

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
HOME INSPECTION ADVISORY COMMITTEE

IN THE MATTER OF

WINFIELD BURNUM

Application No: 945071

FOR LICENSURE TO PRACTICE
HOME INSPECTION IN THE STATE
OF NEW JERSEY

Administrative Action

FINAL ORDER
DENYING LICENSURE

This matter was opened to the New Jersey State Board of Professional Engineers and Land Surveyors, Home Inspection Advisory Committee (hereinafter the "Committee"), upon receipt of an application for licensure as a home inspector in this State filed by Winfield Burnum. The Board has reviewed the application and makes the following findings:

FINDINGS OF FACT

1. On or about March 27, 2003, respondent Winfield Burnum filed an application for licensure, via the grandfather provision, as a home inspector in the State of New Jersey. Pursuant to the mandates of N.J.S.A. 45:8-72, a home inspector license shall be issued to any individual, provided the individual can demonstrate: a) good moral character; b) successful completion of high school or its equivalent; c) successful passage of the American Society of Home Inspectors Examination or the National Home Inspection Examination; and d) having been engaged in the practice of home inspections for compensation for not less than three years prior to the effective date

of the Home Inspection Professional Licensing Act and has performed not less than 300 home inspections for compensation. [N.J.S.A. 45:8-72(a)].*

2. In a correspondence dated April 1, 2003, the Committee advised the respondent that additional information was needed for its review of his application. In addition to other documents, the Committee requested that Mr. Burnum provide thirty (30) home inspection reports, as authorized by N.J.A.C. 13:40-15.4(c), for its review. Moreover, the Committee requested that Mr. Burnum submit an additional four (4) reports of home inspections that were performed prior to June 3, 1999.

3. Following his request to the Committee's administrative staff, the respondent appeared before the Committee at its May 13, 2003, meeting. He presented additional reports, information and photographs in support of his application and requested that the Committee approve his licensure application.

4. At its May 29, 2003, meeting, the Committee reviewed Mr. Burnum's licensure application. The Committee found that the respondent had failed to demonstrate or provide evidence that he had performed not less than 300 home inspections for compensation as required by N.J.S.A. 45:8-72 and N.J.A.C. 13:40-15.4(a)(5) and (c).

DISCUSSION

The Home Inspection Advisory Committee is empowered by the New Jersey Legislature with several duties, including the issuances of licenses to home inspectors. It is the Committee's

* N.J.S.A. 45:8-72 was amended on or about May 23, 2003. The amendment provided an additional method of licensure under the grandfather provision, allowing an applicant to be issued a home inspector license by satisfying the requirements enumerated above in sections a, b and c and by performing not less than 400 home inspections for compensation prior to June 30, 2004. Following submission of Mr. Burnum's application and the Committee's issuance of its Provisional Order denying licensure, on June 10, 2004, N.J.S.A. 45:8-72 was again amended, extending the time period to December 30, 2005 for applicants to satisfy the requirements for licensure.

responsibility to ensure that home inspectors to whom it grants licensure have met all of the requirements for licensure set forth in the relevant statutes and regulations. The Committee's practice is to carefully review every candidate's application in order to assure that licenses are being issued only to qualified individuals.

In order to be licensed as a home inspector in New Jersey via the grandfather provision, N.J.S.A. 45:8-72 requires that an individual must demonstrate: a) good moral character; b) successful completion of high school or its equivalent; c) successful passage of the American Society of Home Inspectors Examination or the National Home Inspection Examination. Additionally, the applicant must demonstrate that he or she was engaged in the practice of home inspections for compensation for not less than three years prior to the effective date of the Home Inspection Professional Licensing Act ("Act") and, most importantly to the case at hand, **"has performed not less than 300 home inspections for compensation."** [N.J.S.A. 45:8-72(a); emphasis added]. Additionally, as of May 23, 2003, an applicant who satisfies the requirements of sections a, b and c listed above and demonstrates that he or she has performed **"not less than 400 home inspections for compensation prior to June 30, 2004,"** may also be licensed as a home inspector. [N.J.S.A. 45:8-72(b); emphasis added].* The Committee has determined that the respondent has failed to perform the requisite number of home inspections as required by N.J.S.A. 45:8-72.

The Act defined a home inspection as

... an inspection and written evaluation of the following components of a residential building: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry, structure, exterior and interior components or any other

* The Act was again amended on June 10, 2004, extending to December 30, 2005 the time for applicants to provide evidence that they have satisfied all criteria for licensure.

related residential housing component as determined by the board by regulation." [N.J.S.A. 45:8-62].

The Committee has promulgated a regulation to implement the mandates of the above cited statute.

N.J.A.C. 13:40-15.4(a) indicates that a "home inspection"

... means a visual, functional, non-invasive inspection conducted without moving personal property, furniture, equipment, plants, soil, snow, ice, or debris, using mandatory equipment and including the preparation of a home inspection report of the readily-accessible elements of the following components of a residential building: structural components, exterior components, roofing system, plumbing system, electrical system, heating system, cooling system, interior components, insulation components and ventilation systems, fireplaces and solid fuel burning appliances, or any other related residential housing component as determined by the Board, in consultation with the Committee, by rule, but excluding recreational facilities and outbuildings other than garages or carports. [N.J.S.A. 13:40-15.2].

Finally, N.J.A.C. 13:40-15.2 defines a home inspection report as

... a written report prepared by a home inspector ... which:

1. Discloses those systems and components which are designed for inspection pursuant to [these regulations] and are present at the time of the inspection, as well as those which are present at the time of the home inspection but are not inspected and the reason(s) they are not inspected;
2. Describes systems and components as specified in [the regulation];
3. States what material defects are found in the systems or components;
4. States the significant findings; and

** The term "board" in this statute refers to the State Board of Professional Engineers and Land Surveyors ("Board") which is authorized by the Legislature, pursuant to N.J.S.A. 45:8-77, to adopt rules and regulations, after consultation with the Committee, to implement the Act.

5. Provides recommendations regarding the need to repair, replace or monitor a system or component, or to obtain examination and analysis by a qualified professional, tradesman or service technician. [N.J.A.C. 13:40-15.2].

Therefore, an applicant for a home inspection license must, in addition to the requirements enumerated above, submit proof that he has performed not less than 300 or 400 home inspections for compensation. These inspections must satisfy the definition of home inspections outlined in the Act.

Following its review of his licensure application, the Committee found that Mr. Burnum failed to demonstrate or provide evidence that he performed the requisite number of home inspections for compensation as required by N.J.S.A. 45:8-72 and N.J.A.C. 13:40-15.4. Rather, the Committee's review of the submitted home inspection reports revealed that the respondent performed remodeling inspection reviews for clients. Specifically, clients would contact Mr. Burnum and indicate the desire to remodel certain components of their residential buildings for which the respondent would inspect the particular and identified component of the home in preparation for remodeling work. The reports reviewed, ranging from 1995 to 2000, were entitled either "Proposal," or "Invoices." Additionally, the Committee notes that these remodeling inspections were performed by Mr. Burnum and his corporation "Kingsway Remodeling, Incorporated." The corporation was incorporated in or about 1979 for the stated purpose, according to the Certificate of Incorporation, to "repair and remodel buildings." The Committee finds that the remodeling inspections do not constitute home inspections as contemplated by the Legislature in its promulgation of the Act. Therefore, the Committee concluded that the respondent is not eligible for licensure as a home inspector in this State.

CONCLUSIONS OF LAW

Respondent has failed to demonstrate or provide evidence that he has performed the requisite number of home inspections for compensation as required by N.J.S.A. 45:8-72 and N.J.A.C. 13:40-15.4.

DISCUSSION ON FINALIZATION

Based on the foregoing findings and conclusions, a Provisional Order Denying Licensure, which concluded that the respondent was not eligible for licensure pursuant to the grandfather clause, was entered on September 23, 2003, and a copy served on the respondent. The Provisional Order was subject to finalization by the Committee at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

Through his counsel, Marvin C. Gaer, Esquire, the respondent provided a written submission, dated October 30, 2003, to the Committee. In this correspondence, the respondent contended that he had met the requirements for licensure as a home inspector via the grandfather clause. He provided copies of his high school diploma and Bachelor of Engineering degree to prove compliance with the educational requirements, and provided his certificate showing that he passed the National Home Inspectors Examination. Additionally, he alleged that his experience in home inspections and other activities in the field for more than twenty years far exceeded the home inspector licensure requirements. Specifically, he asserted that his corporation, Kingsway Remodeling Inc., has been

in business since 1979, and Mr. Burnum has performed home inspections through that corporation as evidenced by the reports provided to the Committee. Mr. Burnum suggests that the Committee has rejected his application in part because it found that Kingsway Remodeling was somehow restricted to the repair and remodeling of buildings, as that purpose is set forth in its certificate of incorporation. Further, citing the definition of home inspection in the Act, he argues that home inspection reports do not have to include a review of all systems to qualify as a home inspection, and that by submitting the reports prepared in connection with his repair and remodeling business he had therefore satisfied all requirements for licensure under the grandfather clause.

The Committee reviewed Mr. Burnum's submission, along with all of the information in the file, and has determined that nothing in Mr. Burnum's submission warrants modification of the Committee's initial determination that Mr. Burnum has not satisfied the requirements for licensure as a home inspector in the State of New Jersey. Whether or not Mr. Burnum or his corporation did the work indicated in the reports or prepared the submitted reports is not the issue. Rather, the issue is that the majority of the submitted reports failed to demonstrate, or indicate in any way, that Mr. Burnum inspected and evaluated the components enumerated in the Act at N.J.S.A. 45:8-62. The reports were restricted to particular and identified components, consistent with remodeling inspections, and do not satisfy either the statutory or regulatory requirements to constitute home inspections.

However, the Committee notes that Mr. Burnum submitted several reports which do constitute home inspection reports within the meaning of the Act and regulations. As noted above, the statute was amended on June 10, 2004 to extend the time available for licensure under the grandfather clause. Accordingly, Mr. Burnum will have the ability to reapply for licensure in the

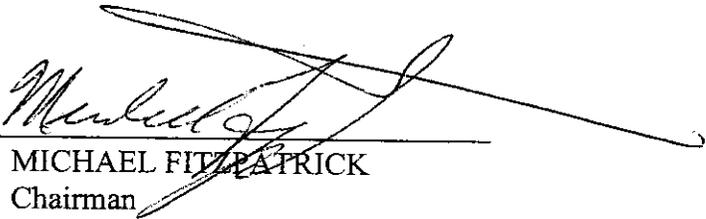
event he is able to complete 400 home inspections which satisfy the criteria set forth in N.J.S.A. 45:8-72 and N.J.A.C. 13:40-15.4 prior to December 30, 2005.

IT IS, THEREFORE, on this 24 day of **SEPTEMBER 2004, ORDERED that:**

1. The application of Winfield Burnum to practice home inspection in the State of New Jersey is hereby denied.

HOME INSPECTION ADVISORY COMMITTEE

By: _____


MICHAEL FITZPATRICK
Chairman