

BPB Appeal No. A1260

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:	15 December 2015 at [omitted]
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Appeal heard by:	Chris Preston, Board Chair Bob Monteith, Board Member Robin Dunlop, Board Member Brian Nightingale, Board Member
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Appearances by:	[The Appellant] [Omitted] (Appellant's Employer) [Omitted] (Witness, via teleconference from [omitted])
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1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for a Roofing 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 9 September 2015. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 01 October 2015 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 Roofing 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 Roofing Licence.

Roofing Licence Competencies:

- *Competency 2: Demonstrate knowledge of current roofing trade practice*
- *Competency 3: Carry out planning for roof work*
- *Competency 4: Carry out roof 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 assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 18, the following from the assessor's recommendations:

- *“Competency 1, the Regulatory environment, there is insufficient evidence to support this key performance indicator as during the phone interview the applicant as unable to answer all questions posed to him. In his answers, he would often refer back to [omitted] Standards and the [omitted] Building Code.*
- *Competency 2 has not been sufficiently demonstrated as the applicant has little knowledge around current trade practice in relation to the NZ Building Code and interpretation of technical information. This was evident during the phone interview and was not able to be confirmed by his referees.*
- *Competency 3 planning and scheduling of the work and Competency 4 the carrying out of the work have not been able to be confirmed as no contact could be made with the two referees*
- *Every attempt was made to contact both referees however the phone number of his former employer went dead and the Training Institute had no knowledge of a tutor by the name of [omitted] (referee 2)*
- *Requested two additional referees that have worked with the applicant in NZ as applicant mentioned he'd been working here for the last 2 years. He wouldn't or couldn't provide any other referees.”*

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.*

⁷ clause 10 and 11 of the Rules

- *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 In the appeal application, the Appellant included a written submission for the Board.
- 5.2 At the appeal hearing, the Appellant confirmed he started a roofing apprenticeship through an [omitted] polytechnic. He then worked full time installing roofs on mostly new builds. Work slowed down in 2008, and he moved to New Zealand. Since moving to New Zealand, his work has included roof painting, restoration, and repairs. He has been working in roofing for 8 years, and has been working on concrete and clay roofing for the past 5 years.
- 5.3 The Board asked questions of the Appellant in relation to Competencies 2, 3, and 4.
- 5.4 The Appellant's employer gave a brief outline of his own experience, and then outlined the Appellant's role and experience within his company.
- 5.5 [Omitted], witness for the appellant, was phoned to give evidence. He gave an outline of his roofing experience and explained the scope of work that the Appellant had undertaken during, and shortly after, completing his apprenticeship.

6.0 Board's Consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for a Roofing Licence:

Roofing Licence Competencies:

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

- 6.2 The Board considered Competencies 2, 3 and 4 for a Roofing 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. In this respect the Board notes the provisions of section 314B(b), which requires the LBP to work only within his/her competence.

Board's findings

- 6.4 The Board considers that the Appellant has met sufficient of the performance indicators to demonstrate competency.

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 license [the Appellant] with a Roofing – Area of Practice 1 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 day of 21 December 2015



Chris Preston
(Board Chair)

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.”*