

BPB Appeal No. A1131

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 [omitted] (witness for the Appellant) [omitted] (witness for the Appellant) [omitted] (witness for 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 2 November 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 4 December 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 s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 2 and 4 for a Carpentry Licence.

Carpentry Licence Competencies:

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 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:

"...

- *From 1990 to 1992 [the Appellant] carried out an apprenticeship in Carpentry.*
- *From 1992 to 2008 [the Appellant] worked for several building companies as a Carpenter.*
- *From 2008 to March 2012 [the Appellant] worked on a [omitted] as a [omitted]. His work included carrying out farm work and building work when required.*
- *April 2012 to present [the Appellant] is carrying out contract building on residential projects. His role includes both performing the carpentry work and carrying out some site supervision.*
- *The assessor requested additional information regarding the roles and responsibilities of the sub-trades for the original projects submitted. The assessor also requested new technical referees and new projects.*
- *The original project received for [the Appellant's] Carpentry application was re-submitted as part of the additional information requested for his Site assessment. [The Appellant's] original Site project was re-submitted as part of the additional information requested for his Carpentry licence assessment.*
- *[The Appellant] was unable to provide any new Carpentry projects.*
- *Two of [the Appellant] referees could not confirm him carrying out the work on the projects provided.*
- *[The Appellant] answered all of the regulatory questions correctly and he has a sound knowledge of NZS3604. [The Appellant] has attended recent learning activities.*
- *[The Appellant] was unable to demonstrate Competencies 2, 3, 4 and 5 for a Site licence and Competencies 2 and 4 for a Carpentry licence."*

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

4.3 The Registrar concluded:

"24. I reviewed the assessors report and [the Appellant's] application.

25. 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.

⁷ clause 10 and 11 of the Rules

26. *I note that [the Appellant] has provided no evidence to support his claim that he completed a Carpentry apprenticeship."*

5.0 Appellant's Submissions

- 5.1 The Appellant appeared with 3 witnesses: his [omitted], his [omitted] and the contracts manager of a housing company with whom he contracts.
- 5.2 The Appellant spoke to and answered questions from the Board about project 2 and other recent projects which he had done at a [omitted]. The Appellant also talked about other projects he had worked on since he began in the building industry in 1989.
- 5.3 The Appellant confirmed that he had undertaken the construction of 2 new dairy sheds, 2 large implement sheds and the set out and finishing of 3 relocated houses during the 4 years that he was at the [omitted].
- 5.4 The contracts manager as witnesses confirmed that the Appellant was engaged for remedial and finishing work.
- 5.5 His brother, as witness, confirmed the Appellant's role as a [omitted] on a large commercial project, and involvement in as facets of all residential construction.
- 5.6 His [omitted], as witness, explained that he had taught his [omitted] traditional carpentry skills, and in his view he [omitted] had completed an informal apprenticeship.
- 5.7 In the Appellant's supporting documentation he submitted further references to those provided in the original application.

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.

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

- 6.2 The Board then considered Competencies 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.
- Board's findings*
- 6.4 The Board was satisfied the Appellant has a broad experience and depth of knowledge in the building industry.

6.5 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 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 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 2 day of July 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.”*