

**BPB Appeal No. A1113**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	12 February 2013 at [omitted]
Appeal heard by:	Dianne Johnson Board Member (Presiding) Brian Nightingale Board Member Colin Orchiston Board Member Bill Smith Board Member
Appearances by:	[omitted] (the Appellant) [omitted] (witness for the Appellant)  The Registrar, Mark Scully, was available by telephone but was not required to participate.

## **1.0 Introduction**

- 1.1 The Appellant of [omitted] applied for a Carpentry Licence under s 288(2) 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(s) and notified his decision by letter dated 10 September 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 11 October 2012<sup>2</sup>, 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.<sup>3</sup> The minimum standards are set out as “competencies” in Schedule 1 to the Rules. In determining whether a person met 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>4</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>5</sup>

## **3.0 Scope of the appeal**

- 3.1 An appeal proceeds by way of rehearing<sup>6</sup> however the Board will not review matters outside the scope of the appeal<sup>7</sup>.
- 3.2 The appeal seeks the following relief:  
*“To be licensed in Carpentry”.*
- 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 2, 3 and 4 for a Carpentry licence.

### **Carpentry Licence competencies**

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

<sup>2</sup> Received by Board Secretary on 11 October 2012.

<sup>3</sup> S286 of the Act and rule 4 of the Rules.

<sup>4</sup> Clause 4(2) of the Rules

<sup>5</sup> S330(1)(a) of the Act.

<sup>6</sup> S335(2) of the Act

<sup>7</sup> S335(4) of the Act

- 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>8</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 the following from the Assessor's recommendations:

" ...

- *In 1985 The Appellant began his career as an apprentice builder while working for [omitted]. In 1990 he spent one year making and installing aluminium joinery.*
- *In 1991 the Appellant was employed for six months as a builder by [omitted].*
- *In 1992 the Appellant was employed by [omitted] as a builder working on interior fit-outs.*
- *In 1994 the Appellant worked for [omitted] as a carpenter working on general building maintenance and alterations.*
- *2004 to present, the Appellant has been operating his own company, [omitted], carrying out small alterations, repair work and the installation and manufacture of kitchens.*
- *The assessor requested two new Carpentry projects, which have been completed within the last five years. The Appellant was unable to do so.*
- *The Appellant requested that the assessor continue with his assessment with the projects that were supplied.*
- *Both referees that the Appellant provided could confirm his carpentry, technical, communication and organisational skills. However, they could not confirm any residential building work concerning the external envelope and weather tightness that was carried out by the Appellant over the last five years.*
- *The Appellant was unable to demonstrate Competencies 2, 3 and 4 because he could not show sufficient evidence showing repeatability of work carried out over the recommended time frame.*

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

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<sup>8</sup> clause 10 and 11 of the Rules

4.3 The Registrar concluded:

“23. *I reviewed the assessor’s report and the Appellant’s application.*

24. *I based my decision on the assessor’s recommendations, for the reasons set out above. I did not consider that there was sufficient reason or concern to overrule the assessor’s recommendations.”*

## **5.0 Appellant’s Submissions**

5.1 The Appellant opened by saying that he had been building for 30 years and considered the performance indicators for the competencies as common practice and therefore had not appreciated the need to explain his skills and experience in these in detail to the Assessor. He had also experienced difficulty in articulating his skills, knowledge and experience to the Assessor.

5.2 The Appellant proceeded to describe in more detail to the Board the work involved in the two projects that he had submitted in his application.

5.3 The Appellant submitted that although he spent most of his last 5 years carrying out kitchen additions and alterations, this work still involved the skills and competencies required to meet many of the performance indicators required to demonstrate competency for carpentry licence competencies 2, 3 and 4.

5.4 The Appellant explained to the Board that his work prior to the kitchen fit out business involved many additions and alteration projects, including a number of re roofing projects. This was verified by the Witness.

5.5 The Appellant submitted that inclusion in the licensing scheme would improve his receipt of industry information, changes and trends, therefore helping to update his knowledge.

5.6 The Witness for the Appellant spoke highly of the Appellant’s carpentry knowledge and skills and his attitude and care in the work that he carried out.

## **6.0 Board’s consideration**

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the Carpentry licence:

### **Carpentry Licence:**

*Competency 1: Demonstrate knowledge of the regulatory environment.*

6.2 The Board then considered Competencies 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.

- 6.4 The Board noted that the Appellant submitted evidence of having completed his Carpentry and Joinery Apprenticeship.
- 6.5 The Board noted that the Appellant's initial response to questioning was often short and brief and that a degree of encouragement and prompting along with specific reference to work examples was required to enable the Appellant to provide sufficient depth in his responses.
- 6.6 The Board notes some concern with the Appellant's responses to questioning on his Health and Safety and Quality Assurance practices and encourages the Appellant to seek professional development in these and other areas to ensure that his knowledge and practices remain current.
- 6.7 The Board considered the Appellant's recent work experience in kitchen additions and alterations along with his prior experience in additions and alterations work with [omitted].

*Board's findings*

- 6.8 The Board considered that the Appellant provided sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2, 3 and 4 for a Carpentry licence.

**7.0 Board's Decision**

- 7.1 Pursuant to s335(3) of the Act the Board has resolved to reverse the Registrar's decision and license the Appellant with a Carpentry Licence.**
- 7.2 The Board directs the Registrar to issue a Carpentry Licence to the Appellant as soon as practicable.**

**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 directs that the name and the particulars of the Appellant are not to be made public.

Signed and dated this ..... day of ..... 2013.

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Dianne Johnson  
(Presiding Member)

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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.”*