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**BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION**

In the Matter of:
Daylan Whitney
Home Inspector
Certification No. 63983

Respondent

Case No.: HI22-013

**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”) and 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, Daylan Whitney (“Respondent”), holder of Certification No. 63983, 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. He further 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.

1 4. Respondent understands that this Consent Agreement or any part of the
2 agreement may be considered in any future disciplinary action by the Board against him.

3 5. The Consent Agreement, any record prepared in this matter, all investigative
4 materials prepared or received by the Board and all related exhibits and materials, are
5 public records upon acceptance by the Board of this Consent Agreement and may be
6 retained in the Board's files pertaining to this matter.

7 6. Respondent understands this Consent Agreement deals with Board case
8 number HI22-013 involving allegations that Respondent engaged in conduct that would
9 subject him to discipline under the Board's statutes and rules. The investigation into
10 these allegations against Respondent shall be concluded upon the Board's adoption of
11 this Consent Agreement.

12 7. Respondent understands that this Consent Agreement does not constitute a
13 dismissal or resolution of any other matters currently pending before the Board, if any,
14 and does not constitute any waiver, express or implied, of the Board's statutory authority
15 or jurisdiction regarding any other pending or future investigation, action or proceeding.

16 8. Respondent also understands that acceptance of this Consent Agreement does
17 not preclude any other agency, subdivision, or officer of this State from instituting any
18 other civil or criminal proceedings with respect to the conduct that is the subject of this
19 Consent Agreement.

20 9. Respondent acknowledges and agrees that, upon signing this Consent
21 Agreement and returning this document to the Board's Executive Director, he may not
22 revoke his acceptance of the Consent Agreement or make any modifications to the
23 document regardless of whether the Consent Agreement has been signed on behalf of the
24 Board. Any modification to this original document is ineffective and void unless
25 mutually agreed by the parties in writing.

26 10. This Consent Agreement is subject to the approval of the Board and is
27 effective only when accepted by the Board and signed on behalf of the Board. If the
28 Board does not accept this Consent Agreement, the Board retains its authority to hold a

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

7 11. If a court of competent jurisdiction rules that any part of this Consent
8 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
9 shall remain in full force and effect.

10 12. Respondent understands that any violation of this Consent Agreement may
11 result in disciplinary action, including suspension or revocation of the registration under
12 A.R.S. § 32-150.

13 13. Respondent agrees that the Board will adopt the following Findings of Fact,
14 Conclusions of Law and Order.

15 **FINDINGS OF FACT**

16 1. The Board is the duly constituted authority for the regulation and control of
17 the practice of Home Inspection in the State of Arizona.

18 2. Respondent is the holder of Arizona Home Inspector Certification No.
19 63983.

20 3. On or about June 18, 2021, Respondent conducted a Home Inspection at 22
21 East Lindsay Way in Sedona, Arizona.

22 4. On or about December 16, 2021, the Board received a complaint alleging that
23 Respondent, after conducting a home inspection at 22 East Lindsay Way in Sedona,
24 Arizona, on or about June 18, 2021, prepared a Home Inspection Report that failed to
25 include evidence of water leakage on the walls and ceiling of the bedroom located in the
26 front of the house.

27 5. On April 20, 2022, an Enforcement Advisory Committee (“EAC”) Meeting
28 convened to review the complaint against Respondent. After reviewing the evidence, the

1 Committee found that the initial allegation was not substantiated, in that there was no
2 evidence that the alleged water leakage and damage was visible at the time of the
3 inspection. However, the Committee further found that Respondent's Home Inspection
4 Report failed to meet the Standards of Professional Practice for Arizona Home inspectors
5 ("S.O.P.") in that:

- 6 a. Respondent failed to include the inspection purpose and scope in an
7 agreement as required in S.O.P. #2.2,
- 8 b. Respondent failed to include a legible name and license number in an
9 agreement as required in S.O.P. #2.2,
- 10 c. Respondent failed to provide a firm address in an agreement as required in
11 S.O.P. #2.2,
- 12 d. Respondent failed to report on the condition of the wall flashing and trim as
13 required in S.O.P. #5.1,
- 14 e. Respondent failed to report on the condition of the patio, walks, and
15 driveway as required in S.O.P. #5.1,
- 16 f. Respondent failed to report on the condition of visible supports and
17 insulation as required in S.O.P. #7.1
- 18 g. Respondent failed to report on the supply system functional flow as
19 required in S.O.P. #7.1,
- 20 h. Respondent failed to report on the type and condition of the waste and vent
21 piping system as required in S.O.P. #7.1,
- 22 i. Respondent failed to report on the waste system functional drainage as
23 required in S.O.P. #7.1,
- 24 j. Respondent failed to report on the condition of the fuel storage and fuel
25 distribution system and supports as required in S.O.P. #7.1,
- 26 k. Respondent failed to report on the compatibility of breakers and fuses as
27 required in S.O.P. #8.1,
- 28 l. Respondent failed to report on the operating controls as required in S.O.P.

1 #9.1

2 m. Respondent failed to report on the presence and condition of automatic
3 safety controls as required in S.O.P. #9.1,

4 n. Respondent failed to report on chimneys, flucs, and vents as required in
5 S.O.P. #9.1,

6 o. Respondent failed to report on the type of energy source for the heating
7 system as required in S.O.P. #9.2,

8 p. Respondent failed to report on the type of energy source for the cooling
9 system as required in S.O.P. #10.2,

10 q. Respondent failed to report on the type and condition of cooling equipment
11 as required in S.O.P. #10.2,

12 r. Respondent failed to report on the type and condition of the insulation as
13 required in S.O.P. #12.1,

14 s. Respondent failed to report on the kitchen ventilation as required in S.O.P.
15 #12.1,

16 t. Respondent failed to report on the bathroom ventilation as required in
17 S.O.P. #12.1.

18 **CONCLUSIONS OF LAW**

19 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.

20 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline
21 pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301.0.1, in that
22 Respondent failed to conduct a Home Inspection in accordance with the Standards of
23 Professional Practice for Arizona Home Inspectors.

24 **ORDER**

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

27 1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of
28 Reprimand.

1 2. STAYED SUSPENSION AND PROBATION. Respondent's certification
2 as a Home Inspector, No. 63983, shall be suspended for ninety (90) days; however, the
3 suspension is stayed for as long as Respondent remains in compliance with this Order.
4 During the stay of suspension, Respondent's certification as a Home Inspector is placed
5 on probation for ninety (90) days. If Respondent is non-compliant with any terms of this
6 Order during the ninety (90) days stayed suspension and probation period, the stay of the
7 suspension shall be lifted and Respondent's certification as a Home Inspector shall be
8 automatically suspended without a formal hearing, and remain suspended until
9 Respondent is compliant with all terms of this Order.

10 3. PEER REVIEW. Within sixty (60) days of the effective date of this
11 Consent Agreement, Respondent shall accompany a supervising Certified Home
12 Inspector ("Peer Reviewer") for one (1) Home Inspection, and perform the inspection at
13 the same time and location as the Peer Reviewer. Respondent shall prepare a Home
14 Inspection Report, and submit the written report to the Peer Reviewer for review. The
15 Respondent may select his Peer Reviewer who shall be in good standing with the Board
16 and shall not have received any disciplinary action from the Board within the last three
17 (3) years. The Peer Reviewer shall have been continuously certified by the Board as a
18 Home Inspector for at least five (5) years and shall have conducted at least two hundred
19 and fifty (250) Home inspections in the State of Arizona. Respondent shall cause the Peer
20 Reviewer to sign and notarize an Affidavit and Agreement to Conduct Peer Reviews with
21 the Board affirming that the Peer Reviewer has met the Peer Review selection criteria
22 prior to conducting any Peer Reviews. At the conclusion of the peer reviewed Home
23 Inspection, Respondent will submit his work product, specifically a Home Inspection
24 Report, to the Peer Reviewer who will review and make all corrections to the
25 Respondent's Home Inspection Report necessary for the report to meet the Standards of
26 Professional Practice for Arizona Home Inspectors. Respondent shall not perform any
27 Home Inspections or provide any client with a Home Inspection Report for a fee, until the
28 Peer Review is completed. Respondent shall ensure that the Peer Reviewer provides a

1 written report to the Board after the peer reviewed Home Inspection, detailing any
2 deficiencies in Respondent's practice, and certifying that the deficiencies have been
3 explained and corrected, in so far as the peer reviewed Home Inspection is concerned.
4 Respondent shall retain the Peer Reviewer at his own expense.

5 4. ADMINISTRATIVE PENALTY. Within ninety (90) days from the
6 effective date of this Consent Agreement, Respondent shall pay an administrative penalty
7 of three hundred and fifty dollars (\$350.00) by certified check or money order made
8 payable to the State of Arizona Board of Technical Registration.

9 5. COST OF INVESTIGATION. Within ninety (90) days from the effective
10 date of this Consent Agreement, Respondent shall pay the cost of investigation of this
11 case to the Board in the amount of three hundred twenty-two dollars (\$322.00) by
12 certified check or money order made payable to the State of Arizona Board of Technical
13 Registration, according to the provisions of A.R.S. § 32-128(H).

14 6. OBEY ALL LAWS. Respondent shall obey all federal, state and local
15 laws, as well as, all rules governing the practice of Home Inspection in the State of
16 Arizona. The Board shall consider any violation of this paragraph to be a separate
17 violation of the rules and statues governing the Arizona Board of Technical Registration.
18 The Board may also consider Respondent's non-compliance with this Order as a separate
19 violation of A.R.S. § 32-150.

20 7. RENEWAL OF REGISTRATION. Respondent shall timely renew his
21 Arizona certification as a Home Inspector, and timely pay all required registration fees.

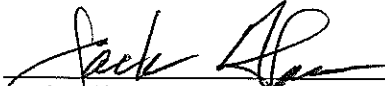
22 8. EFFECTIVE DATE. The effective date of this Consent Agreement is the
23 date the Respondent and Board sign the Consent Agreement. If the dates are different, the
24 effective date is the later of the two dates.

25 9. COSTS OF COMPLIANCE. Respondent shall pay all costs associated
26 with complying with this Consent Agreement.

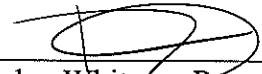
27 10. NONCOMPLIANCE. If Respondent violates this Order in any way or fails
28 to fulfill the requirements of this Order, the Board, after giving notice and the opportunity

1 to be heard, may revoke, suspend or take other disciplinary actions against the
2 registration. The issue at such a hearing will be limited solely to whether this Order has
3 been violated.
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6 ACCEPTED and ORDERED this 28 day of June, 2022.

7
8 
9 Jack Gilmore, L.A., Chairman
10 Arizona State Board of
11 Technical Registration

12 Consent Agreement and Order, No. HI22-013 accepted this 10 day of
13 May, 2022.

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15 Daylan Whitney, Respondent
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1 ORIGINAL filed this 29th day of
2 June, 2022, with:

3
4 Arizona State Board of Technical Registration
5 1110 W. Washington, Suite 240
6 Phoenix, AZ 85007

7 COPY of the foregoing mailed via Certified Mail
8 No. 9214 8901 9434 4600 0880 68 and
9 First Class mail this 29th day of June, 2022, to:

10 Daylan Whitney
11 4926 E. Comanche Dr.
12 Cottonwood, AZ 86326

13
14 By:  _____