

BPB Appeal No. A1175

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 August 2013 at [omitted]
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Appeal heard by:	Brian Nightingale Colin Orchiston Dianne Johnson Richard Merrifield	Presiding Member Board Member Board Member Board Member
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Appearances by:	The Appellant The Registrar's delegate, Stanil Stanilov, 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 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 18 February 2013. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 14 March 2013 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, 3 and 4 for a Carpentry Licence.

Carpentry Competencies:

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.

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 19, the following from the Assessor's recommendations:

“... ”

- *[The Appellant] has been associated with the building trade for the last 38 years.*
- *From 1974 to 1988 [the Appellant] has been working in the freezing works and built with friends in his spare time.*
- *From 1989 to present [the Appellant] is a self employed builder/ log fireplace installer.*
- *[The Appellant's] mainstream work is installing log fires and carrying out demolition work of brick chimneys.*
- *[The Appellant] has built the occasional house for himself.*
- *[The Appellant] has not taken out a building consent other than that for installation of log fires.*
- *The referee [the Appellant] provided for Project 1 was supportive and the project's scope of work was sufficient.*
- *Project 2 [the Appellant] provided had an insufficient scope of work to cover all of the competencies. He was also unable to provide a referee for this project.*
- *The assessor requested for an additional Carpentry project, however [the Appellant] was unable to provide one completed within the last five years.*
- *[The Appellant] answered all of the regulatory questions correctly but he had no understanding of NZS 3604 and how this code relates to the building trade. [The Appellant] also demonstrated a very poor knowledge of E2-AS1.”*

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.

⁷ clause 10 and 11 of the Rules

23. *[The Appellant] has provided insufficient evidence to meet the minimum requirements of the Carpentry licence class.*
24. *The second project that [the Appellant] provided does not fit within the Carpentry licensing category and upon request [the Appellant] has not been able to provide any additional jobs and/or technical referees in support of his Carpentry application.*
25. *[The Appellant] did not demonstrate a sufficient understanding of NZS3604 and has a very poor knowledge of E2-AS1."*

5.0 Appellant's Submissions

- 5.1 The Appellant spoke of his experience in the industry including having built 3 houses for himself. This experience also includes bricklaying, fencing, and alterations due to the installation of fireplaces.
- 5.2 The Appellant tabled a photo as an example of recent work in a roof space around a newly installed chimney flue.
- 5.3 The Appellant explained that he undertakes foundation work, installation of light metal roofing, bricklaying and blocklaying, and carpentry work. He has applied for a Carpentry Licence because he has been advised by some Building Consent Authorities that some of his work in installing log fires required a building consent.
- 5.4 The Appellant acknowledged his limited knowledge of current industry standards and trade practices. He explained that he sought support from licensed practitioners and territorial authority officers.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competency for the Carpentry Licence:

Carpentry Competency:

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.
- 6.4 The Board notes that much of the work undertaken by the Appellant is not Restricted Building Work requiring a licence. This was either because it did not need a building consent, or it could be considered to fall within the type of work which could be exempted by Schedule 1 of the Building Act or by specific application for exemption.

- 6.5 The Board further notes that whether or not work is required to be completed in accordance with a building consent, it is required to meet the Building Code. Accordingly, a familiarity with relevant technical information is fundamental to meeting the competencies required for a Carpentry Licence.
- 6.6 The Board is concerned that the Appellant places undue reliance on building inspectors, and was unable to demonstrate that he knew of or referred to commonly used technical literature including NZS3604 and E2/AS1.
- 6.7 The Appellant is required to demonstrate that he can carry out or supervise work in the range of performance indicators relevant to the licence being sought.
- 6.8 The Board was not satisfied that the Appellant demonstrated that he met sufficient of the performance indicators in Carpentry Competencies 2, 3 and 4.

Board's findings

- 6.9 The Board, therefore, concluded that the Appellant did not meet the competency 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 18 day of August 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.”*