# BEFORE THE ARIZONA STATE BOARD OF TECHNICAL REGISTRATION

In the Matter of:

MICHAEL MCGARRY Certified Home Inspector Registration No. 70711

Respondent

Case No.: HI24-014

CONSENT AGREEMENT AND ORDER OF DISCIPLINE

In the interest of a prompt and judicious resolution of the above-captioned matter before the Arizona State Board of Technical Registration ("Board"), consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to A.R.S. § 32-101 et seq., and A.A.C. R4-30-120(G), the undersigned party, Michael McGarry ("Respondent"), holder of Certified Home Inspector Registration No. 70711, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law, and Order ("Consent Agreement") as a final disposition of this matter.

### **RECITALS**

- 1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.
- 2. Respondent understands that he has a right to a public administrative hearing concerning this case and acknowledges that at such formal hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly, voluntarily, and irrevocably waives his right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action concerning the matters set forth herein.
- 3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

- 4. Respondent understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action by the Board against him.
- 5. Respondent understands this document, any record prepared in this matter, all investigative materials prepared or received by the Board, and all related exhibits and materials are public records upon acceptance by the Board of this Consent Agreement and may be retained in the Board's files pertaining to this matter.
- 6. Respondent understands this Consent Agreement deals with Board case number HI24-014 involving allegations that Respondent engaged in conduct that would subject him to discipline under the Board's statutes and rules. The investigation into these allegations against Respondent shall be concluded upon the Board's adoption of this Consent Agreement.
- 7. Respondent understands that this Consent Agreement does not constitute a dismissal or resolution of any other matters currently pending before the Board, if any, and does not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending or future investigation, action or proceeding.
- 8. Respondent understands that acceptance of this Consent Agreement does not preclude any other agency, subdivision, or officer of this State from instituting any other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.
- 9. Respondent acknowledges and agrees that, upon signing this Consent Agreement and returning this document to the Board's Executive Director, he may not revoke his acceptance of the Consent Agreement or make any modifications to the document regardless of whether the Consent Agreement has been signed on behalf of the Board. Any modification to this original document is ineffective and void unless mutually agreed by the parties in writing.
- 10. Respondent understands this Consent Agreement is subject to the approval of the Board and is effective only when accepted by the Board and signed on behalf of the Board. If the Board does not accept this Consent Agreement, the Board retains its

authority to hold a formal administrative hearing pursuant to A.R.S. § 32-128(E). In the event that the Board does not approve this Consent Agreement, it shall be withdrawn and of no evidentiary value and shall not be relied upon nor introduced in any action by any party, except that the parties agree that should the Board reject this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its review and discussion of this document or any records relating thereto.

- 11. Respondent understands if a court of competent jurisdiction rules that any part of this Consent Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and effect.
- 12. Respondent understands that any violation of this Consent Agreement may result in disciplinary action, including suspension or revocation of the registration under A.R.S. § 32-150.
- 13. Respondent agrees that the Board will adopt the following Findings of Fact, Conclusions of Law and Order.

#### FINDINGS OF FACT

- 1. The Board is the duly constituted authority for the regulation and control of the practice of Certified Home Inspection in the State of Arizona.
- 2. Respondent is the holder of Certified Home Inspector Registration No. 70711, which was issued by the Board on January 17, 2020 and expired on January 17, 2023.
- 3. On or about September 13, 2023, the Board received a complaint regarding a home inspection conducted by Respondent in Queen Creek, AZ while his home inspector certification was expired.
- 4. On or about November 9, 2023, Respondent provided a written response to the allegations in which he acknowledged the expired registration and reported that it was an administrative oversight.
- 5. On or about November 13, 2023, Respondent's home inspector certification No. 70711 was renewed.

#### **CONCLUSIONS OF LAW**

- 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.
- 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline pursuant to A.R.S. § 32-127(D) and A.R.S. § 32-145(1), in that Respondent may have engaged in the practice of Home Inspection while his certification was in an expired status.

#### **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues the following Order:

- 1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of Reprimand.
- 2. ADMINISTRATIVE PENALTY. Within thirty (30) days from the effective date of this Consent Agreement, Respondent shall pay an administrative penalty of Two Hundred and Fifty Dollars (\$250.00) by certified check or money order made payable to the State of Arizona Board of Technical Registration.
- 3. COST OF INVESTIGATION. Within thirty (30) days from the effective date of this Consent Agreement, Respondent shall pay the cost of investigation of this case to the Board in the amount of One Hundred and Ten Dollars (\$110.00) by certified check or money order made payable to the State of Arizona Board of Technical Registration.
- 4. OBEY ALL LAWS. Respondent shall obey all federal, state, and local laws as well as all rules governing the practice of Home Inspection in the State of Arizona. The Board shall consider any violation of this paragraph to be a separate violation of the rules and statues governing the Arizona Board of Technical Registration.
- 5. RENEWAL OF REGISTRATION. Respondent shall timely renew his Arizona registration as a Certified Home Inspector, and timely pay all required registration fees.

- 6. EFFECTIVE DATE. The effective date of this Consent Agreement is the date the Respondent and Board sign the Consent Agreement. If the dates are different, the effective date is the later of the two dates.
- 7. COSTS OF COMPLIANCE. Respondent shall pay all costs associated with complying with this Consent Agreement.
- 8. NONCOMPLIANCE. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order, the Board, after giving notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against the registration. The Board may also consider Respondent's non-compliance with this Order as a separate violation of A.R.S. § 32-150, with the sole issue at such a hearing being whether this Order has been violated.

Jack Glimore, L.A., Chairman Arizona State Board of

Technical Registration

Accepted this 20th day of Wovenser, 2023.

Michael McGarry, Respondent

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    ORIGINAL filed this 6th day of
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    December, 2023, with:
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    Arizona State Board of Technical Registration
    1110 W. Washington, Suite 240
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    Phoenix, AZ 85007
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    COPY of the foregoing mailed via Certified Mail
 7
    No. 9214890194344600095233 and First Class mail this 6^{+h} day of <u>December</u>, 2023, to:
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    Michael McGarry
    12110 South Tomi Drive
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    Phoenix, AZ 85044
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    By: Kaulyn Crawfol
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