

BPB Appeal No. A1285

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:	31 May 2017 Auckland
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Appeal heard by:	Chris Preston Mel Orange Bob Monteith Robin Dunlop
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Appearances by:	[the Appellant] – Appellant [Omitted] – Interpreter
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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 28 March 2017. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 3 April 2017 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 of the Rules. In determining whether a person meets a Competency, regard must be given to the extent to which the person meets the Performance Indicators set out for that competency in Schedule1³.
- 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 1, 2, 3 & 4 for a Carpentry Licence.

Carpentry Licence Competencies:

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

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 **18**, the following from the Assessor's recommendations:

- The Appellant declared work history begins in 2012 and there is no learning or training phase.
- Neither of the applicant's referees were able to confirm that the full scope of carpentry work had been carried out by the applicant.
- During the phone interview the applicant was unable to answer questions related to the regulatory environment and current trade practice and did not demonstrate competencies 1 and 2 as a result.
- The applicants answers in the project records questionnaire were insufficient to support technical knowledge and his work experience (from his declared work history and statements by the referees) is limited to erecting framing, installing aluminum joinery and installing one type of cladding system only.
- Therefore none of the competencies for carpentry were demonstrated by the applicant.

4.3 The Registrar concluded:

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

- I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.
- I reviewed the assessor's 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 made an application for appeal of the Registrars decision not to grant a carpentry licence. He did not provide any supporting information but did submit at the appeal hearing various photos of work he had been involved in.

⁷ clause 10 and 11 of the Rules

- 5.2 The Appellant appeared with a witness who gave evidence as to building work he had carried out with the Appellant and as regards the Appellant's competence as a Carpenter.
- 5.3 The Board asked questions of the Appellant and received oral submissions from him.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of the following Competencies for the Carpentry licence:

Carpentry Licence Competencies

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

- 6.2 The Board then considered Competencies 1, 2, 3 & 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 **failed to provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies [1, 2, 3 & 4] for a Carpentry Licence.
- 6.5 The Board considered that the Appellant had a depth of knowledge and experience in certain aspects of carrying out building work but lacked sufficient breadth of knowledge in all the required aspects of building work for a licensed person with a carpentry licence. In particular he had limited knowledge of the regulatory environment and it is recommended that he undertake formal training in this area before reapplying to be licensed.

7.0 Board's Decision

- 7.1 **Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license [the Appellant] with a Carpentry Licence.**

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 2 day of June 2017



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.”*