

BPB Appeal No. A1052

IN THE MATTER OF

The Building Act 2004

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

1. Introduction

- 1.1 The Appellant applied for Carpentry Licence under S.288(2) of Building Act 2004 ("the Act") and the Licensed Building Practitioners' Rules 2007¹ ("the Rules").
- 1.2 The Registrar of Licensed Building Practitioners ("the Registrar") declined the application and the Appellant was notified of the Registrar's decision on 20 April 2012, together with his right to appeal the decision within 20 working days to the Building Practitioners' Board ("the Board").
- 1.3 On 2 May 2012², 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 upholds his application and grants him Licensed Building Practitioner status in Carpentry.
- 1.4 The Board decided to hear the appeal in Auckland on 29 May 2012. The Appeal was considered in accordance with the Board's "Appeals Procedure".
- 1.5 A pre-hearing teleconference was convened by the Acting Deputy Presiding Member of the Board with the Appellant on 18 May 2012. The Board's Secretary was in attendance. The Appellant did not attend the pre-hearing teleconference and did not respond to Board Secretary's messages arranging and advising of the pre-hearing teleconference.
- 1.6 The Procedure provides that appeals are considered by way of a "re-hearing"³, and that the burden of proof lies with the Appellant (Clauses 3.10.17 and 3.10.18 of the Board's Appeals Procedure).

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 2 May 2012.

³ Refer S.335(2) of the Act.

1.7 The following were present for the hearing of the appeal:

Board Members and support staff:

| | |
|-----------------|--|
| David Clark | Acting Deputy Chair Member (Presiding) |
| Colin Orchiston | Board Member |
| Jane Cuming | Board Member |
| William Smith | Board Member |

Pam Lwee Board Secretary LBP Appeals and Complaints

Appellant:

The Appellant was not present.

Registrar and support:

Mark Scully

1.8 The Board received the Registrar's report of 16 May 2012.

2. Background

2.1 The Appellant submitted his application to the Registrar to be licensed as a building practitioner in the Carpentry licence class on 16 December 2011.

2.2 On 22 December 2011, the Registrar wrote to the Appellant advising him that his application for Carpentry was incomplete, and was on hold awaiting new Carpentry project record completed within the last 5 years, and a completed project records questionnaire.

2.3 On 12 January 2012 the Appellant provided additional information and on 18 January 2012 the Registrar wrote to the Appellant advising him that his application for Carpentry was now complete and had proceeded to assessment.

2.4 Assessment Systems Limited (ASL) reviewed the application.

2.5 The assessment was completed by the Assessor on 28 February 2012, and finalised by ASL on 15 March 2012. The Assessor recommended to the Registrar (under Rule 11) that the Appellant's application for a Carpentry licence should be declined. The Assessor concluded that the Appellant did not meet Competency 4 for a Carpentry licence.

2.6 After taking into account the recommendation of the Assessor and the requirements of S.286 of the Act, the Registrar decided (under Rule 12) to decline the application for a Carpentry licence, on the basis that Competencies 2 and 4 had not been demonstrated by the Appellant.

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 S.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 current building and trade practice.*
- *Competency 3: Carry out planning and scheduling for carpentry work.*
- *Competency 4: Carry out carpentry work.*

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

3.2 These competences may be demonstrated by meeting some or all of the performance indicators of the Rules. In carrying out an assessment, the Assessor appointed by the Registrar must use the "Assessor Guidelines" prescribed by the Registrar. The Registrar must take into consideration the Assessor's recommendation before making a decision but is not bound by the recommendation.

3.3 In making the recommendation to decline the application, the reasons below were recorded by the Assessor:

- The Appellant had only provided evidence of working on a building site for 6 months from May 2004 to December 2004.
- The Appellant was not able to provide further information to show that he had worked on building projects in the last 5 years.
- The Appellant does not work on new builds or construction sites, but supplies and installs kitchens/bathrooms.
- The Appellant provided insufficient evidence through the performance indicators in Competency 4 to meet the minimum standard for the Carpentry licence.

3.4 The Registrar's agreed with the Assessor's recommendation that the Appellant did not demonstrate Competency 4 (*Carry out carpentry work*). However, the Registrar also decided that there was insufficient evidence to demonstrate that Competency 2 (*Demonstrate knowledge of current building and trade practice*) had been met.

3.5 As a result, the Registrar's decision was to decline the application for a Carpentry licence.

4. The Appellant's Submissions

- 4.1 The Appellant has taken no steps to progress his appeal other than advising the Board's Secretary that he preferred to rely upon the grounds set out in his original application together with his undated letter submitted when his appeal was lodged.
- 4.2 He did not attend the pre-hearing telephone conference and although advised, of the time, date and location of the hearing, confirmed to the Board Secretary that the appeal be dealt with based on the information currently before the Board.
- 4.3 The Board, noting the Appellant did not wish to attend at the appeal, but did not wish to withdraw his appeal either, determined that the matter could proceed on an ex parte basis and from the written information which the Appellant had submitted to the Board.

5. Board's Consideration

- 5.1 The original Registrar's decision was to decline the Appellant's application for licensing on the grounds that he had failed to meet the minimum requirements for:
- *Competency 2: Demonstrate knowledge of current building and trade practice and,*
 - *Competency 4: Carry out carpentry work.*
- 5.2 The Board, having considered the information before it agrees with the Registrar that there is no further information which would persuade the Board to overturn the Registrar's decision on appeal.

6. Board's Decision

- 6.1 Pursuant to S.335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to issue the Appellant with a Carpentry Licence. The appeal is therefore declined.**

7. Costs

- 7.1 Pursuant to s338 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.⁴
- 7.2 Without the Appellant being present, it was difficult for the Board to determine costs on an ex parte basis. The Registrar, nevertheless wished to reserve the decision of costs and accordingly the Board resolves that costs can be dealt

⁴ The "parties" are the Appellant and the Registrar. The Board is not a party

with by way of written submission. In the circumstances the Registrar is invited to make submissions as to costs (if any) within ten working days from the receipt date of this decision and the Appellant may respond to those submissions five working days thereafter.

8. 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 13th day of June 2012

David Clark
Deputy Chair
(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.*