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**BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON**

**IN THE MATTER OF:**

**CONSENT ORDER**

**JERRY E. HOWE,  
AN INDIVIDUAL,**

**RESPONDENT.**

**BCD CASE C2015-0031**

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**INTRODUCTION**

The Building Codes Division (Division) conducted an investigation on behalf of the State Plumbing Board of the State of Oregon (Board) and determined that Jerry E. Howe (Respondent) violated certain provisions of the Division's statutes and administrative rules as identified below.

The parties agree to resolve this matter without a hearing. Respondent understands that Respondent has the right to a contested case hearing under the Administrative Procedures Act, Oregon Revised Statutes (ORS) chapter 183, and Respondent fully and finally waives the right to a hearing and any judicial review therefrom by the signing of this Consent Order.

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**FINDINGS OF FACT**

1. Respondent has held journeyman plumber license 4845JP since July 9, 1993.
2. At no relevant time did Respondent hold a plumbing contractor license.
3. During or about January 2015, at 427 H Street, Gearhart, Oregon (the property), Respondent assisted a general contractor with the installation of an electric water heater and water service piping.<sup>1</sup>
4. Respondent did not obtain a plumbing permit prior to performing work at the property.
5. Respondent has reimbursed the homeowner of the property \$750.

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<sup>1</sup> See related BCD Case number C2015-0059

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**APPLICABLE LAW**

1. Under ORS 447.010(6), plumbing is defined as the art of installing, altering, or repairing pipes, fixtures, and other apparatus for bringing in the water supply and removing liquid and water-carried waste.
2. Under ORS 447.040(1), a person may not work as a plumbing contractor, or advertise or purport to be a plumbing contractor, without having obtained a plumbing contractor license.
3. OAR 918-030-0010(8) states that for purposes of ORS 447.040, 479.620, 480.630, and any other license regulated by ORS chapter 455, "engaging in the business" means to advertise or solicit, contract or agree to perform, or to perform work for which a license or permit is required under Oregon law, including but not limited to a single instance.
4. Under OAR 918-780-0065, no person, firm, or corporation shall do plumbing work in the State of Oregon without first obtaining a plumbing permit or minor label when required and paying the appropriate fees to the authorized permit issuing agency.

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**CONCLUSIONS OF LAW**

1. Installing a water heater and water service piping is plumbing as defined by ORS 447.010(6).
2. Contracting to install or performing the installation of a water heater and water service piping constitutes engaging in the business of plumbing contracting under OAR 918-030-0010(8).
3. By working as a plumbing contractor without holding a plumbing contractor license, Respondent violated ORS 447.040(1).
4. By installing a water heater and water service piping prior to obtaining a plumbing permit, Respondent violated OAR 918-780-0065.

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**ORDER**

1. The Board hereby assesses a total civil penalty of \$4,000 against Respondent for violating

1 OAR 447.040 (\$3,000) and OAR 918-780-0065 (\$1,000) as follows:

- 2 a. \$3,250 of the total civil penalty will be suspended for a period of five years if there is  
3 compliance with all other terms of this Consent Order.
- 4 b. Respondent agrees to pay the remaining \$750 of the civil penalty. Respondent's  
5 payment shall be postmarked no later than the 25<sup>th</sup> day of the month following the  
6 month in which this Consent Order becomes a final order. *(An invoice will be*  
7 *included with Respondent's copy of the final order after the Director signs it.)*

8 Payment shall be mailed to Department of Consumer and Business Services, Fiscal  
9 Services Section, P.O. Box 14610, Salem, OR 97309-0445.

10 2. Respondent understands the suspended civil penalty (\$3,250) will be considered satisfied  
11 five years after this Consent Order becomes a final order, provided Respondent complies  
12 with its terms and has not committed any further violations of the Division's statutes and  
13 rules within that five-year period. Respondent understands and agrees that if Respondent  
14 does not comply with the terms of this Consent Order or if Respondent commits any further  
15 violations of the Division's statutes or rules within the five-year period, then the entire civil  
16 penalty, including any suspended amount, will become immediately due and payable.  
17 Failure to comply with this Consent Order includes, but is not limited to, failure to pay the  
18 civil penalty amount due by the due date.

19 3. Respondent represents that he has reimbursed the homeowner of the property the amount of  
20 \$750.

21 4. Respondent agrees to fully cooperate with the Division's enforcement efforts in other cases  
22 that rely on the facts underlying this case. Cooperation may include, but may not be limited  
23 to, making sworn statements or testifying in administrative hearings.

24 5. Respondent understands that further enforcement action may be taken for any violation of  
25 the Division's statutes or rules not alleged in this Consent Order, whether committed before

1 or after the execution of this Consent Order, and/or for any violation of the terms of this  
2 Consent Order.

3 6. Respondent understands that failure to comply with this Consent Order may be used as a  
4 basis for the denial of future license, certificate, registration, or other applications, or for the  
5 refusal to renew the same; for the suspension, revocation, or conditioning of a license,  
6 certificate, or registration issued by the Division or other state agencies; and/or for any other  
7 reason provided for in law.

8 7. Respondent understands that this Consent Order is a public record.

9 8. Respondent has read and fully understands the terms of this Consent Order, freely and  
10 voluntarily consents to the entry of this Consent Order without any force or duress, and  
11 expressly waives all rights to hearing or judicial review in this matter.

12 9. Respondent understands that, upon signature of all parties, this Consent Order will be a  
13 Final Order.

14 Jerry E. Howe It is so agreed this 20<sup>th</sup> day of Sept, 2015.  
15 Jerry E. Howe

17 Andrea Simmons for It is so agreed this 1 day of October, 2015.  
18 Chair  
19 State Plumbing Board  
20 State of Oregon