

**BPB Appeal No. A1186**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	22 July 2013 at [omitted]
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Appeal heard by:	Colin Orchiston Brian Nightingale Dianne Johnson	Presiding 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 Carpentry Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 14 May 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 22 May 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.<sup>2</sup> 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 1<sup>3</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>4</sup>

## 3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing<sup>5</sup> however the Board will not review matters outside the scope of the appeal<sup>6</sup>.
- 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 Licence 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.*

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<sup>1</sup> Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup> S286 of the Act and rule 4 of the Rules.

<sup>3</sup> Clause 4(2) of the Rules

<sup>4</sup> S330(1)(a) of the Act.

<sup>5</sup> S335(2) of the Act

<sup>6</sup> 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 recommendation<sup>7</sup>. 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 20, the following from the Assessor's recommendations:

"...

- *The only work that [the Appellant] has been involved with in the last three years has been in an overview or observation role in the relocation of two transportable homes working on behalf of the client [omitted].*
- *The referee, [omitted], confirmed [the Appellant] did not carry out any of the work apart from minor works, as in baseboards and an unconsented deck below one metre in height. All other works were undertaken by [omitted] and their licensed employees.*
- *Both of [the Appellant's] referees were not technically suitable, [omitted] is an owner of a building supply company, has no recent trade background within the last 5 years and has not worked with [omitted] on site or observed his work.*
- *Referee 2, [omitted] is listed as a Project Manager, he stated that he comes from 30 years in farming, is a jack of all trades and is the Chairman of [omitted], who have been busy developing eight sections on a block of land in [omitted].*
- *During the interview the assessor requested two more suitably technical referees, ideally sub-contractors or other builders, suggesting Electricians, Plumbers and Carpenters. [The Appellant] was unable to do so.*
- *[The Appellant] confirmed that the two referees that were provided were his best referees.*
- *[The Appellant] has no recent involvement in consented or critical building works and has no suitably technical referees to confirm his technical ability or current trade practice knowledge.*
- *The referee, [omitted], can only confirm [the Appellant] as a trade account holder with [omitted].*
- *The evidence provided is too light to suggest [the Appellant] has the current trade knowledge and ability to either supervise the carrying out of Carpentry work or undertake the Carpentry work.*
- *[The Appellant] has spent a significant amount of time away from the industry and no evidence has been provided by suitably technical referees of work carried out during employment with either the [omitted] or when he was self-employed.*
- *The only Competency that [the Appellant] could meet was Competency 1 in completing the regulatory environment questions.*

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<sup>7</sup> clause 10 and 11 of the Rules

- *There is insufficient evidence that [the Appellant] has been actively involved in the carrying out and supervising of Carpentry work within the last three to five years."*

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

#### 4.3 The Registrar concluded:

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

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

*23. I based my decision on the assessor's recommendation, for the reasons set out above.*

*24. The evidence provided is not sufficient to demonstrate recent work repeatability and current competence to meet the minimum requirements of the Carpentry licence class.*

*25. [The Appellant] has not provided evidence of him consistently carrying out the Carpentry work in the last five years. This information has been confirmed by the technical referees.*

*26. None of the referees have witnessed [the Appellant] carry out the full scope of Carpentry work and could not comment on [the Appellant's] Carpentry skills and knowledge of the current trade practice."*

#### **5.0 Appellant's Submissions**

5.1 The Appellant read through some aspects of his written submission and then responded to questions from the Board which allowed him the opportunity to explain his depth of knowledge and experience.

5.2 The Appellant had brought with him the documentation he relied upon when he was involved in onsite construction. He explained that when he was unsure of issues, he would look up the technical information.

5.3 The Appellant also brought with him a copy of the design drawings for the residential project he was about to start.

5.4 In response to the Boards questions about his work experience, the Appellant indicated that he had undertaken residential construction including relocatable homes, houses, remediation of leaky homes, and commercial construction including classroom blocks, and in-situ concrete work.

5.5 Using a recent house undertaken in [omitted], the Appellant described his work in relation to the performance indicators to competencies 2, 3 and 4. The house was a two stored timber framed brick veneer house with a sheet metal roof all on a rafter slab on a gently sloping site. The Appellant was the main contractor. His personal involvement included directly working on the construction from start to finish, the direction and supervision of others involved in the construction, the co-ordination of subtrades, and attendance upon council inspections.

## **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 Licence 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 noted that the Appellant recognised the extent of his competencies and the need to work within it.

6.5 The Board was satisfied that the Appellant provided sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2, 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 30th day of July 2013

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Colin Orchiston  
(Presiding Member)

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**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.”*