

BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

CONSENT ORDER

SMITH & SONS, INC.,  
A DOMESTIC BUSINESS CORPORATION,

RESPONDENT.

BCD CASE C2015-0142

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 Smith & Sons, Inc. (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.

FINDINGS OF FACT

1. In or around May 2015, Dan Smith (Smith), acting on Respondent's behalf, performed the following work at a residential property located at 917 Millview Street, in Lakeview, Oregon (Millview property):
  - a. Installed a Jacuzzi walk-in-tub in the bathroom, connecting the tub to existing water supply lines with flexible tubing; and
  - b. Installed new drain piping in the bathroom, connecting the tub to an existing drainpipe.<sup>1</sup>

<sup>1</sup> Smith is also Respondent's owner. See related Division case number C2015-0141. In addition, Respondent acted as an installation contractor for AITHR Dealer Inc. See related Division case number C2015-0256.

- 1 2. Respondent did not obtain a permit or minor label to perform the foregoing plumbing work  
2 at the Millview property.<sup>2</sup>  
3 3. At no relevant time did Respondent hold a plumbing contractor license.

#### 4 APPLICABLE LAW

- 5 1. The terms used in this Notice may be defined in ORS 183.310(1)-(10), ORS 447.010(1)-(6),  
6 ORS 455.010(1)-(10), ORS 693.010(1)-(5), OAR 918-001-0005(1)-(4), OAR 918-030-  
7 0010(1)-(11), and OAR 918-690-0420(1)-(14).  
8 ~~2. Under ORS 447.010(6), plumbing is defined as the art of installing, altering, or repairing~~  
9 pipes, fixtures, and other apparatus for bringing in the water supply and removing liquid and  
10 water-carried waste.  
11 3. Under OAR 918-780-0065, no person, firm, or corporation shall do plumbing work in the  
12 State of Oregon without first obtaining a plumbing permit or minor label when required and  
13 paying the appropriate fees to the authorized permit issuing agency.  
14 4. Under ORS 447.040(1), a person may not work as a plumbing contractor, or advertise or  
15 purport to be a plumbing contractor, without having obtained a plumbing contractor license.  
16 5. OAR 918-030-0010(8) states that for purposes of ORS 447.040, 479.620, 480.630, and any  
17 other license regulated by ORS chapter 455, "engaging in the business" means to advertise  
18 or solicit, contract or agree to perform, or to perform work for which a license or permit is  
19 required under Oregon law, including but not limited to a single instance.

#### 20 CONCLUSIONS OF LAW

- 21 1. The following constitute plumbing under ORS 447.010(6):  
22 a. Installing a Jacuzzi walk-in-tub;  
23 b. Installing new drain piping; and  
24 c. Connecting the tub to the piping.

25 <sup>2</sup> Respondent later contracted with Outback Plumbing and Remodeling Inc. (Outback), plumbing contractor license number PB1486, to review Respondent's unlicensed work and obtain an appropriate minor label. Respondent incurred \$65.00 in expenses pursuant to this contract.

- 1 2. By performing the foregoing plumbing work at the Millview property without first obtaining  
2 a permit or minor label, Respondent violated OAR 918-780-0065.
- 3 3. By performing the foregoing plumbing work at the Millview property, Respondent engaged  
4 in the business of plumbing contractor under OAR 918-030-0010(8).
- 5 4. By working as a plumbing contractor without having obtained a plumbing contractor  
6 license, Respondent violated ORS 447.040(1).

7 **ORDER**

8 ~~1. The Board hereby assesses a total civil penalty of \$4,000.00 against Respondent for~~

9 violating OAR 918-780-0065 (\$1,000.00) and ORS 447.040(1) (\$3,000.00) as follows:

10 a. \$2,750.00 of the total civil penalty will be suspended for a period of five years if  
11 there is compliance with all other terms of this Consent Order.

12 b. Respondent agrees to pay the remaining \$1,250.00 of the civil penalty. Respondent  
13 will make four monthly payments, the first two in the amount of \$125.00 per month,  
14 the third in the amount of \$435.00, and the fourth in the amount of \$500.00. The  
15 remaining \$65.00 of the civil penalty, the expense incurred by Respondent pursuant  
16 to its contract with Outback, shall be considered satisfied when Respondent's final  
17 \$500.00 payment is received by the Division. All payments shall be postmarked no  
18 later than the 25<sup>th</sup> day of each month. Respondent's first payment shall be

19 postmarked no later than the 25<sup>th</sup> day of the month following the month in which this  
20 Consent Order becomes a final order. *(An invoice will be included with*  
21 *Respondent's copy of the final order after the Director signs it. This is a one-time*  
22 *invoice; Respondent will not receive monthly invoices or other reminders to pay.*  
23 *Respondent understands timely payments must be made even if no invoice is ever*  
24 *received.)* Payments shall be mailed to Department of Consumer and Business  
25 Services, Fiscal Services Section, P.O. Box 14610, Salem, OR 97309-0445.

1 c. Respondent understands the suspended civil penalty (\$2,750.00) will be considered  
2 satisfied five years after this Consent Order becomes a final order, provided  
3 Respondent complies with its terms and has not committed any further violations of  
4 the Division's statutes and rules within that five-year period. Respondent  
5 understands and agrees that if Respondent does not comply with the terms of this  
6 Consent Order or if Respondent commits any further violations of the Division's  
7 statutes or rules within the five-year period, then the entire civil penalty, including  
8 any suspended amount, will become immediately due and payable. Failure to comply  
9 with this Consent Order includes, but is not limited to, failure to pay the civil penalty  
10 amount due by the due date.

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

14 3. Respondent understands that further enforcement action may be taken for any violation of  
15 the Division's statutes or rules not alleged in this Consent Order, whether committed before  
16 or after the execution of this Consent Order, and/or for any violation of the terms of this  
17 Consent Order.

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

23 5. Respondent understands that this Consent Order is a public record.

24 6. Respondent has read and fully understands the terms of this Consent Order, freely and  
25 voluntarily consents to the entry of this Consent Order without any force or duress, and

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expressly waives all rights to hearing or judicial review in this matter.

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

 ~~for Smith & Sons, Inc.~~ It is so agreed this 2 day of MAY, 2016.  
Dan L. Smith  
Authorized Representative  
Smith & Sons, Inc.

 for It is so agreed this 5<sup>th</sup> day of May, 2016.  
Chair  
State Plumbing Board  
State of Oregon