

BPB Appeal No. A1262

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:	15 March 2016 at [omitted]
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Appeal heard by:	Brian Nightingale, Presiding Member Dianne Johnson, Board Member Robin Dunlop, Board Member
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Appearances by:	[The Appellant]
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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 19 November 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 1 December 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 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.

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:

- *"One referee supports the applicant in his competence, while the other does not. A third referee was requested, and provided, but following multiple calls to him and voice messages left, no contact was made, and there are no other referees available.*
- *The applicant provided evidence of carrying out carpentry work within the past 5 years and some other work more than 5 years ago, but one referee does not support his competence. A third verification could not be found, so the recommendation is to decline the granting of the licence due to insufficient evidence.*
- *[The Appellant] does not have any work coming up in the short term which could provide evidence for a face-to-face assessment, so this has not been offered."*

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 In the appeal application, the Appellant included NZQA National Certificate in Carpentry Level 4.

5.2 At the appeal hearing, the Appellant outlined his work history for the Board. He noted that he has worked as a carpenter in New Zealand and Australia in both

⁷ clause 10 and 11 of the Rules

commercial and residential construction. Since his return to New Zealand, he has been working on refurbishment projects.

- 5.3 The Board asked questions of the Appellant in relation to Competencies 3 and 4. The Appellant went into further detail concerning the processes he follows for various jobs carried out onsite. He showed that he carries copies of NZS3604, E2/AS1, and various manufacturers' literature as reference guides for when additional information is required.

6.0 Board's Consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for a 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 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. 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

- 6.4 The Board found that the Appellant demonstrated competence in sufficient performance indicators for Competencies 3 and 4 of the Carpentry Licence.
- 6.5 The Board reminds the Appellant of the obligations of an LBP to keep up to date with regulatory changes in the building environment. The Board encourages the Appellant to seek out and join a network of builders.

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.**

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 30 March 2016



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.”*