

**BPB Appeal No. A1328**

**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 [REDACTED] 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:	28 January 2020, in Auckland
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Appeal heard by:	Richard Merrifield (Presiding Member) Mel Orange Faye Pearson-Green David Fabish
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## 1.0 Introduction

- 1.1 [REDACTED] (“the Appellant”) of Auckland applied for a Building License 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 11 October 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 15 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.<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 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 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*

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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 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:

- From a strict Assessment perspective, [the Appellant] does not meet competencies 3 and 4 based on [the Appellant's] lack of experience in the construction process from setup/setout to completed floor.
- I would have some concerns if [the Appellant] therefrom carried out setup/setout to completed floor without support or unsupervised.
- However [the Appellant's] evidence supports his scope and repetition of competencies 3 and 4 from completed floor onwards.

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 [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 did not include supporting information with his appeal.

5.2 The Appellant confirmed that he was happy for the hearing to proceed on the set day but did not appear.

#### **6.0 Board's consideration**

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competences 1 and 2 for the 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.*

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

- 6.2 The Board then 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.

*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 Competencies 3 and 4 for a Carpentry 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. Notwithstanding the Board reviewed that evidence and decided that there was no evidence to show that the Registrar's decision should be overturned.

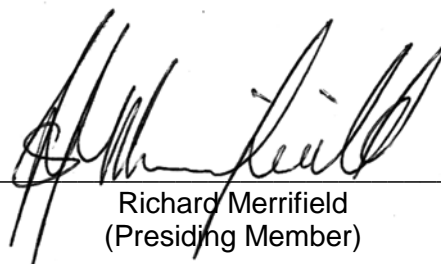
**7.0 Board's Decision**

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license [REDACTED] 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 **not** to be made public.

Signed and dated this 3<sup>rd</sup> day of February 2020



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Richard Merrifield  
(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.”*