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Law

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August 2015

# Eugene Lennox Whiting vs. Commerce and Insurance

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**State of Tennessee**  
**Department of State**  
Administrative Procedures Division  
312 Rosa L. Parks Avenue  
8<sup>th</sup> Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243-1102  
Phone: (615) 741-7008/Fax: (615) 741-4472

August 11, 2015

Commissioner Julie Mix McPeak  
Tennessee Department of Commerce &  
Insurance  
Office of Legal Counsel  
12<sup>th</sup> Floor, Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, Tennessee 37243-5065

Eugene Lennox Whiting  
179 Country Road #655  
Athens, TN 37303

Robyn Lynne Ryan, Esq.  
Staff Attorney  
Tennessee Department of Commerce &  
Insurance  
Office of Legal Counsel  
12<sup>th</sup> Floor, Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, TN 37243-0569

RE: In the Matter of: Eugene Lennox Whiting

Docket No. 12.29-130173J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division  
Tennessee Department of State

/aem  
Enclosure

**BEFORE THE COMMISSIONER OF THE TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE**

**IN THE MATTER OF:**

**EUGENE LENNOX WHITING**

**DOCKET NO. 12.29-130173J**

**NOTICE**

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **August 26, 2015.**

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION  
WILLIAM R. SNODGRASS TOWER  
312 ROSA PARKS AVENUE, 8<sup>th</sup> FLOOR  
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472.** PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE TENNESSEE  
DEPARTMENT OF COMMERCE & INSURANCE  
HOME INSPECTOR LICENSING PROGRAM**

**IN THE MATTER OF:**

**TENNESSEE DEPARTMENT OF  
COMMERCE & INSURANCE,  
*Petitioner,***

**v.**

**EUGENE LENNOX WHITING,  
*Respondent.***


**DOCKET NO: 12.29-130173J**

**INITIAL ORDER**

This matter was set to be heard on August 5, 2015 before an Administrative Law Judge pursuant to a NOTICE OF HEARING AND CHARGES issued on March 6, 2015 by the Office of Legal Counsel of Tennessee Department of Commerce and Insurance, Division of Regulatory Boards. At the commencement of the hearing on August 5, 2015, the parties entered into an AGREED ORDER. On August 5, 2015, Assistant General Counsel Robyn Lynne Ryan filed the AGREED ORDER and a notice of taking a voluntary nonsuit to dismiss this proceeding with prejudice. .

The AGREED ORDER is hereby approved and the terms, conditions, and sanctions set forth therein are incorporated and made a part of this INITIAL ORDER.<sup>1</sup> Based on the AGREED ORDER and the notice filed by the Tennessee Department of Commerce and Insurance, this matter is hereby **DISMISSED**.

It is so **ORDERED**, this the 11<sup>th</sup> day of August, 2015.

  
\_\_\_\_\_  
**J. RICHARD COLLIER**  
**ADMINISTRATIVE JUDGE**  
**ADMINISTRATIVE PROCEDURES DIVISION**  
**OFFICE OF THE SECRETARY OF STATE**

Filed in the Office of the Secretary of State, Administrative Procedures Division,  
this 11<sup>th</sup> day of August, 2015.

  
\_\_\_\_\_  
J. Richard Collier  
Director, Administrative Procedures Division

<sup>1</sup> A copy of the AGREED ORDER is attached hereto as **Exhibit A**.

**STATE OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE  
TENNESSEE HOME INSPECTOR LICENSING PROGRAM**

**IN THE MATTER OF:** )  
 )  
**EUGENE LENNOX WHITING** ) **DOCKET NO. 12.29-13-173J-JCB**  
 ) **COMPLAINT NO. 2014012441**  
 )  
 )

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**AGREED ORDER**

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THIS MATTER comes before the Tennessee Home Licensing Program, and the Administrative Law Judge sitting on behalf of the Program on the Notice of Hearing and Charges filed on March 5, 2015. Respondent Eugene Lennox Whiting voluntarily enters into this Agreed Order to avoid pursuing the hearing in this matter set for today, August 5, 2015

**AUTHORITY**

TENN. CODE ANN., Title 62, Chapter 6, Title 56 and the Rules of the Tennessee Department of Commerce and Insurance, Division of Regulatory Boards, Home Inspector Licensing Program, authorize the Commissioner, through an Administrative Law Judge, to take disciplinary action and/or assess civil penalties as consequences of any violation of the Tennessee Home Inspector License Act of 2005 and/or any rules promulgated there under.

**STIPULATED FACTS**

The parties agree and stipulate to the following facts:

1. Respondent is licensed as a home inspector with the Tennessee Department of Commerce and Insurance, Home Inspectors Licensing Program holding home inspector license number 310 at all times relevant to this matter.
2. On or about February 26, 2014, Respondent conducted a home inspection for Amber Lovelace on a property located at 2204 Paw Paw Plains Road, Lenior City, TN 37771.
3. Amber Lovelace filed a complaint with this program alleging that Respondent failed to address many issues in the inspection of this property, with regard to sewage, the hot water heater and mold.
4. The home inspection report that is the subject of the complaint was sent to an expert reviewer who addressed issues raised by Amber Lovelace as well as the inspection report itself.
5. After reviewing this matter, the reviewer determined that the Respondent did not provide a statement in Respondent's home inspection report to identify the presence or absence of smoke detectors as required by Rule 0780-5-12-.10(9)(d).
6. On September 2, 2014, Respondent responded to the above and admitted that Respondent had no knowledge of the obligation to identify the absence or presence of smoke alarms, and has now remedied this issue by including this requirement in all additional home inspection reports.



STIPULATED CONCLUSIONS OF LAW

The parties agree that the facts listed above constitute a violation of the following:

1. TENN. CODE ANN. §62-6-308(a)(9) which provides in part:  
(a) The commissioner may take disciplinary action against a licensee or applicant, deny an application for a license, assess a civil penalty of up to one thousand dollars (&1,000) per violation, or may suspend, revoke, or refuse to issue, or renew a license when a licensee performs or attempts to perform any of the following acts:  

(9) Violation any provisions of this part or rules promulgated by the commissioner under this part.
2. Tenn. Comp. Rules & Regs. 0780-5-12-.10(9)(d) which provides in part as follows:  

(d) The home inspector shall report on the presence or absence of smoke detectors.....

**NOW, THEREFORE**, in order to effectuate Respondent's desires and intentions, Respondent hereby consents and agrees to the following:

1. Respondent shall pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) and shall pay according to the terms below.
2. Respondent agrees to pay in the following manner:  

**\$50.00 on or before August 30, 2015**  
**\$50.00 on or before September 30, 2015**  
**\$50.00 on or before October 30, 2015**  
**\$50.00 on or before November 30, 2015**  
**\$50.00 on or before December 30, 2015**
- 3.. Payment should be made by cashier's check or money order to the State of Tennessee and shall be remitted along with a copy of the first page of this Order to:

**State of Tennessee**  
**Department of Commerce and Insurance**  
**Office of Legal Counsel**  
**Attn. Robyn Ryan**  
**Davy Crockett Tower**  
**500 James Robertson Parkway**  
**Nashville, Tennessee 37243**

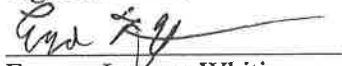
4. Respondent acknowledges that Respondent understands and agrees that this settlement in no way binds any other agency, division, department or political subdivision of the State of Tennessee relative to any factual allegations cited herein.
5. Respondent shall comply with all statutes and rules governing Tennessee Home Inspector law.
6. This Order shall have no effect unless accepted by the Tennessee Home Inspector Licensing Program. Should this Order not be accepted by the Commission, it is agreed that the

presentation to and consideration of this Agreed Order shall in no way prejudice the Commission or any of its members from further participation in the formal resolution of this matter.


7. Respondent acknowledges that Respondent understands and agrees that this settlement in no way binds any other agency, division, department or political subdivision of the State of Tennessee relative to any factual allegations cited herein.

8. Respondent, by signing this Agreed Order, expressly waives all further procedural steps including the opportunity for a hearing, currently scheduled for August 5, 2015, pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Title 4, Chapter 5, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this

Agreed Order.


  
Eugene Lennox Whiting

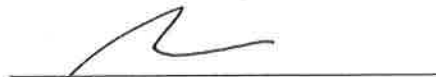
APPROVED FOR ENTRY:

  
Robyn Lynne Ryan #1276  
Assistant General Counsel  
Department of Commerce & Insurance  
500 James Robertson Parkway  
Davy Crockett Tower  
Nashville, TN 37243-0569

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent to the following individual(s) via United States Postal Service, First Class, regular mail, this the 5 day of August 2015.

  
Eugene Lennox Whiting  
179 Country Road 655  
Athens, TN 37303

  
Robyn Ryan

## **APPENDIX A TO INITIAL ORDER** **NOTICE OF APPEAL PROCEDURES**

### **Review of Initial Order**

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8<sup>th</sup> Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

### **Review of Final Order**

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

### **YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER**

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.