

BPB Appeal No. A1087

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

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	11 June 2013 at [omitted]
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Appeal heard by:	Richard Merrifield Colin Orchiston Dianne Johnson Jane Cuming	Presiding Member Board 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 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 16 July 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 16 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.² 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 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 s355(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 1, 2 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 4: Carry out carpentry work.*

¹ Incorporating amendments for 2008, 2009 and 2010.

² S286 of the Act and rule 4 of the Rules.

³ Clause 4(2) of the Rules

⁴ S330(1)(a) of the Act.

⁵ S335(2) of the Act

⁶ S335(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 Procedures⁸ 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 24, the following from the Assessor's recommendations:

“...

- *From 1985 to 1990 [the Appellant] was an apprentice carpenter and joiner in [omitted].*
- *1992 to 1996 [the Appellant] carried out shop fitting work in [omitted] along with being labour only carpenter.*
- *2002 to 2004 [the Appellant] was carrying out work on one to two storey houses in [omitted].*
- *2005 to 2011 [the Appellant] was a head carpenter and self employed builder carrying work out on new homes and alterations in [omitted].*
- *2011 to present [the Appellant] is carrying out non consented work in [omitted].*
- *The two projects that [the Appellant] submitted in his application were both completed within the last five years. However both projects were located in [omitted].*
- *The assessor requested more information from [the Appellant] in regards to the detail of work undertaken in New Zealand since July 2011.*
- *The work that [the Appellant] has been undertaking since returning to New Zealand in [omitted] has been small non consented work, which includes, decks, pergola's, retaining walls, repairs and maintenance.*
- *[The Appellant's] referees were supportive of his ability to carry out carpentry work on the projects he provided.*
- *[The Appellant] answered most of the regulatory knowledge questions adequately. However [the Appellant] did not know what E2 / AS1 referred to.*
- *[The Appellant] is aware of the introduction of the cavity batten system, but was unable to provide any details of building wrap, window flashing, or the inspections that are required for external cladding systems.*
- *[The Appellant] does not have sufficient current knowledge of New Zealand's structural and weathertight construction requirements, therefore he is unable to sufficiently demonstrate Competencies 2 and 4.”*

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

4.3 The Registrar concluded:

⁷ clause 10 and 11 of the Rules

- “25. I reviewed the assessors report and [the Appellant’s] application.
26. 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.
27. However, I did not agree with the assessor that [the Appellant] achieved Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry. [The Appellant] may have answered the set questions put to him, but he does not have sufficient current knowledge for New Zealand’s structural and weather tight construction requirements, specifically E2/AS1.”
28. I noted that [the Appellant] was not licensed in [omitted].”

5.0 Appellant’s Submissions

- 5.1 The Appellant prepared and submitted with his application new information about work he has undertaken in both [omitted] and in New Zealand. He presented this to the Board by PowerPoint presentation.
- 5.2 The Appellant appeared with a witness who is a subcontractor he has worked with on a number of projects. The witness was able to confirm via the photograph slideshow the work performed by the Appellant at a refurbishment of a relocated house.
- 5.3 The Appellant clarified for the Board that his apprenticeship entailed doing manufacture and installation of specialist joinery work in [omitted].
- 5.4 After the appeal the Appellant communicated with the Board on a separate issue which had no bearing on this appeal.

6.0 Board’s consideration

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

Carpentry Licence Competency:

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

- 6.2 The Board then considered Competencies 1, 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 notes that conflicts between the Appellant’s submission and his responses to their questions raised doubt as to the weight that could be given to his submission.

- 6.5 The Board considered that the Appellant failed to provide evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements for a Carpentry Licence.

Board's findings

- 6.6 On the evidence before them, the Board considered that it would be contrary to the objectives of the Licensed Building Practitioners' scheme to grant a Carpentry Licence to the Appellant. It concluded that the Appellant did not meet the competency requirements for a Carpentry Licence.

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 the Appellant with a Carpentry Licence. The appeal is therefore declined.**

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 and the terms of this decision, directs that the name and the particulars of the Appellant are not to be made public.

Signed and dated this 24 day of June 2013

Richard Merrifield
(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.”*