

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

2 **IN THE MATTER OF:**

CONSENT ORDER

3
4 **DAN L. SMITH,**
5 **AN INDIVIDUAL,**

6 **RESPONDENT.**

BCD CASE C2015-0141

7
8 **INTRODUCTION**

9 The Building Codes Division (Division) conducted an investigation on behalf of the State
10 Plumbing Board of the State of Oregon (Board) and determined that Dan L. Smith (Respondent)
11 violated certain provisions of the Division's statutes and administrative rules as identified below.

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

16 **FINDINGS OF FACT**

17 1. In or around May 2015, Respondent performed the following work at a residential property
18 located at 917 Millview Street, in Lakeview, Oregon (Millview property):

- 19 a. Installed a Jacuzzi walk-in-tub in the bathroom, connecting the tub to existing water
20 supply lines with flexible tubing; and
21 b. Installed new drain piping in the bathroom, connecting the tub to an existing
22 drainpipe.¹

23 2. At no relevant time did Respondent hold a journeyman plumber license.

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25 ¹ Respondent acted on behalf of Smith & Sons, Inc. (Smith & Sons), which he owns. See related Division case number C2015-0142. Smith & Sons acted as an installation contractor for AITHR Dealer Inc. See related Division case number C2015-0256.

1 **APPLICABLE LAW**

- 2 1. The terms used in this Notice may be defined in ORS 183.310(1)-(10), ORS 447.010(1)-(6),
3 ORS 455.010(1)-(10), ORS 693.010(1)-(5), OAR 918-001-0005(1)-(4), OAR 918-030-
4 0010(1)-(11), and OAR 918-690-0420(1)-(14).
- 5 2. Under ORS 447.010(6), plumbing is defined as the art of installing, altering, or repairing
6 pipes, fixtures, and other apparatus for bringing in the water supply and removing liquid and
7 water-carried waste.
- 8 3. Under ORS 693.030(1), a person may not engage in the trade of journeyman plumber
9 without a journeyman plumber license.

10 **CONCLUSIONS OF LAW**

- 11 1. The following constitute plumbing under ORS 447.010(6):
- 12 a. Installing a Jacuzzi walk-in-tub; and
 - 13 b. Installing new drain piping.
- 14 2. By performing the foregoing plumbing at the Millview property without a journeyman
15 plumber license, Respondent violated ORS 693.030(1).

16 **ORDER**

- 17 1. The Board hereby assesses a total civil penalty of \$2,000.00 against Respondent for
18 violating ORS 693.030(1) as follows:
- 19 a. \$1,250.00 of the total civil penalty will be suspended for a period of five years if
20 there is compliance with all other terms of this Consent Order.
 - 21 b. Respondent agrees to pay the remaining \$750.00 of the civil penalty. Respondent
22 will make 2 monthly payments postmarked no later than the 25th day of each month
23 in the amount of \$375.00 per month. Respondent's first payment shall be postmarked
24 no later than the 25th day of the month following the month in which this Consent
25 Order becomes a final order. *(An invoice will be included with Respondent's copy*

1 *of the final order after the Director signs it. This is a one-time invoice; Respondent*
2 *will not receive monthly invoices or other reminders to pay. Respondent*
3 *understands timely payments must be made even if no invoice is ever received.)*

4 Payments shall be mailed to Department of Consumer and Business Services, Fiscal
5 Services Section, P.O. Box 14610, Salem, OR 97309-0445.

6 c. Respondent understands the suspended civil penalty (\$1,250.00) will be considered
7 satisfied five years after this Consent Order becomes a final order, provided

8 Respondent complies with its terms and has not committed any further violations of
9 the Division's statutes and rules within that five-year period. Respondent
10 understands and agrees that if Respondent does not comply with the terms of this
11 Consent Order or if Respondent commits any further violations of the Division's
12 statutes or rules within the five-year period, then the entire civil penalty, including
13 any suspended amount, will become immediately due and payable. Failure to comply
14 with this Consent Order includes, but is not limited to, failure to pay the civil penalty
15 amount due by the due date.

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

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

23 4. Respondent understands that failure to comply with this Consent Order may be used as a
24 basis for the denial of future license, certificate, registration, or other applications, or for the
25 refusal to renew the same; for the suspension, revocation, or conditioning of a license,

1 certificate, or registration issued by the Division or other state agencies; and/or for any other
2 reason provided for in law.

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

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

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

9 
10 Dan L. Smith, Inc. It is so agreed this 2 day of MAY, 2016.
11 Dan L. Smith

12 Andrea Simmonds for It is so agreed this 5th day of May, 2016.
13 Chair
14 State Plumbing Board
15 State of Oregon
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