

BPB Appeal No. A1124

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

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| Date and location of hearing: | 5 November 2013 at [omitted] |
| Appeal heard by: | Chris Preston, Presiding Member Dianne Johnson, Board Member Mel Orange, Board Member Richard Merrifield, Board Member |
| Appearances by: | [The Appellant] [Omitted] [Omitted] The Registrar's delegate, Stanil Stanilov, was available by telephone but was not required to participate. |

1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for a Carpentry and Site Area of Practice (AOP) 2, or in the alternative AOP 1, 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 15 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 19 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 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 and Site (AOP) 2 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 and Competencies 2, 3, 4 and 5 for a Site (AOP) 2 Licence.

Carpentry Licence Competencies:

Competency 2: Demonstrate knowledge of current building and trade practice.

Competency 3: Carry out planning and scheduling for 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

Competency 4: Carry out carpentry work.

Site AOP 2 Licence Competencies:

Competency 2: Apply technical knowledge of construction methods and practice.

Competency 3: Organise and manage building projects.

Competency 4: Manage personnel.

Competency 5: Provide technical supervision.

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 23, the following from the Assessor's recommendations:

- [The Appellant] has 47 years' experience working as a Carpenter.
- From 1965 to 1968 [the Appellant] was first employed as a Hammer Hand for [omitted] in [omitted], where he learnt the trade by undertaking formwork, tying re-enforcing and placing concrete.
- From 1969 to 1970 [the Appellant] was employed by [omitted] as a Carpenter working alongside other builders on new homes and skyline garages.
- From 1970 to 1975 [the Appellant] was employed by [omitted] in [omitted] as a Carpenter building new residential homes and alterations.
- From 1976 to 1979 [the Appellant] was a self-employed building contractor.
- From 1979 to 1993 [the Appellant] was employed as a Manager of [omitted] in [omitted].
- From 1994 to present [the Appellant] is a Manager or Business Owner of [omitted] where his role involves building new residential homes, employing staff, contracting builders and training apprentices.
- The assessor queried [the Appellant] around his work history, which he stated was true and correct. The assessor then asked [the Appellant] whether he started in the industry as a thirteen year old child in 1965, which [the Appellant's] reply was that it was incorrect.
- There was further doubt around [the Appellant's] work history by one of his nominated referees, [omitted]. [Omitted] stated that he has known [the Appellant] for over 50 years. The assessor queried [omitted] as to [the Appellant] starting work at thirteen years of age; [omitted] stated [the Appellant] has a good imagination.

⁷ clause 10 and 11 of the Rules

- [Omitted] stated that [the Appellant] had been an apprentice Butcher from 1967 to 1970, where he then worked for [omitted] from 1971 with [omitted]. [The Appellant] then moved to [omitted] for a period.
- [Omitted] confirmed [the Appellant's] role at the truss and frame plant, where [omitted] also worked. [The Appellant] then became a Foreman and a Salesman for [omitted] before setting up [omitted] from 1995 to 2010, which was placed into liquidation.
- [The Appellant] then started [omitted] from 2010 to 2012. [Omitted] states that [the Appellant] has been an Excavator for the last twelve months carrying out excavations.

Carpentry

- The assessor queried [the Appellant] around his work history after doubt was cast on it by his referee [omitted] and by himself. After the assessor's conversation with [the Appellant] it appears that his declared work history is not totally true and correct.
- The assessor asked [the Appellant] if he could provide further referees that would be able to confirm him carrying out the Carpentry work on the projects provided and ascertain his true role on site. [The Appellant] was able to provide two additional referees.
- Both referees that [the Appellant] provided related to Project 1. One of the referees, [omitted], stated that he himself built Project 1 and that [the Appellant] only spent three or four days in total on site and did very little Carpentry work.
- The second referee [the Appellant] provided confirmed [omitted] was the Carpenter on Project 1 and could not confirm observing [the Appellant] carrying out the Carpentry work on the project.
- There is insufficient evidence by the four referees [the Appellant] provided to confirm he carried out the Carpentry work on the projects he submitted.
- There is no repeatability of work or recent work activity to support [the Appellant] carrying out Carpentry work in the last three to five years. This was confirmed by his referees.
- [The Appellant] has answered all of the regulatory environment questions correctly and has a good understanding of the building consent process.

Site

- [The Appellant] has provided insufficient evidence to confirm he undertook the site supervision work on the projects he submitted.
- Since 1995 [the Appellant] has been a business owner with no true role as a Site Supervisor.
- The assessor asked the appellant to provide two new projects that would meet the criteria for Category 2 buildings. [The Appellant] declined to provide the additional information.
- The assessor queried the appellant for more accurate dates for Project 2, which [the Appellant] stated that he did not remember.

- There is no repeatability of work or recent work activity to support [the Appellant] carrying out site supervision in the last three to five years. This was confirmed by his referees.
- [The Appellant] has answered all of the regulatory environment questions correctly and has a good understanding of the building consent process.

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

4.3 The Registrar concluded:

24. *I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.*
25. *I reviewed the assessor's report and [the Appellant's] application.*
26. *I based my decision on the assessor's recommendation, for the reasons set out above.*
27. *There has been no response from [the Appellant] regarding several phone and email requests for additional information. As per [the Appellant's] request I extended the due date to 12 October 2012 so he could provide the information; however there still has been no additional information received.*

5.0 Appellant's Submissions

- 5.1 The Appellant included in his appeal fresh references in addition to those that were included in his original application. At the hearing, he submitted a further two references and a company's official certificate of incorporation.
- 5.2 The Appellant appeared with two support witnesses; [omitted] and [omitted]. [Omitted] read a short statement in support of the appeal. A telephone call was made to [omitted] – a BCITO field officer who attested to the Appellant's carpentry experience in [omitted].
- 5.3 The Board asked questions of the Appellant specifically around his work and business experience and the degree to which he was actually involved in building work or supervising work.

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 Competencies:

Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.

- 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.

Board's findings

- 6.4 The Board considered that the Appellant provided evidence to demonstrate that he met sufficient performance indicators to satisfy the requirements of Competencies 2, 3 and 4 for a Carpentry Licence.
- 6.5 In reaching its findings the Board noted that the Appellant was, in relation to competency 2.3, lacking in current knowledge and understanding of the technical information. The Appellant will need to ensure that his knowledge is updated and maintained.

Site AOP 2 Licence Competency:

Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.

- 6.6 The Board then considered Competencies 2, 3, 4 and 5 for a Site AOP 2 Licence. These competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.7 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.
- 6.8 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 of Competencies 2, 3, 4 and 5 for a Site AOP 2 Licence.

Board's findings

- 6.9 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Site AOP 2 Licence.
- 6.10 The Board then considered whether the Appellant had provided sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2, 3, 4 and 5 for a Site AOP 1 Licence.
- 6.11 The Board considered that the Appellant provided evidence to demonstrate that he met sufficient performance indicators to satisfy the requirements of Competencies 2, 3, 4 and 5 for a Site AOP 1 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 licence [the Appellant] with a Carpentry Licence and a Site 1 Licence.
- 7.2 The Board directs the Registrar to issue a Carpentry Licence and Site 1 Licence to [the Appellant] as soon as practicable.
- 7.3 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to licence [the Appellant] with a Site Area of Practice 2 Licence. This aspect of 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.....

Chris Preston
(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.”*