

**BPB Appeal No. A1289**

**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:	Christchurch Commodore Hotel – 22 August 2017
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Appeal heard by:	Chris Preston – Board Chair Mel Orange Brian Nightingale Robin Dunlop
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Appearances by:	[the Appellant] [Omitted]– Referee by phone
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## 1.0 Introduction

- 1.1 (“the Appellant”) of Christchurch 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 31 May 2017. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 11 July 2017 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 of the Rules. In determining whether a person meets a Competency, regard must be given to the extent to which the person meets the Performance Indicators set out for that competency in Schedule1<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 & 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.*

## 4.0 Registrar’s report

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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

4.1 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 **18**, the following from the Assessor's recommendations:

- The Appellant was not able to provide two referee's that could support his application and confirm the full scope of recent carpentry work.
- The original first referee had only worked with the Appellant on unconsented maintenance work and was replaced by a new referee.
- The first referee supported the Appellants licensing application but could only confirm his knowledge and ability as of 2002 and unsure if the Appellant had kept up to date.
- The second referee had recently worked with the Appellant on limited aspects of carpentry work to "Versatile Garage" type buildings. This referee was not supportive of the Appellants licensing application.

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 included his CV and two images of projects he had previously worked on with his appeal application.

5.2 The Appellant had a referee [Omitted] who was contacted via teleconference. [Omitted] confirmed he had worked with [the Appellant] and found him competent in his work and was able to leave him to work unsupervised. [the Appellant] also provided a google earth image of the property he worked on with [Omitted].

5.3 The Board asked questions of the Appellant and received oral submissions.

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

## 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.*

- 6.2 The Board then considered Competencies 2, 3 & 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.

### *Board's findings*

- 6.4 The Board concluded that the Appellant **provided** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 2, 3 & 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 licence [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, 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 23rd day of August 2017



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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.”*