

BPB Appeal No. A1259

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 **[omitted]** against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	8 December 2015 at [omitted]
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Appeal heard by:	Brian Nightingale, Presiding Board Member Dianne Johnson, Board Member Mel Orange, Board Member
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Appearances by:	[Omitted] (Appellant) The Registrar of Licensed Building Practitioners
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1.0 Introduction

- 1.1 [Omitted] (“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 9 September 2015. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 25 September 2015 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 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.*

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

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 assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 18, the following from the assessor's recommendations:

- *"The recommendation is to decline a carpentry licence because [the Appellant's] second referee, his recent employer, was negative regarding Leon's abilities as a Carpenter and his relative skills for a carpentry licence.*
- *This referee ([omitted]), who has employed Leon as an adult apprentice during the last 18 months, was not supportive of [the Appellant's] carpentry skills and technical knowledge. More specifically [omitted] said that [the Appellant] was not up to speed and that the applicant's training was still on-going, that he could not carry out carpentry work without supervision and when he was working under supervision refused to carry out instruction and completed tasks independently and incorrectly. [Omitted] commented that this has happened on several occasions, which prompted complaints from his fellow workers. I queried all this with the Applicant, he confirmed his employer's statement regarding all the above.*
- *Applicant has not satisfied competencies 2, 3 & 4. He has a broad understanding of the regulatory environment, Competency 1."*

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."*

⁷ clause 10 and 11 of the Rules

5.0 Appellant's Submissions

- 5.1 In the appeal application, the Appellant included a written submissions bundle.
- 5.2 At the appeal hearing, the Appellant outlined his work experience and qualifications for the Board. He confirmed that he has worked within the construction industry for the past 25 years, and completed the hours and examination for carpentry and joinery in 2007 in [omitted]. He advised that the majority of his work experience is in residential building. He has now been in New Zealand for 9 years, during which time he worked on a two-year commercial project in [omitted]. He then moved to [omitted] where he started his own business in home maintenance and renovations. Following that he worked for 18 months in [omitted] for a licensed person carrying out restricted building work under supervision.
- 5.3 The Appellant tabled evidence of recent projects he has worked on. He spoke to the project photographs and answered the Board's questions on them and on the competencies for a Carpentry Licence.
- 5.4 The Appellant explained that he has approximately 11 modules to go for his BCITO carpentry qualification. However, he has put his studies on hold.

6.0 Board's Consideration

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

Carpentry Licence Competency:

Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.

- 6.2 The Board 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. In this respect the Board notes the provisions of section 314B(b), which requires the LBP to work only within his/her competence.

Board's findings

- 6.1 The Board was satisfied that the Appellant met sufficient performance indicators for each Competency of the Carpentry Licence.
- 6.2 The Board reminds the Appellant to work within his competence and to ensure he maintains and increases his regulatory knowledge.

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 [omitted] 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 15 December 2015



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.”*