

**BPB Appeal No. A1092**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	14 May 2013 at [omitted]
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Appeal heard by:	Richard Merrifield Dianne Johnson Brian Nightingale	Presiding Member Board Member Board Member
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Appearances by:	The Appellant  The Registrar, Mark Scully, was available by telephone but was not required to participate.
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## 1.0 Introduction

- 1.1 The Appellant of [omitted] applied for Carpentry Licence under s 287 of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 7 August 2012. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 28 August 2012 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.<sup>2</sup> 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 1<sup>3</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>4</sup>

## 3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing<sup>5</sup> however the Board will not review matters outside the scope of the appeal<sup>6</sup>.
- 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 and 4 for a Carpentry Licence.

### **Carpentry Licence Competencies:**

*Competency 2: Demonstrate knowledge of current building and trade practices.*

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<sup>1</sup> Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup> S286 of the Act and rule 4 of the Rules.

<sup>3</sup> Clause 4(2) of the Rules

<sup>4</sup> S330(1)(a) of the Act.

<sup>5</sup> S335(2) of the Act

<sup>6</sup> S335(4) of the Act

*Competency 4: Carry out carpentry work.*

#### **4.0 Registrar's report**

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation<sup>7</sup>. 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:

" ...

- *From 1964 to 1968 [the Appellant] was an apprentice steam fitter and labourer to a commercial contractor.*
- *1968 to 1973 [the Appellant] was part of the [omitted].*
- *1973 to 1976 [the Appellant] was located in [omitted] carrying out labouring duties for a masonry contractor.*
- *From 1976 to 1992 [the Appellant] was a self employed joiner and builder carrying out work on residential buildings in [omitted].*
- *From 1992 to Present [the Appellant] is a self employed, semi retired joiner and cabinet maker in New Zealand. [The Appellant] has only built two residential homes in this period of time.*
- *[The Appellant] has a broad knowledge of the construction industry which he has applied to the construction of the projects he has provided.*
- *The supplied inspection details provided by [the Appellant] in his application highlight his proficiency/knowledge to construct a residential home.*
- *The assessor requested more recent projects that [the Appellant] has carried out but [the Appellant] was unable to provide any further information.*
- *The referees that [the Appellant] provided were all supportive of his application and confirmed that he has carried out the carpentry work. One of [the Appellant's] referees commented that he was a "timber artist".*
- *During the phone interview [the Appellant] was able to use construction jargon to outline technical details and he appeared up to date with construction protocols.*

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<sup>7</sup> clause 10 and 11 of the Rules

- *[The Appellant] by his own admission appears not to want to be involved in construction as a commercial enterprise but is looking to build himself another residential property purely as a self project.*
- *Given the time delay in both construction projects that [the Appellant] has provided and the intent of the licence criteria, [the Appellant] is unable to demonstrate Competencies 2 and 4."*

*The basis for the Registrar's decision to decline the application.*

4.3 The Registrar concluded:

*"21. I reviewed the assessors report and [the Appellant's] application.*

*22. 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 spoke to the two projects in his original application and provided photographs of the construction and finishing of the second project for the Board to view.

5.2 The Appellant expressed concern that the Assessor's report had noted at note 7:

*"Appellant appears competent to build his own home and his involvement is in all facets the process, historically Appellant has a broad knowledge of the construction industry which he has applied to the construction of the above projects"*

yet the Registrar acted on the Assessor's recommendation to decline him for a Carpentry licence because he failed to demonstrate:

*"the intent of the licence criteria to meet the commercial market in construction".*

5.3 The Appellant stated that he had been unable to find reference to the intention to use the licence as a requirement to be awarded the licence.

## **6.0 Board's consideration**

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the Carpentry Licence:

### **Carpentry Licence Competencies:**

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

*Competency 3: Carry out planning and scheduling for carpentry work.*

- 6.2 The Board then considered Competencies 2 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.
- 6.4 The Board considered that the intended use of the licence is not relevant in deciding whether or not a person meets the competencies. That is only relevant when ensuring that the Licensed Building Practitioner will always work within their competency.
- 6.5 The Board is concerned that the Appellant relies on the building inspector to update him with changes in the industry. That is not a responsibility for Territorial Authorities inspectors and the onus is on the Appellant to ensure that he remains current with relevant legislation, regulations (such as code requirements) and trade practices.

*Board's findings*

- 6.6 The Board considered that the Appellant provided sufficient evidence in responding to the Board's questioning to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2 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 license 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 invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.
- 8.3 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 5 day of June 2013.

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Richard Merrifield  
Presiding Member

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**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.”*