

**BPB Appeal No. A1263**

**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:	15 March 2016 at [omitted]
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Appeal heard by:	Richard Merrifield, Presiding Member Mel Orange, Board Member Robin Dunlop, Board Member Bob Monteith, 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 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 17 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 21 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.<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 assessor's recommendation.

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

- *"The applicant provided information on carpentry work carried out on the applicant's own home and rental properties.*
- *The original projects were 1992 and 2002 and were outside of the five year requirement, and two new carpentry projects have been submitted. Both additional projects however were limited in scope of works carried out.*
- *Applicant's responses to the regulatory discussion were sufficient to demonstrate an adequate understanding of the regulatory environment and NZ Standards focusing on carpentry work therefore Competency 1 has been met.*
- *Neither of the original projects was inside of the five year requirement, and neither of the additional information projects contained sufficient scope of works to demonstrate the critical performance indicators within Competencies 2, 3 and 4 within the Carpentry Licence class."*

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 projects that were outside of the five-year licensing guidelines. The Appellant also included two more recent projects.

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

- 5.2 At the appeal hearing, the Appellant outlined his work experience for the Board. He explained that he had worked on various family builds as a young man before going on to work in a timber plant. He has worked in the electrical industry since 1978, and has kept up to date with the changes in building construction throughout the years. He noted that he renovated his own home in 1992, and carried out multiple smaller-scale consented renovations to rental properties he owns.
- 5.3 The Board then questioned the Appellant on his knowledge of the current regulatory environment.
- 5.4 The Appellant tabled a written affidavit from a witness who confirmed that the Appellant had carried out the carpentry work on his own home.
- 5.5 The Board then questioned the Appellant on Competencies 2, 3, and 4.

## **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 and Site AOP 1 Licence:

### **Carpentry Licence Competencies:**

*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 Whilst he demonstrated that he had carried out recent building work, his overall experience and knowledge was very limited and he relied heavily on reference to product information and standards as opposed to having a depth of basic practical building knowledge. The Appellant should work with a licensed building practitioner for a period of time to gain a breadth of building experience and knowledge.

## **7.0 Board's Decision**

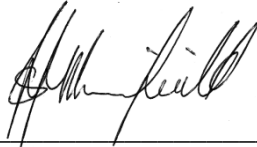
- 7.1 **Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision and not license [the Appellant] with a Carpentry Licence.**

## **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 5<sup>th</sup> day of April 2016



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Richard Merrifield  
(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.”*