

**BPB Appeal No. A1281**

**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 [Omitted] 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:	21 March 2017 in Auckland
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Appeal heard by:	Chris Preston, Board Chairman Mel Orange, Board Member Brian Nightingale, Board Member Robin Dunlop, Board Member
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Appearances by:	N/A
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## 1.0 Introduction

- 1.1 [Omitted] (“the Appellant”) of Auckland applied for a Carpentry Licence under s287 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 26 January 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 21 February 2017 the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 On 13 March 2017 the Appellant requested that the appeal be heard on the papers.
- 1.5 The Appellant declined the opportunity to have a prehearing conference.

## 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 1, 2, 3 and 4 for a Carpentry Licence.

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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

### **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.*

#### **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 assessor's recommendation.

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

- *In making the recommendation that [Omitted] application for an Carpentry licence should be declined, the assessor noted the following:*
  - *There has been no training phase and the applicant's experience is 3 1/2 years.*
  - *[Omitted] does not carry out the full scope of carpentry work from set out to completion. This was confirmed by phone with the applicant.*
  - *[Omitted] referees were also unable to confirm the full scope of work for Carpentry. His referees were supportive of his licensing based on the work that he does carry out.*
  - *[Omitted] was unable to answer all questions posed to him related to the regulatory environment or technical standards.*

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*

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

*sufficient reason or concern to overrule the assessor's recommendation."*

## **5.0 Appellant's Submissions**

- 5.1 In the appeal application, the Appellant included some photographs of foundation work, a copy of a Unitech qualification and a short statement as regards his comments on the Registrar's report.

## **6.0 Board's Consideration**

- 6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of the Competencies for a Carpentry license.
- 6.2 The Board then considered Competencies 1, 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. 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 found that the Appellant did not meet the performance indicators for a Carpentry Licence.
- 6.5 The Board did not consider, on the balance of probabilities, that sufficient evidence had been provided by the Appellant to satisfy the Board that the Appellant met the performance indicators of competencies 1 to 4 inclusive of a carpentry license.
- 6.6 Had the Appellant appeared before the Board and answers questions as to his experience and knowledge in Carpentry then the Board may well have been able to ascertain whether he met the Competencies but the evidence as provided was insufficient. It should be noted that the burden on an appeal is on the Appellant to establish, on the balance of probabilities, that they do meet the competencies.

## **7.0 Board's Decision**

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision and not license [Omitted] 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 6<sup>th</sup> day of April 2017



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Chris Preston  
(Board Chairman)

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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.”*