

**BPB Appeal No. A1025**

**IN THE MATTER OF**

The Building Act 2004

**AND**

**IN THE MATTER OF**

An Appeal to the Building Practitioners' Board by the Appellant against the Decision of the Registrar to Decline the Appellant's Carpentry Licensed Building Practitioner Application

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**DECISION OF THE BUILDING PRACTITIONERS' BOARD**

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**1. Introduction**

- 1.1 On 1 June 2011 the Appellant applied for a carpentry licence under S.288(2) of Building Act 2004 ("the Act") and the Licensed Building Practitioners' Rules 2007<sup>1</sup> ("the Rules").
- 1.2 The Registrar of Licensed Building Practitioners ("the Registrar") appointed under S.310 of the Act, declined the application under Rule 12 and the Appellant was notified of the Registrar's decision on 29 June 2011, together with his right to appeal the decision within 20 working days to the Building Practitioners' Board ("the Board").
- 1.3 On 2 September 2011<sup>2</sup>, the Appellant appealed to the Board against the Registrar's decision under S.330(1)(a) of the Act, seeking that, on the basis of information provided, the Board grant a carpentry license.
- 1.4 The Board decided to hear the appeal on 14 November 2011. The Appeal was considered in accordance with the Board's "Appeals Procedure".
- 1.5 The Board provides that appeals are considered by way of a "re-hearing", and that the burden of proof lies with the Appellant (Clauses 3.10.17 and 3.10.18 of the Board's Appeal Procedure).
- 1.7 The following were present for the hearing of the appeal:

*Board Members and support staff:*

David Clark	Board Member (Presiding Member)
Jane Cuming	Board Member
Brian Nightingale	Board Member

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

<sup>2</sup> Received by Board Secretary on 6 September 2011.

Dianne Johnson      Board Member  
William Smith      Board Member

Pam Lwee              (Acting Board Secretary)

*Appellant and supporting witnesses:*  
The Appellant

*Registrar*

Mr Mark Scully

1.8      The Board received the Registrar's report on 14 October 2011.

## **2.      Background**

2.1      The Appellant has had considerable experience, firstly as a hammer hand and then, independently, building houses over the last five to six years. He owns and operates a building company which employs two labourers/hammer hands.

2.2      The company, under the Appellant's direction undertakes a variety of building works but primarily, newer homes particularly around the xxx area.

## **3.      The Registrar's Report & Submissions**

3.1      In order to become licensed, the Appellant was required to satisfy the Registrar that he met the applicable minimum standards for licensing (under section 286 of the Act). These minimum standards are set out in Schedule 1 to the Rules, in the form of "competencies" which must all be satisfied.

For carpentry, these competencies are:

- *Competency 1:* Demonstrate knowledge of the regulatory environment of the building construction industry.
- *Competency 2:* Demonstrate knowledge of the current building and trade practice.
- *Competency 3:* Carry out planning and scheduling of carpentry work.
- *Competency 4:* Carry out carpentry work.

In order to be licensed an applicant must demonstrate that he/she meets all the required competencies of the Licence Class.

3.2      These competencies may be demonstrated by meeting some or all of the performance indicators of the Rules. In carrying out an assessment, the Assessor must use the "Assessor Guidelines" prescribed by the Registrar (see Rule 11(1)).

3.3      The competencies address a broad range of skills and knowledge that a competent practitioner should be able to demonstrate.

- 3.4 The Registrar must take into consideration the Assessor's recommendation before making a decision (under Rule 12(2)).
- 3.5 Reliance on the Assessor's recommendation does not mean that the Registrar cannot reach a different view about an applicant from the view reached by the Assessor. The Registrar is required to maintain an independent view. In the normal course of events, however, the Registrar will accept a recommendation of an Assessor, unless there are strong reasons for not doing so.
- 3.6 In making the recommendation to decline the application, the Assessor found that the Appellant did not meet the requirements of Competency 2. In particular the following reasons were provided:
- a) The Appellant had an insufficient work history and career progression;
  - b) The Appellant lacked practical trade experience;
  - c) Referee 1 was supportive of the Appellant's carpentry skills, however Referee 2 was not. Referee 2 explained that the Appellant could not comply with Competency 2 (demonstrate knowledge of current building and trade practice).

#### **4. The Appellant's Submissions**

- 4.1 The Appellant made oral submissions and also provided the following further evidence:
- a) He explained that Referee 2 (who was referred to by the Assessor as the "second referee") was not a referee relied upon by the Appellant. Referee 2 is apparently a Training Advisor for BCITO and that there may have been some personal differences between Referee 2 and the Appellant. He also provided a copy of a Training Plan visit signed by Referee 2 confirming Referee 2's view of the Appellant as being "competent" and suggested it was inconsistent for Referee 2 to now suggest otherwise;
  - b) The Appellant also provided references from Referee 1, a Structural Engineer, confirming that the professional relationship between the Appellant and the engineering firm and confirming the quality of work was sufficient to be passed by the engineering site inspectors;
  - c) A further reference from a Referee 3, a Weathertightness Inspector who also confirmed that the type and nature of work undertaken by the Appellant and confirmation that the Appellant is competent for licensing in respect of carpentry;
  - d) The Appellant also provided evidence of work which had been undertaken by himself (through his company) being a range of different housing projects which included the nature of the work, site inspections which had been undertaken and copies of the various Code Compliance Certificates issued in respect of those projects.

## **5. Board's Consideration**

- 5.1 The Board questioned the Appellant about his work history and in particular concentrated on his knowledge of the building industry. This involved a range of questions of a technical and generic nature in order for the Board to satisfy itself that the Appellant was able to demonstrate that he possesses sufficient knowledge for Competency 2.

## **6. Board's Decision**

- 6.1 The Board is satisfied that the Appellant possesses knowledge of current building and trade practices sufficient to meet the requirements for Competency 2. In particular the Board finds;

- a) The Appellant is involved in projects of a sufficient degree of complexity that without the knowledge of current building and trade practices it is unlikely that he would be able to complete the projects in the manner that he has;
- b) He was able to answer and respond to the questions posed by the Board in such a way that a person who did not possess this knowledge, simply could not answer in the manner that he did;
- c) That the references that he referred to supported the fact that he was competent in this area;
- d) That the Board accepts the evidence given by the Appellant outweighs the unfavorable reference provided by Referee 2.

- 6.1 In the circumstances the Board has concluded that the Appeal shall be upheld and the Appellant shall be awarded a carpentry license.

## **7. Costs**

- 7.1 Pursuant to S.338 of the Act, the Board may order any party to the appeal to pay any other party any or all of the costs incurred by the other party in respect of the appeal.<sup>3</sup>
- 7.2 The Board invited the Appellant and Registrar to provide submissions in respect of costs. The Registrar advised that he was not seeking costs. The Appellant however was unclear as to whether or not he wished to seek costs and in the circumstances the Appellant is once again invited to seek costs which, for the sake of clarity will be "out of pocket expenses" which are as a direct result of the appeal. Such costs must be supported by evidence and shall be received no later than fourteen days from the receipt of this decision by the Appellant.

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<sup>3</sup> The "parties" are the Appellant and the Registrar. The Board is not a party.

**8. Publication of Name**

- 8.1 Pursuant to S.339 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 indicated that he had no firm view on the matter.
- 8.3 The Board having considered the circumstances of this further directs that the name and particulars of the Appellant are not made public.

Signed and dated this 6<sup>th</sup> day of December 2011

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David Clark  
(Presiding Member)

**Advice Note (not part of Board's Decision)**

Extracts from the Building Act 2004:

**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; or*
  - (b) *suspend or cancel his or her licensing.*
- (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); or*
- ...

**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.*