

BPB Appeal No. A1201

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:	4 February 2014 at New Plymouth
-------------------------------	---------------------------------

Appeal heard by:	Chris Preston, Presiding Member Brian Nightingale, Board Member Catherine Taylor, Board Member Richard Merrifield, Board Member
------------------	--

Appearances by:	[The Appellant]
-----------------	-----------------

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 19 September 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 19 October 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 4 for a Carpentry Licence.

Carpentry Licence Competencies:

Competency 4: Carry out carpentry work.

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

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

⁷ clause 10 and 11 of the Rules

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 21, the following from the Assessor's recommendations:

- "[The Appellant] confirmed that he has had no formal carpentry training.
- Between 1993 and 2006 [the Appellant] worked as a dairy farmer, slaughter man and welder respectively. In 2006 he became a self-employed carpenter, primarily doing non-structural work. From 2011 he has been employed as a Carpenter by [omitted], carrying out a shop interior refurbishment and extension, and a villa renovation.
- [The Appellant] presented the shop refurbishment and extension, and villa renovation as his two projects for assessment. The villa renovation was viewed as a part of the face to face interview.
- His work history states the shop refurbishment is his first project undertaken which is suitable for assessment. This project was undertaken from December 2011 to March 2013. In March 2013 [the Appellant] began work on the villa alterations, and this work was less than 50% complete at the time of the interview on 03 September 2013.
- His referee [omitted], an architectural designer, was supportive of [the Appellant's] application.
- [The Appellant] displayed a good grasp of knowledge of the regulatory environment of the building construction industry, and of current building and trade practice. His referee also stated that [the Appellant] does not hesitate to research an area if he does not know the required information.
- His work on the two projects showed sufficient evidence of carrying out the planning and scheduling necessary for carpentry work.
- [The Appellant] had no other projects that he had worked on that were suitable for assessment. The two provided projects, only one of which has been completed, do not demonstrate repeatability of performance, nor do they demonstrate his ability to carry out a sufficient range of practical carpentry work."

4.3 The Registrar concluded:

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

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

5.0 Appellant's Submissions

- 5.1 The Appellant described his work experience and then spoke to the photographs of his current project that were submitted in his appeal application.
- 5.2 Through questioning from the Board, the Appellant spoke of his experience with respect to the performance indicators of Competency 4.

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 Competencies:

- Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.*
- Competency 2: Demonstrate knowledge of current building and trade practice.*
- Competency 3: Carry out planning and scheduling for carpentry work.*

- 6.2 The Board then considered Competency 4 for a Carpentry Licence. This competency 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 considered each of the performance indicators of the Competency 4;
- 6.4.1 **Preparing site for construction:** the Board notes that the Appellant has some experience in this performance indicator. The Appellant did not provide sufficient evidence to demonstrate competence in this performance indicator.
- 6.4.2 **Construct concrete foundations and or pile foundations:** the Board considered that the Appellant demonstrated competence in this performance indicator.
- 6.4.3 **Construct concrete structures:** the Appellant was unable to provide sufficient evidence to demonstrate competence in this performance indicator.
- 6.4.4 **Construct, set out and erect floor, wall and roof frames, and trusses, and/or install pre-fabricated elements:** the Board considered that the Appellant demonstrated competence in this performance indicator.
- 6.4.5 **Prepare works to receive pre-cast/pre-fabricated and in-situ elements and install:** the Appellant was unable to provide sufficient evidence to demonstrate competence in this performance indicator.
- 6.4.6 **Install lightweight profile metal roofing:** the Appellant was unable to provide sufficient evidence to demonstrate competence in this performance indicator.

- 6.4.7 **Fix exterior cladding:** the Board notes that the Appellant has some experience in this performance indicator. The Appellant did not provide sufficient evidence to demonstrate competence in this performance indicator.
- 6.4.8 **Set out, install, finish and make weather-tight exterior joinery:** the Board considered that the Appellant demonstrated competence in this performance indicator.
- 6.4.9 **Construct timber stairs, ramps and barriers:** the Appellant was unable to provide sufficient evidence to demonstrate competence in this performance indicator.
- 6.4.10 **Install internal linings, panelling and mouldings:** the Board considered that the Appellant demonstrated competence in this performance indicator.
- 6.4.11 **Install internal fittings, finishings and hardware:** the Board considered that the Appellant demonstrated competence in this performance indicator.
- 6.4.12 **Construct decks, balconies and verandahs:** the Board considered that the Appellant demonstrated competence in this performance indicator.
- 6.4.13 **Install installation systems:** the Board considered that the Appellant demonstrated competence in this performance indicator.

Board's findings

- 6.5 The Board concluded that the Appellant failed to provide evidence to demonstrate that he met sufficient performance indicators to satisfy the requirements of Competency 4 for a Carpentry Licence.
- 6.6 The Board encourages the Appellant to obtain further experience before reapplying for a Carpentry Licence. The Appellant should note that a new application for a Carpentry Licence will have to go through the normal application process. The Appellant, should he make a fresh application, will still have to supply evidence that demonstrates competence for all of the competencies of the Carpentry Licence – notwithstanding the findings in this decision. The Appellant may, however, submit this decision in support of a fresh application.

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.**

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, 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."*