

BPB Appeal No. A1152

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:	14 May 2013 at [omitted]
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Appeal heard by:	Dianne Johnson Brian Nightingale Colin Orchiston Richard Merrifield	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 s 288(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 Appellant’s application and notified his decision by letter dated 10 December 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 February 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 3 and 4 for a Carpentry Licence.

Carpentry Licence Competencies:

- Competency 3: Carry out planning and scheduling for carpentry work.*
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 S 335(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 19, the following from the Assessor's recommendations:

“...

- *[The Appellant] emigrated from the [omitted] in 2005 having 15 years of building experience working on residential housing projects. Immediately prior to moving to New Zealand [the Appellant] worked on commercial construction projects.*
- *[The Appellant] was employed by [omitted] from October 2005 to March 2011 as a sponsored migrant carrying out work as a Carpenter. His role involved working on both commercial and residential projects. [The Appellant] was under supervision of a foreman during this time.*
- *From April 2011 to present [the Appellant] is currently employed as a Carpenter carrying out work on one to two storey residential housing projects, commercial shops, and insurance projects.*
- *[The Appellant] lacks confidence in both site set out and foundation work and he would only attempt this work under supervision.*
- *[The Appellant] works alongside qualified builders on all aspects of residential construction but is tasked with taking the lead on interior Carpentry works only.*
- *[The Appellant's] referees confirmed that he would rather take direction from more qualified and experienced Carpenters in areas of construction in which he lacked competency.*
- *[The Appellant's] New Zealand work history and career progression is limited due to the lack of opportunity to gain experience to satisfy Competency 3 and Competency 4.”*

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

4.3 The Registrar concluded:

“20. *I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.*

21. *I reviewed the assessors report and [the Appellant's] application.*

22. *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

5.0 Appellant's Submissions

- 5.1 The Appellant appended to his appeal application a well-organised written submission with photographs. The submission matched his work experience to the relevant competencies.
- 5.2 The Appellant recognized that two of the original referees had not enough knowledge of his work to be able to sufficiently communicate his skills and experience, and submitted further verified references to the Board.

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

- 6.2 The Board then considered Competencies 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 Appellant responded to questioning from the Board and expanded upon his submission at the hearing.
- 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 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 15 day of May 2013.

Dianne Johnson
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.”*