

BPB Appeal No. A1121

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:	12 March 2013 at [omitted]
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Appeal heard by:	Brian Nightingale Colin Orchiston Jane Cuming Dianne Johnson	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 a Carpentry Licence under s288(2) of the Act and the Licensed Building Practitioners Rules 2007¹ (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Carpentry Licence application and notified his decision by letter dated 8 October 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 7 November 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 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 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 2, 3 and 4 for a Carpentry Licence.

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

Carpentry Licence:

- 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 recommendation⁷. 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 21, the following from the Assessor's recommendations:

" ...

- *The Appellant began his construction career in 1978 as a general carpenter in [omitted] working for various construction companies for five years.*
- *In 1990 the Appellant was employed as a Project Superintendent in [omitted], supervising the construction of commercial properties for five years.*
- *The Appellant began his own construction company in 1995 and project managed the re-models of historic houses in [omitted] for nine years.*
- *In 2004 the Appellant moved to [omitted] and began another construction company, still operating, specialising in remodel and repairs.*
- *The Appellant moved to New Zealand in July 2011 and was employed by [omitted] for three months as a Project Manager/ Loss Adjuster. In October 2011 he began working for [omitted] as a Project Manager until January 2012.*
- *The Appellant is currently working as a building consultant for his former employer [omitted] and as an Insurance Adjuster and Project Manager for [omitted] in [omitted]. He is also starting up his own consultancy firm, specialising in building consents and code compliance consultations.*
- *Both projects supplied were [omitted] and do not involve the required weather tightness of the external envelope of a residential building.*
- *The small amount of carpentry work that was required on the projects supplied was completed by the main contractor/ carpenter.*

⁷ clause 10 and 11 of the Rules

- *The assessor requested additional projects that involved the necessary competencies for a Carpentry licence. The Appellant was unable to do so.*
- *Both of the Appellant's referees were supportive of his application and could confirm his management skills but they could not confirm either his carpentry skills or any carpentry work carried out on any project over the last 5 years.*
- *The Appellant has not supplied any projects that involve him carrying out or supervising the carrying out of carpentry work.*

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

4.3 The Registrar concluded:

- "22. *I reviewed the assessor's assessment report and the Appellant's application.*
23. *I based my decision on the assessment report for the reasons set out above. I did not consider that there was sufficient reason or concern to overrule the assessor's recommendation."*

5.0 Appellant's Submissions

5.1 The Appellant submitted that:

- a. He is an [omitted] who has been in New Zealand for approximately 3 years.
- b. He has a [omitted] from [omitted], which would allow him to apply for "[omitted]" status in the [omitted] which he submitted is similar to a Design LBP.
- c. He was a Licensed General Contractor in both the [omitted] and [omitted] and latterly the [omitted] with 20 years plus experience in residential, commercial, and heavy construction.
- d. That he owned the relevant contracting companies and was responsible for managing his employees.
- e. Because of the similarity around construction and in particular carpentry, the fact that he was regarded as a competent and qualified builder in the [omitted] should also be recognised in New Zealand.

5.2 The Appellant then talked in detail and demonstrated with using photos, his role in the construction of a house he built for himself in [omitted] in 2001.

5.3 The Appellant submitted evidence to show that he was currently working in [omitted] carrying out [omitted].

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 of the building construction industry.

- 6.2 The Board then considered Competencies 2, 3 and 4. 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 considered that the Appellant demonstrated a thorough general knowledge of domestic and light commercial construction, in the [omitted].
- 6.5 The Appellant was unable to demonstrate knowledge of weathertightness and construction specific to New Zealand. Nor could he demonstrate an awareness of NZ timber standards and residential construction methods including construction of the external envelope. In general the Board found he lacked knowledge of current NZ building and trade practice and therefore found he did not provide evidence of meeting Competency 2.
- 6.6 The Appellant did not provide any specific evidence in relation to Competency 3 but the Board considered he may have been able to demonstrate this competency by using examples from his current role as a project manager, had he chosen to present that evidence.
- 6.7 In his Appeal application the Appellant stated he did not have any documented Carpentry experience in NZ. In response to the Board's questioning the appellant recalled some carpentry work he had undertaken on a house in [omitted]. The appellant advised a builder had undertaken the consented work. The appellant also described some minor [omitted] remedial work he had undertaken in recent weeks. None of the work described was verified or sufficient evidence for the Appellant to meet Competency 4.
- 6.8 The Board considered that the Appellant failed to provide evidence to demonstrate that he met sufficient performance indicators of Competency 2, 3 and 4 to be considered to meet the requirements of the Carpentry Licence.

Board's findings

- 6.9 The Board, therefore, concluded that the Appellant did not meet the competencies 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 directs that the name and the particulars of the Appellant are not to be made public.

Signed and dated this day of 2013.

Brian Nightingale
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."*