

BPB Appeal No. A1022

IN THE MATTER OF

The Building Act 2004

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

1. Introduction

- 1.1 On 26 May 2011 the Appellant applied for a Carpentry Licence under S.288(2) of Building Act 2004 ("the Act") and the Licensed Building Practitioners' Rules 2007¹ ("the Rules").
- 1.2 The Registrar of Licensed Building Practitioners ("the Registrar") appointed under S.310 of the Act, declined the application under Rule 12 and the Appellant was notified of the Registrar's decision on 4 August 2011, together with his right to appeal the decision within 20 working days to the Building Practitioners' Board ("the Board").
- 1.3 On 12 August 2011 the Appellant appealed to the Board against the Registrar's decision under S.330(1)(a) of the Act, seeking that, on the basis of information provided, the Board grant a carpentry licence.
- 1.4 The Board decided to hear the appeal on 26 September 2011. The Appeal was considered in accordance with the Board's "Appeals Procedure".
- 1.5 The Procedure provides that appeals are considered by way of a "re-hearing"², and that the burden of proof lies with the Appellant (Clauses 3.10.17 and 3.10.18 of the Board's Appeals Procedure).
- 1.7 The following were present for the hearing of the appeal:

Board Members and support staff:

David Clark	Board Member (Presiding Member)
Jane Cuming	Board Member
Brian Nightingale	Board Member
Colin Orchiston	Board Member
William Smith	Board Member

¹ Incorporating amendments for 2008, 2009 and 2010.

² Refer S.335(2) of the Act.

Pam Lwee (Acting Board Secretary)

Appellant and supporting witnesses:

The Appellant indicated prior to the hearing a supporting witness would appear however that witness was not available on the day of the hearing.

Registrar

Mark Scully

1.8 The Board received the Registrar's report of 30 August 2011.

2. Background

2.1 The Appellant has a varied work experience originally training as a drain layer and subsequently in recent years as an all round tradesperson. His work includes not only building/carpentry type work but also painting, plastering and some design work.

2.2 The Appellant works primarily on housing requiring remedial and/or renovation work and expressed no interest or desire to work on new homes.

3. The Registrar's Report & Submissions

3.1 In order to become licensed, the Appellant was required to satisfy the Registrar that he met the applicable minimum standards for licensing (under section 286 of the Act). These minimum standards are set out in Schedule 1 to the Rules, in the form of "competencies" which must all be satisfied.

For carpentry, these competences are:

- *Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry*
- *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*

In order to be licensed an applicant must demonstrate that he/she meets all the required Competencies of the Licence Class.

3.2 These competences may be demonstrated by meeting some or all of the performance indicators of the Rules. In carrying out an assessment, the Assessor must use the "Assessor Guidelines" prescribed by the Registrar (see Rule 11(1)).

3.3 The competencies address a broad range of skills and knowledge that a competent practitioner should be able to demonstrate.

- 3.4 The Registrar must take into consideration the Assessor's recommendation before making a decision (under Rule 12(2)).
- 3.5 Reliance on the Assessor's recommendation does not mean that the Registrar cannot reach a different view about an applicant from the view reached by the Assessor. The Registrar is required to maintain an independent view. In the normal course of events, however, the Registrar will accept a recommendation of an Assessor, unless there are strong reasons for not doing so.
- 3.6 In making the recommendation to decline the application, the reasons below were recorded by the Assessor.
- The Appellant had a basic work history with limited career progression, but had some related work skills
 - The Appellant's role in projects were not consistent with licence class criteria
 - There was insufficient detail in the Appellant's application to demonstrate knowledge of current building and trade practices (Competency 2)
 - The Appellant's referees were supportive of the Appellant's role as a handyman only
 - There was insufficient support to demonstrate competency at planning and scheduling of work (Competency 3)
 - There was insufficient evidence for carrying out the scope of carpentry work required for Competency 4

4. The Appellant's Submissions

- 4.1 The Appellant provided, in respect of the hearing, some further references, they being:
- (a) From Referee 1, Electrician, who had previously provided a reference for the original application.
 - (b) From Referee 2, who were clients of the Appellant.
 - (c) From Referee 3 who was a Foreman where the Appellant was employed while undertaking drainage work.
 - (d) From Referee 4 who are clients of the Appellant.
- 4.2 The Appellant also made further submissions responding to Board questions in order to ascertain the type, nature and extent of the experience the Appellant had in order to satisfy whether the standards required of the Competencies were met.
- 4.3 The Appellant submitted that the nature of work that he undertook, the liaison and relationships that he had established with his clientele and the complexity of the work that he undertook (especially that work which required consents to be obtained from the local territorial authority) provided sufficient evidence to establish he met the standards required of the Competencies.

- 4.4 The Appellant confirmed that most of the skills he had obtained in terms of his carpentry work were learnt “on the job” and that he had no formal training in the carpentry trade. He further insisted that the reason why he wished to obtain the carpentry licence was to undertake remedial and renovation work as opposed to building new houses. He acknowledged that if a carpentry licence was to be granted then he would be entitled to, as of right, build new single storey dwellings which had a risk matrix of less than 12.

5. Board’s Consideration

- 5.1 The Board focused on a number of areas in order to understand and ascertain whether the Appellant met the required competencies. In particular, it considered:

- (a) The type of work that the Appellant had undertaken;
- (b) The type of training that the Appellant had undertaken;
- (c) The technical ability of the Appellant;
- (d) The Appellant’s knowledge in respect of the Regulatory environment (e.g. the Building Act and Building Code);
- (e) The Appellant’s knowledge in respect of the planning and scheduling of a project together with any structural elements of a building project.

6. Board’s Decision

- 6.1 The Board was unable to find that the Appellant met the competencies required for a Carpentry Licence. In particular the Board considered that although the Appellant was a competent all round handyman, he did not exhibit the level required for a Carpentry Licence in the areas of:

- (a) current building and trade practices;
- (b) the ability to undertake any planning or scheduling for carpentry work in terms of the Regulatory processes; and
- (c) the necessary level and knowledge of general carpentry work required of a practitioner for this licence class.

- 6.2 In the circumstances the appeal is declined and the Registrar’s decision is upheld.

- 6.3 The Board does however encourage the Appellant to:

- (a) undertake some formal training to raise his level of skill and awareness of the Competencies especially in respect of the Regulatory environment and general trade practices;
- (b) obtain some independent assessment of the quality of his workmanship in order to assist the Appellant should he choose to reapply for a carpentry licence in the future.

7. Costs

- 7.1 Submissions on costs were sought from the Appellant and the Registrar.
- 7.2 Neither the Appellant nor the Registrar sought costs. The Board having considered the circumstances of this appeal directs that the costs shall lie where they fall.

8. Publication of Name

- 8.1 Pursuant to S.339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- 8.2 The Board invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant indicated that he had no firm view on the matter.
- 8.3 The Board having considered the circumstances of this appeal directs that the name and the particulars of the Appellant are not made public.

Signed and dated this 9th day of October 2011

David Clark
(Presiding Member)

Advice Note (not part of Board's Decision)

Extracts from the Building Act 2004:

333 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; or*
 - (b) *suspend or cancel his or her licensing.*

- (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); or*
 - ...

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.*