

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

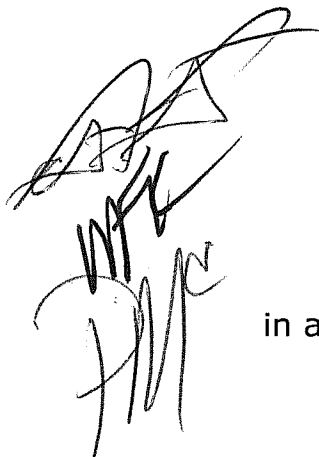
NO. 2002 CA 0870

WEBB WARTELLE AND PRESTIGE HOME SERVICE,
A DIVISION OF AMERICAN HOME SHIELD CORPORATION

VERSUS

LOUISIANA STATE BOARD OF HOME INSPECTORS

JUDGMENT RENDERED ON MARCH 28, 2003



Appealed from the
Nineteenth Judicial District Court
in and for the Parish of East Baton Rouge, State of Louisiana

Trial Court No. 488,834

Honorable Kay Bates, Judge

* * * * *

Sheri M. Morris
Baton Rouge, LA

Attorney for Appellees
Plaintiffs
Webb Wartelle and
Prestige Home Service,
A Division of American Home
Shield Corporation

Albert J. Nicaud
Metairie, LA

Attorney for Appellant
Defendant
Louisiana State Board of
Home Inspectors

Panel composed of Judges FRANK FOIL, PAGE McCLENDON
and WILLIAM F. KLINE, JR.

Judge William F. Kline, Jr., Retired, serving Pro Tempore by special
appointment of the Louisiana Supreme Court.

FOIL, JUDGE.

The Louisiana State Board of Home Inspectors appeals from a judgment whereby the trial court concluded individuals employed by a home warranty company were not subject to the Louisiana Home Inspector Licensing Law. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prestige Home Service offers home warranties to buyers and sellers of resale residential homes. Before offering a warranty, Prestige requires the prospective buyer or seller to obtain an inspection of certain appliances and fixtures in the residential home so that Prestige can determine if these items are eligible for warranty coverage.

In 1999, the Louisiana legislature enacted the Louisiana Home Inspectors Licensing Law, La. R.S. 37:1471 et seq., which mandates licensure and regulation of home inspectors. Thereafter, Prestige, through its regional manager, Webb Wartelle, filed a petition for declaratory relief with the Louisiana State Board of Home Inspectors seeking a declaration that the independent contractors it used to perform the home warranty eligibility inspections were not required to obtain home inspector licenses under the new law. After a hearing, the Board issued an order indicating that the Prestige inspectors were required to obtain licenses. Mr. Wartelle then filed a petition for judicial review of the Board's order in district court. The district court reversed the Board's order, and the Board appeals.

DISCUSSION

On appeal, the Board contends the district court erred in concluding the Prestige inspectors did not fall within the purview of the Home Inspectors Licensing Law. In related assignments of error, the Board argues the district court failed to consider certain provisions of the statute, misconstrued the purpose of the statute, and factually erred in concluding that the activities of the Prestige inspectors did not qualify as "home inspection" within the meaning of the statute.

When reviewing an administrative final decision, the district court functions as an appellate court. On review of the district court's judgment, sitting in its appellate mode, this court owes no deference to the court's factual or legal conclusions. **Bless Home Health Agency v. Louisiana Department of Health and Hospitals**, 99-0936 (La. App. 1 Cir. 5/22/00), 770 So.2d 780, 783. However, after a thorough review of the record, we conclude the trial court correctly characterized the business being conducted by the Prestige inspectors as falling outside the scope of the Home Inspectors Licensing Law. The trial court's factual findings and legal conclusions are correct.

Accordingly, we affirm the trial court's judgment and adopt its written reasons as our own, attaching a copy to this opinion. Costs of this appeal in the amount of \$533.75 are assessed to the Louisiana State Board of Home Inspectors.

AFFIRMED.

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WEBB WARTELL ,et al

* NO. 488,834 Div. M

* 19TH JUDICIAL DISTRICT COURT

vs.

* PARISH OF EAST BATON ROUGE

LOUISIANA STATE BOARD OF HOME INSPECTORS

* STATE OF LOUISIANA

WRITTEN REASONS FOR JUDGMENT

This matter came for hearing on oral argument after the plaintiffs filed a request for judicial review. The plaintiffs are independent contractors who perform specific jobs for Prestige Home Service, "Prestige". Prestige is involved in the business of providing home warranties for the repair or replacement of certain appliances and fixtures connected with the sale of residential properties. As such, Prestige hires independent contractors to inspect the appliances and/or fixtures so that Prestige may determine if it will offer a warranty on that appliance and/or fixture.

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The Louisiana State Board of Home Inspectors, "Board", contends that the inspections performed for Prestige by the independent contractors are subject to the Louisiana Home Inspector Licensing Law, R.S. 37:1471 et seq. The Board also contends that as the independent contractors have not been licensed as home inspectors and they must cease and desist all of their activities for Prestige. Further, the Board contends that the independent contractors do not qualify under the grandfather provisions and thus cannot receive the licensing without performing the requisites outlined in the statute. The plaintiffs have sought judicial review of the Board's decisions.

This Court finds that the requirement that the independent contractors hired by Prestige be licensed under the Louisiana Home Licensing Law to be an impermissible expansion of the powers granted to the Board by the Legislature. R.S. 37:1473 defines a licensed home inspector as any person who "holds himself out to the general public and engages in the business of performing home inspections on resale residential buildings for compensation and who examines any component of a building through visual means and through normal user controls, without the use of mathematical sciences." Further, R.S. 37: 1478 states, "A. A licensed home inspector shall provide a written report of the home inspection to each person for whom the inspector performs a home inspection for

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compensation. B. No licensed home inspector shall, at the time of the inspection or for a reasonable time thereafter, advertise or solicit to perform repair services or any other type of service on the home upon which he has performed a home inspection.” It is clear that the legislative intent was to protect the general public from fraudulent home inspections and as such that when a potential home buyer sought to buy an older home, as opposed to a newly constructed home, the potential purchaser could hire a “licensed home inspector” to determine if the appliances and components contained in the home were in working order. The intent was that the general public was the consumer of the service. This is not the situation in the instant suit.

In the instant suit, Prestige, an insurer, is obtaining the services of independent contractors in their field of expertise to determine the status of the appliances and/or components in a resale home that Prestige is deciding whether or not it wishes to insure or provide warranty. The independent contractors are not holding themselves out to the general public as ones who engage in the business of performing home inspections. The independent contractor is not being compensated by the general public for an objective opinion of the component parts of a potential home.

The Board’s ruling that the independent contractors employed by Prestige need to be licensed home inspectors is an expansion of the Board’s powers and is hereby reversed. As this Court finds that the independent contractors do not need to be licensed to perform services for Prestige there is no need to reach the issue of whether the grandfather clause applies to these particular independent contractors.

Rendered this 4 day of February, 2002. Judgment to be signed accordingly.

FILED

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Matthew S. Nolan
DY. CLERK OF COURT

[Signature]
KAY BATES, Judge
Division M

I hereby certify that on this day a notice of the above judgment was mailed by me, with sufficient postage affixed, to: Morris -

Ch. Carson
Done and signed on 2-11-02
[Signature]
Deputy Clerk of Court