

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

<b>In the Matter of:</b>	)	<b>Case No.: HI22-004</b>
	)	
<b>Nicholas Marksberry</b>	)	
<b>Certified Home Inspector</b>	)	<b>CONSENT AGREEMENT</b>
<b>Registration No. 63765</b>	)	<b>AND ORDER</b>
	)	<b>for</b>
<b>Respondent</b>	)	<b>VOLUNTARY SURRENDER</b>
	)	
	)	

---

AZ-BTR RECEIVED  
DEC 19 2021 PM 3:5

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, Nicholas Marksberry (“Respondent”), holder of Registration No. 63765, 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.
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. The Consent Agreement, any record prepared in this matter, all investigative materials prepared or received by the Board and all related exhibits and materials, are public records (as defined in A.R.S. § 41-158.18) 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 HI22-004 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 also 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. 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 is withdrawn and shall be 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. 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 Home Inspections in the State of Arizona.

2. Respondent is the holder of Arizona Certified Home Inspector Registration No. 63765.

3. On February 8, 2021, Respondent conducted a home inspection for Alleger at 5125 W. Condor Drive in Tucson, Arizona.

4. On August 24, 2021, Alleger filed a complaint with the Board alleging Respondent failed to properly report on the HVAC system in the home inspection report.

5. On November 30, 2021, an Enforcement Advisory Committee (EAC) meeting was held to discuss the case. After reviewing the evidence and interviewing Respondent, the Committee determined Respondent failed to conduct a home inspection in accordance with the Standards of Professional Practice for Arizona Home Inspectors ("S.O.P") and found that:

- a. Respondent failed to include the name, address and certification number of Inspector as required in S.O.P #2.2.
- b. Respondent failed to include the firm address as required in S.O.P #2.2.
- c. Respondent failed to describe wall structure as required in S.O.P. #4.2.
- d. Respondent failed to describe type of roof structure as required in S.O.P. #4.2.
- e. Respondent failed to observe and report on wall flashing as required in S.O.P.

#5.1.

- f. Respondent failed to observe and report on caves, soffits and fascias as required in S.O.P. #5.1.
- g. Respondent failed to observe and report patio as required in S.O.P. #5.1.
- h. Respondent failed to observe and report on roof coverings as required in S.O.P. #6.1.
- i. Respondent failed to observe and report on interior water supply and distribution system as required in S.O.P. #7.1.
- j. Respondent failed to observe and report on automatic safety controls as required in S.O.P. #7.1.
- k. Respondent failed to observe and report on fuel storage and distribution systems as required in S.O.P. #7.1.
- l. Respondent failed to describe drain, waste and vent piping materials as required in S.O.P. #7.2.
- m. Respondent failed to observe and report on service entrance conductors as required in S.O.P. #8.1.
- n. Respondent failed to observe and report on service grounding equipment as required in S.O.P. #8.1.
- o. Respondent failed to observe and report on overcurrent protection devices as required in S.O.P. #8.1.
- p. Respondent failed to observe and report on condition of branch circuit conductors as required in S.O.P. #8.1.
- q. Respondent failed to observe and report on amperage and voltage ratings as required in S.O.P. #8.1.
- r. Respondent failed to observe and report on the condition of lights and switches as required in S.O.P. #8.1.
- s. Respondent failed to observe and report on the polarity and grounding of receptacles as required in S.O.P. #8.1.

- t. Respondent failed to observe and report on the type of heating equipment as required in S.O.P. #9.1.
- u. Respondent failed to observe and report on the condition of automatic safety controls as required in S.O.P. #9.1.
- v. Respondent failed to observe and report on condition of chimneys, flues and vents as required in S.O.P. #9.1.
- w. Respondent failed to observe and report on type of solid fuel heating devices as required in S.O.P. #9.1.
- x. Respondent failed to observe and report on the type and condition of heat distribution systems as required in S.O.P. #9.1.
- y. Respondent failed to observe and report on the condition of air filters as required in S.O.P. #9.1.
- z. Respondent failed to observe and report on the heat source presence in each room as required in S.O.P. #9.1.
- aa. Respondent failed to describe the energy source type as required in S.O.P. #9.2.
- bb. Respondent failed to describe the systems using normal operating controls as required in S.O.P. #9.2.
- cc. Respondent failed to observe and report on condition of operating controls as required in S.O.P. #10.1.
- dd. Respondent failed to observe and report on the type of cooling equipment as required in S.O.P. #10.1.
- ee. Respondent failed to observe and report on type and condition of distribution system as required in S.O.P. #10.1.
- ff. Respondent failed to observe and report on the condition of air filters as required in S.O.P. #10.1.
- gg. Respondent shall describe type of energy source as required in S.O.P. #10.2.
- hh. Respondent failed to observe and report on condition of fire separation doors as required in S.O.P. #11.1.

ii. Respondent failed to observe and report on the presence and condition of attic ventilation as required in S.O.P. #12.1.

jj. Respondent failed to describe type and condition of vapor retarder as required in S.O.P. #12.2.

### CONCLUSIONS OF LAW

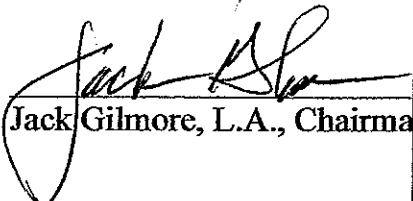
1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.
2. The conduct alleged in the Findings of Fact constitutes grounds for discipline pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301.01, in that Respondent failed to conduct a home inspection in accordance with the Standards of Professional Practice for Arizona Home Inspectors.

### ORDER

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

1. **VOLUNTARY SURRENDER.** Respondent agrees to voluntarily surrender his Certified Home Inspector Registration No. 63765 in lieu of a formal hearing.
2. **RESTITUTION.** Within thirty (30) days from the effective date of this Consent Agreement, Respondent shall pay restitution to the client, John Hohn, in the amount of Three Hundred and Fifteen Dollars (\$315.00) for the cost of the home inspection fee related to case HI22-004. Respondent shall provide proof of payment made to the client, such as a copy of the check, to the Board of Technical Registration showing payment was made to the client.
3. **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.

ACCEPTED and ORDERED this 15 day of January, 2022.

  
Jack Gilmore, L.A., Chairman

Arizona State Board of  
Technical Registration

Consent Agreement and Order, No. HI22-004 accepted this 9<sup>th</sup> day of December,  
2021.

  
\_\_\_\_\_  
Nicholas Marksberry, Respondent

**ORIGINAL** filed this 29<sup>th</sup> day of

January, 2022, with:

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

**COPY** of the foregoing mailed via Certified Mail

No. 9214 8901 9434 4600 0864 84 and

First Class mail this 27<sup>th</sup> day of January, 2022, to:

Nicholas Marksberry  
4700 N. El Adobe Ranch Rd.  
Tucson, AZ. 85745

By: \_\_\_\_\_

SM Boehm, BTR Investigator