

BPB Appeal No. A1325

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:	27 February 2020, in Whangarei
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Appeal heard by:	Mel Orange (Presiding Member) Richard Merrifield David Fabish Rob Shao
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1.0 Introduction

- 1.1 [Omitted] (“the Appellant”) of Auckland applied for a Roofing License under s288(2) 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 2019. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 4 October 2019 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 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 Schedule1³.
- 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 Roofing (Metal Title AOP) 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 Competency 4 for a Roofing Licence – carry out roof work.

4.0 Registrar’s report

- 4.1 The Registrar’s decision to 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 assessors’ recommendation.

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

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

- *[Omitted]* work history is very light (2-3 years), and he has mainly been working in concrete and clay tile roofing
- The applicant has recently done a week of training with *[Omitted]* Palmerston North for metal roof tiles.
- The technical questions and general discussion regarding the projects supplied gave the impression of a trainee roofer with the skills and knowledge to carry out the basic type hip or gable roof.
- On this basis I recommend licensing is declined, with the applicants work history showing he was still training only a month ago with the installing of these products, which would not cover off the full aspects of competency four.

4.3 The Registrar concluded:

- 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 *[Omitted]* 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 did not include supporting information with his appeal. He did provide a submission that the Assessor had misinterpreted the reason for his trip to Palmerston North stating that it was to get a reference, not to be trained.

5.2 The Board Officer was unable to contact the Appellant prior to the hearing. The Appellant did not confirm his attendance and did not appear on the day of the hearing and no contact was received from him.

6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competences 1, 2 and 3 for the Roofing licence:

Roofing Licence Competencies:

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

6.2 The Board then considered Competency 4 for a Roofing Licence. The 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.

Board's findings

- 6.4 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 Roofing Licence.
- 6.5 The Board noted that the burden is on the Appellant to satisfy the Board that the Registrar's decision to decline a licence was wrong. The Appellant did not provide any evidence other than that which was put before the Registrar when he made his decision and his submission. Notwithstanding the Board reviewed that evidence and decided that there was no evidence to show that the Registrar's decision should be overturned.

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 [Omitted] with a Roofing 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 **not** to be made public.

Signed and dated this 9th day of March 2020



Mel Orange
(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.”*