

BPB Appeal No. A1367

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

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	29 March 2022, in Auckland
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Appeal heard by:	Mr M Orange, Legal Member (Presiding) Mr D Fabish, LBP, Carpentry Site AOP 2 Ms J Clark, Legal Member Ms K Reynolds, Construction Manager
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Appearances by:	[Omitted] (the Appellant) [Omitted] (the Interpreter)
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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 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 22 December 2021. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board ("the Board").
- 1.3 On 19 January 2022, 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 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 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.

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 Applicant claims to have been working as a carpenter from 2001 to 2006 then worked as a cleaner through to 2019 when he started back as a carpenter again. These dates do not match the Application form it is also noted that his role was mainly cladding and standing frames in the application.
- During the interview with the Applicant the Assessor heard the Applicant being given prompts from a 3rd party, it also became clear that his regulatory and building knowledge was limited to cladding, standing frames, could be some gib fixing, the Applicant answered no correct regulatory knowledge questions. The Assessor put approximately 30 building questions to the Applicant and he answered 4 correctly. The Applicant was asked if he had an NZS/3604 and E2/AS1. The Applicant stated that he did have one but through it out in a house move along with the Level 3 Carpentry certificate he claimed to have. The Assessor asked if the Applicant could get a copy, he said he couldn't.
- The Applicant could not answer most of the basic building methodology questions including site location, set out, levels, foundation, concrete MPA, steel set out and including FFLs, piles, timber and concrete, depth of piles, all pile and joist fixings, bracing, truss fixings, (this is after the Applicant told the Assessor that he carried out this work on one of the projects) also he could not tell the Assessor what CCC documents are required for the completion of the project.
- The Applicant claims to have carried out, all of the above work.
- The Assessor notes that there may be some doubt with both Referees around the amount of time that they have supervised or viewed the Applicants work with both of them recommending the Applicant be granted an LBP Carpentry Licence.

4.3 The Registrar concluded:

- 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."

⁷ clause 10 and 11 of the Rules

5.0 Appellant's Submissions

- 5.1 The Appellant included statement with his appeal summarising the reasons why he should be granted a licence and his dissatisfaction with the assessor process and the assessor's findings.
- 5.2 The Board asked questions of the Appellant at the hearing about competencies 1, 2 and 3. The questioning did not progress beyond competency 3 as the Appellant's answers had not satisfied the Board that he met sufficient of those competencies to be granted a licence. Specifically, the Appellant only had a very superficial knowledge of regulatory requirements and had limited knowledge and experience in certain key aspects of carpentry work such as set out and foundations. It was apparent that he was experienced and knowledgeable in areas such as framing. A carpentry licence, however, allows the holder to carry out and supervise all aspects of carpentry work. The Board is not able to limit it to those areas where an applicant shows that they are competent.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met none of the Competencies for the Carpentry licence.
- 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.

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 for a Carpentry Licence.
- 6.5 The Appellant is encouraged to gain further experience and knowledge of a wider range of carpentry work under the supervision of a Licensed Building Practitioner before reapplying to become licensed.

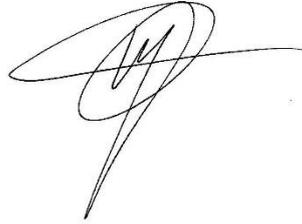
7.0 Board's Decision

- 7.1 **Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license [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 11th day of April 2022.



Mr M Orange
(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."*