

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

In the Matter of:

Case No.: HI16-027

**David Berry
Home Inspector
Certification No. 38633**

**CONSENT AGREEMENT
and
ORDER OF DISCIPLINE**

**DJ's Horizon Home Inspection, LLC
Firm Registration No. 12302**

_____ **Respondents**

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, David Berry ("Respondent"), holder of Certification No. 38633, and DJ's Horizon Home Inspection, firm registration No. 12302 ("Respondent Firm"), 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.

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1 3. Respondent affirmatively agrees that this Consent Agreement shall be
2 irrevocable.

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

5 5. The Consent Agreement, any record prepared in this matter, all investigative
6 materials prepared or received by the Board and all related exhibits and materials, are
7 public records (as defined in A.R.S. § 41-158.18) upon acceptance by the Board of this
8 Consent Agreement and may be retained in the Board's files pertaining to this matter.

9 6. Respondent understands this Consent Agreement deals with Board case
10 number HI16-027 involving allegations that Respondent engaged in conduct that would
11 subject him to discipline under the Board's statutes and rules. The investigation into
12 these allegations against Respondent shall be concluded upon the Board's adoption of
13 this Consent Agreement.

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

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

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

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1 10. This Consent Agreement is subject to the approval of the Board and is
2 effective only when accepted by the Board and signed on behalf of the Board. If the
3 Board does not accept this Consent Agreement, the Board retains its authority to hold a
4 formal administrative hearing pursuant to A.R.S. § 32-128(E). In the event that the
5 Board does not approve this Consent Agreement, it is withdrawn and shall be of no
6 evidentiary value and shall not be relied upon nor introduced in any action by any party,
7 except that the parties agree that should the Board reject this Consent Agreement and this
8 case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced
9 by its review and discussion of this document or any records relating thereto.

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

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

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

FINDINGS OF FACT

19 1. The Board is the duly constituted authority for the regulation and control of
20 Certified Home Inspectors in the State of Arizona.

21 2. Respondent is the holder of Arizona Certified Home Inspector No. 38633,

22 3. Between June 30, 2015, and December 23, 2016, Respondent Firm was not
23 registered with the Board.

24 4. On or about February 9, 2016, the Respondent performed a home inspection
25 and prepared a home inspection report through Respondent firm, for the property located
26 at 11596 W. Sierra Dawn Blvd., Surprise, AZ.

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1 5. On March 28, 2016, the Board received a complaint alleging that
2 Respondent failed to conduct a home inspection in accordance with Standards of
3 Professional Practice for Arizona Home Inspectors ("AZ SOP") and while Respondent
4 Firm's registration was expired.

5 6. On December 22, 2017, an Enforcement Advisory Committee reviewed
6 the case, and found the following:

7 a. Respondent conducted a home inspection in the State of Arizona
8 through the unregistered firm, DJ's Horizon Home Inspection, LLC.

9 b. Respondent failed to accurately observe/or report on the interior drain
10 waste, and vent system in violation of AZSOP No. 7.1.B.

11 c. Respondent failed observe the presence of an installed heating/cooling
12 source in each room in violation of AZSOP Nos.9.1.A.7 and 10.1.B.2.

13 d. Respondent failed to provide the client with better understanding of the
14 property conditions by identifying the condition of numerous system and components
15 only with the comment "Inspected".

16 e. Respondent failed to obtain a signed agreement prior the delivery of the
17 report in violation of AZSOP No. 2.2.A.

18 f. Respondent failed to observe functional drainage in violation of AZSOP
19 No. 7.1.B.3.

20 **CONCLUSIONS OF LAW**

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

22 2. The conduct alleged in the Findings of Facts constitutes grounds for
23 discipline pursuant to A.R.S. § 32-121, and A.R.S. § 32-141(A), in that Respondent
24 conducted a home inspection on or about February 9, 2016, through DJ's Horizon Home
25 Inspection, LLC, a firm that was not registered with the Board.

26 3. The conduct alleged in the Findings of Fact, constitutes grounds for discipline
27 pursuant to A.R.S. § 32-128(C)(4) as it relates to; A.A.C. R4-301.1(A), in that
28 Respondent failed to conduct home inspection in accordance with the Standards of

1 Professional Practice for Arizona Home Inspectors.

2 ORDER

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

5 1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of
6 Reprimand.

7 2. ADMINISTRATIVE PENALTY. Within Four (4) months from the
8 effective date of this Consent Agreement, Respondent shall pay an administrative penalty
9 of One Thousand Dollars (\$1,000.00) by certified check or money order made payable to
10 the State of Arizona Board of Technical Registration. The Respondent shall make Four
11 Payments of Two Hundred Fifty Dollars (\$250.00), with the first payment to be
12 submitted on the first of the month following the Board's acceptance of the agreement.

13 3. COST OF INVESTIGATION. Within ninety (90) days from the effective
14 date of this Consent Agreement, Respondents shall pay the cost of investigation of this
15 case to the Board in the amount of Six Hundred Twenty-Nine Dollars (\$629.00) by
16 certified check or money order made payable to the State of Arizona Board of Technical
17 Registration, according to the provisions of A.R.S. § 32-128(H).

18 4. OBEY ALL LAWS. Respondent shall obey all federal, state and local
19 laws, as well as, all rules governing the practice of Home Inspections in the State of
20 Arizona. The Board shall consider any violation of this paragraph to be a separate
21 violation of the rules and statues governing the Arizona Board of Technical Registration.

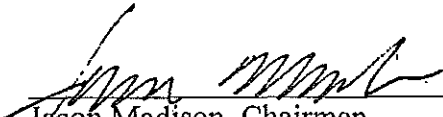
22 5. RENEWAL OF REGISTRATION. Respondent and Respondent Firm shall
23 timely renew their Arizona registration as a Home Inspector and Home Inspection Firm,
24 and timely pay all required registration fees.

25 6. EFFECTIVE DATE. The effective date of this Consent Agreement is the
26 date the Respondent and Board sign the Consent Agreement. If the dates are different, the
27 effective date is the later of the two dates.


28 7. COSTS OF COMPLIANCE. Respondents shall pay all costs associated

1 to fulfill the requirements of this Order, the Board, after giving notice and the opportunity
2 to be heard, may revoke, suspend or take other disciplinary actions against the
3 registration. The issue at such a hearing will be limited solely to whether this Order has
4 been violated.

5 ACCEPTED and ORDERED this 12 day of April, 2017.

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7  4/13/17
8 Jason Madison, Chairman
9 Arizona State Board of
10 Technical Registration

11 Consent Agreement and Order, No. HI16-027 accepted this 12 day of
12 April, 2017.

13 
14 David Berry, Personally and on behalf of
15 DJ's Horizon Home Inspection, LLC,
16 Respondents

17 ORIGINAL filed this 12 day of
18 April, 2017, with:

19 Arizona State Board of Technical Registration
20 1110 W. Washington, Suite 240
21 Phoenix, AZ 85007

22 COPY of the foregoing mailed via Certified Mail

23 No. 9214 8901 9434 4600 040 43 and
24 First Class mail this 14 day of APRIL, 2017, to:

25 David Berry
26 DJ's Horizon Home Inspection, LLC
27 PO Box 9446
28 Surprise, AZ 85374

By: David H Berry
R Kramer

