

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

JOHN K. KLEINSCHMIT,  
RESPONDENT.

FINAL DECISION AND ORDER

**ORDER 0007136**

Division of Legal Services and Compliance Case No. 17 RHI 021

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

John K. Kleinschmit  
Oshkosh, WI 54902

Wisconsin Department of Safety and Professional Services  
P.O. Box 8366  
Madison, WI 53708-8366

Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190  
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Department of Safety and Professional Services (Department). The Department has reviewed this Stipulation and considers it acceptable.

Accordingly, the Department in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent John K. Kleinschmit (Birth Year 1975) is registered by the State of Wisconsin as a home inspector, having registration number 2973-106, first issued on September 30, 2016 and current through December 14, 2020. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Oshkosh, Wisconsin 54902.

2. On December 15, 2017, the Department received a complaint alleging that Respondent failed to discover and report foundation issues in a home inspection report. The Division of Legal Services and Compliance (DLSC) subsequently opened Case Number 17 RHI 021 for investigation.

3. Around June 2017, Respondent and Complainant signed an Inspection Agreement for Respondent to perform a home inspection of Complainant's home in Markesan, Wisconsin. A review of the Inspection Agreement revealed that it contained a limitation of liability provision.

4. On June 7, 2017, Respondent performed a home inspection of Complainant's home. Respondent later completed a home inspection report to describe his findings.

5. Respondent's home inspection report was reviewed by the Department and it was determined that the report was deficient as follows:

- a. Respondent failed to describe the method used to observe the roof. [Wis. Admin. Code § SPS 131.32(4)].
- b. Respondent failed to observe and describe the condition of all required components of the permanently installed heating system. [Wis. Admin. Code § SPS 131.32(9)].
- c. Respondent failed to observe and describe the condition of the central air conditioning by failing to report that there was no air conditioning. [Wis. Admin. Code § SPS 131.32(10)].
- d. Respondent failed to observe and describe the condition of all required components of the insulation and ventilation. [Wis. Admin. Code § SPS 131.32(11)].

6. On May 21, 2019, the Department sent a letter to Respondent to inform him that his inspection agreements must not contain a limitation of liability provision, and to request that Respondent review his home inspection report for compliance with Wis. Admin. Code § SPS 131.32.

7. On June 13, 2019, the Department received a new Inspection Agreement from Respondent for another property. Respondent had updated the form to remove the limitation of liability provision.

8. On July 7, 2019, the Department received a new inspection report from Respondent that was completed on July 6, 2019 for another property. Respondent had updated the inspection report to bring it into compliance with Wis. Admin. Code § SPS 131.32.

9. On July 8, 2019, the Department received Respondent's response to its letter of May 21, 2019. Respondent admitted that his home inspection report for Complainant's home failed to comply with Wis. Admin. Code §§ 131.32 (4), (9), (10), and (11).

10. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

### CONCLUSIONS OF LAW

1. The Wisconsin Department of Safety and Professional Services has jurisdiction to act in this matter pursuant to Wis. Stat. § 440.978, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).
2. By the conduct described in the Findings of Fact, Respondent violated Wis. Stat. § 440.975(3)(a) and Wis. Admin. Code § SPS 131.32(4)(b) by failing to describe the method used to observe the roof.
3. By the conduct described in the Findings of Fact, Respondent violated Wis. Stat. § 440.975(3)(a) and Wis. Admin. Code § SPS 131.32(9) by failing to observe and describe the condition of all required components of the permanently installed heating system.
4. By the conduct described in the Findings of Fact, Respondent violated Wis. Stat. § 440.975(3)(a) and Wis. Admin. Code § SPS 131.32(10) by failing to report that there was no air conditioning.
5. By the conduct described in the Findings of Fact, Respondent violated Wis. Stat. § 440.975(3)(a) and Wis. Admin. Code § SPS 131.32(11) by failing to observe and describe the condition of all required components of the insulation and ventilation.
6. By the conduct described in the Findings of Fact, Respondent violated Wis. Stat. § 440.976 by including, as a term or condition in an agreement to conduct a home inspection, provisions that disclaimed the liability, or limited the amount of damages for liability, of the home inspector for his failure to comply with the standards of practice prescribed in the statutes and rules.
7. As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 440.978(2)(m).

### ORDER

1. The attached Stipulation is accepted.
2. Respondent John K. Kleinschmit is REPRIMANDED.
3. Within ninety (90) days from the date of this Order, Respondent John K. Kleinschmit shall pay the COSTS of this matter in the amount of \$2,675.00.
4. Payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190, Madison, WI 53707-7190

Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

You may also submit this information online via DSPS' Monitoring Case Management System  
at: <https://dpsmonitoring.wi.gov/>

5. In the event Respondent violates any term of this Order, Respondent's registration (number 2973-106), or Respondent's right to renew his registration, may, in the discretion of the Department or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Department may, in addition and/or in the alternative, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

6. This Order is effective on the date of its signing.

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

by: Al. Rohmeyer  
Al Rohmeyer, Chief Legal Counsel  
On Behalf of the Department

1/3/2021  
Date

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	
JOHN K. KLEINSCHMIT,	:	STIPULATION
RESPONDENT.	:	

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Division of Legal Services and Compliance Case No. 17 RH1 021

Respondent John K. Kleinschmit and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:


1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.
2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:
  - the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
  - the right to confront and cross-examine the witnesses against Respondent;
  - the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
  - the right to testify on Respondent's own behalf;
  - the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
  - the right to petition for rehearing; and
  - all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Department of Safety and Professional Services (Department). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Department's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Department, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the

Stipulation is not accepted by the Department, the parties agree not to contend that the Department has been prejudiced or biased in any manner by the consideration of this attempted resolution.

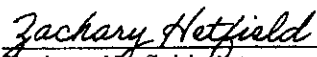
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Department ever assigned as an advisor in this investigation may appear before the Department in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Department may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Department should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Department adopt this Stipulation, the Department's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondent in recommending the Department adopt this Stipulation and issue the attached Final Decision and Order.

  
\_\_\_\_\_  
John K. Kleinschmit, Respondent  
Oshkosh, WI 54902  
Credential No. 2973-106

11-14-20  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Zachary Hetfield, Attorney  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

11/16/20  
\_\_\_\_\_  
Date