the referee thought was between 5 and 6 years ago. He only witnessed this project at the foundations stage where [the Appellant] was putting right the previous builders work. [Omitted] has not seen [the Appellant's] work on other projects, and could not comment on his current competency in any of the four core competences. He was unwilling to recommend [the Appellant] for a licence.
- [Omitted] is a registered Plumber who has worked with the applicant periodically since the 1990's, while the applicant was working in such companies as [omitted]. One of the last jobs [omitted] can recall working on with [the Appellant] was approximately 5 years ago, and he can recall him doing some finishing work while the bulk of the work was done by two other builders. He does not know what [the Appellant] has been doing recently, as he has not seen him for at least 2 years.
- While [the Appellant] displayed a sufficient grasp of knowledge regarding the regulatory environment of the building construction industry, he could not provide referees who could confirm the scope of work he has been undertaking over the past five years. Without referees to support [the Appellant's] application he cannot provide sufficient evidence for knowledge of current building and trade practice; of carrying out the planning and scheduling necessary for carpentry work; or of [the Appellant] carrying out a sufficient range of practical carpentry work."

4.3 The Registrar concluded:

"The basis for the Registrar's decision to decline the application

⁷ clause 10 and 11 of the Rules

- I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.
- I reviewed the assessors report and [the Appellant's] application.
- I based my decision on the assessor's recommendation, for the reasons set out above. I did not consider that there was sufficient reason or concern to overrule the assessor's recommendation."

5.0 Appellant's Submissions

- 5.1 The Appellant included with his appeal photographs and plans of additional projects that he had undertaken, and a number of new references.
- 5.2 The Appellant appeared with three witnesses; [omitted], [omitted], and [omitted].
- 5.3 The Board asked questions of the Appellant and the witnesses.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competency for the carpentry licence:

Carpentry Licence Competencies:

Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.

- 6.2 The Board then considered Competencies 2, 3, and 4 for a Carpentry Licence. These competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.3 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.

Board's findings

- 6.4 The Board concluded that the Appellant provided evidence to demonstrate that he met sufficient performance indicators to satisfy the requirements of Competencies 2, 3, and 4 for a Carpentry Licence.

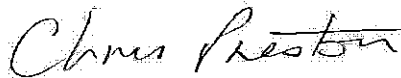
7.0 Board's Decision

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to reverse the Registrar's decision and licence [the Appellant] with a Carpentry Licence.
- 7.2 The Board directs the Registrar to issue a Carpentry Licence to [the Appellant] as soon as practicable.

8.0 Publication of Name

- 8.1 Pursuant to s339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- 8.2 The Board, having considered the circumstances of this appeal, directs that the name and the particulars of the Appellant are not to be made public.

Signed and dated this day of 13 March 2014



Chris Preston
(Presiding Member)

Advice Note (not part of Board's Decision)

Extracts from the Act:

"330 Right of Appeal

- (1) *A person may appeal to the Board against any decision of the Registrar to—*
(a) *decline to licence the person as a building practitioner;*
...
- (2) *A person may appeal to a District Court against any decision of the Board—*
(a) *made by it on an appeal brought under subsection (1);*
...

331 Time in which appeal must be brought

An appeal must be lodged—

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires."*