

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

APPLE TERMITE, INC.; JENHENSEN
LOPEZ, PRESIDENT; DAVE DANIEL
CHAVEZ, QM; WENDELL T. POLK, Jr.

Respondents.


Case No. 2012-56

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

This Decision shall become effective on July 26, 2013.

It is so ORDERED June 26, 2013.



FOR THE STRUCTURAL PEST CONTROL
BOARD
DEPARTMENT OF PESTICIDE REGULATION

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8 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
9 **DEPARTMENT OF PESTICIDE REGULATION**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2012-56

11 **APPLE TERMITE, INC.; JENHNSEN**
12 **LOPEZ, PRESIDENT; DAVE DANIEL**
13 **CHAVEZ, QM; WENDELL T. POLK, Jr.**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER (Wendell T.
Polk Jr. only)

14 Respondents.

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17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Susan Saylor ("Complainant") is the Interim Registrar / Executive Officer of the
21 Structural Pest Control Board ("Board"). She brought this action solely in her official capacity
22 and is represented in this matter by Kamala D. Harris, Attorney General of the State of California,
23 by Zachary T. Fanselow, Deputy Attorney General.

24 2. Respondent Wendell T. Polk, Jr. is representing himself in this proceeding and has
25 chosen not to exercise his right to be represented by counsel.

26 3. On or about May 2, 1993, the Board issued Field Representative's License Number
27 FR 21710 in Branch 3 to Wendell T. Polk, Jr. ("Respondent"). On or about October 30, 2008, the
28 Board upgraded Field Representative's License Number FR 21710 to include Branches 2 and 3.

1 Respondent's Field Representative's License was in full force and effect at all times relevant to
2 the charges brought in Accusation No. 2012-56 and the First Supplemental Accusation for Case
3 No. 2012-56 and will expire on June 30, 2013, unless renewed.

4 JURISDICTION

5 4. Accusation No. 2012-56 and the First Supplemental Accusation for Case No. 2012-56
6 were filed before the Structural Pest Control Board, Department of Pesticide Regulation, and are
7 currently pending against Respondent. The Accusation, as well as the First Supplemental
8 Accusation, and all other statutorily required documents were properly served on Respondent on
9 October 8, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

10 5. A copy of Accusation No. 2012-56 is attached as Exhibit A and incorporated herein
11 by reference.

12 6. A copy of the First Supplemental Accusation for Case No. 2012-56 is attached as
13 Exhibit B and incorporated herein by reference.

14 ADVISEMENT AND WAIVERS

15 7. Respondent has carefully read, and understands the charges and allegations in
16 Accusation No. 2012-56 and the First Supplemental Accusation for Case No. 2012-56.
17 Respondent has also carefully read, and understands the effects of this Stipulated Settlement and
18 Disciplinary Order.

19 8. Respondent is fully aware of his legal rights in this matter, including the right to a
20 hearing on the charges and allegations in the Accusation and the First Supplemental Accusation;
21 the right to be represented by counsel at his own expense; the right to confront and cross-examine
22 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
23 to the issuance of subpoenas to compel the attendance of witnesses and the production of
24 documents; the right to reconsideration and court review of an adverse decision; and all other
25 rights accorded by the California Administrative Procedure Act and other applicable laws.

26 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
27 every right set forth above.

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1 CULPABILITY

2 10. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 2012-56 and the First Supplemental Accusation for Case No. 2012-56.

4 11. Respondent agrees that his Field Representative's License is subject to discipline and
5 he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
6 below.

7 CONTINGENCY

8 12. This stipulation shall be subject to approval by the Structural Pest Control Board.
9 Respondent understands and agrees that counsel for Complainant and the staff of the Structural
10 Pest Control Board may communicate directly with the Board regarding this stipulation and
11 settlement, without notice to or participation by Respondent. By signing the stipulation,
12 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
13 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
14 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
15 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
16 the parties, and the Board shall not be disqualified from further action by having considered this
17 matter.

18 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
19 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
20 effect as the originals.

21 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
24 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
25 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
26 writing executed by an authorized representative of each of the parties.

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1 15. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Board may, without further notice or formal proceeding, issue and enter the following
3 Disciplinary Order:

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Field Representative's License No. FR 21710 in Branch 2
6 and 3, issued to Respondent Wendell T. Polk, Jr. is revoked. However, the revocation is stayed
7 and Respondent is placed on probation for three (3) years on the following terms and conditions.

8 1. **Obey All Laws.** Respondent shall obey all Federal, State and Local laws along with
9 all laws and rules relating to the practice of structural pest control.

10 2. **Quarterly Reports.** Respondent shall file quarterly reports with the Board during
11 the period of probation.

12 3. **Tolling of Probation.** Should Respondent leave California to reside outside this
13 state, Respondent must notify the Board in writing of the dates of departure and return. Periods
14 of residency or practice outside the state shall not apply to, or result in a reduction of, the
15 probationary period.

16 4. **Notice to Employers.** Respondent shall notify all present and prospective employers
17 of the decision in Case No. 2012-56 and the terms, conditions and restriction imposed on
18 Respondent by said decision.

19 Within 30 days of the effective date of the Decision and Order, and within 15 days of
20 Respondent undertaking new employment, Respondent shall cause his/her employer to report to
21 the Board in writing acknowledging the employer has read the decision in Case No. 2012-56.

22 5. **Notice to Employees.** Respondent shall, upon or before the effective date of the
23 Decision and Order, post or circulate a notice to all employees involved in structural pest control
24 operations which accurately recite the terms and conditions of probation. Respondent shall be
25 responsible for said notice being immediately available to said employees. "Employees" as used
26 in this provision includes all full-time, part-time, temporary and relief employees and independent
27 contractors employed or hired at any time during probation.

28 6. **Completion of Probation.** Upon successful completion of probation, Respondent's

1 license will be fully restored.

2 7. **Violation of Probation.** Should Respondent violate probation in any respect, the
3 Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and
4 carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against
5 Respondent during the probationary period, the Board shall have continuing jurisdiction until the
6 matter is final, and the period of probation shall be extended until the matter is final.

7 8. **Completion of Board Approved Rules and Regulations Course.** Respondent shall
8 complete four (4) hours of a Board approved rules and regulations course and four (4) hours of a
9 Board approved Branch 3 technical course within sixty (60) days of the effective date of the
10 Decision and Order. If Respondent has not provided proof of completion of both courses within
11 sixty (60) days, Respondent's Field Representative's License will be suspended until proof of
12 completion of the Board approved courses is submitted. Respondent cannot use the eight (8)
13 hours required under this paragraph towards renewing his Field Representative's License and
14 these eight (8) hours cannot be used towards complying with the order of abatement for CF11-52.

15 9. **Random Inspections.** Respondent shall reimburse the Board for one (1) random
16 inspection per quarter by Board specialists during the period of probation not to exceed \$125 per
17 inspection.

18 10. **Prohibited from Serving as Officer, Director, Associate, Partner or Qualifying**
19 **Manager.** Respondent is prohibited from serving as an officer, director, associate, partner,
20 qualifying manager or branch office manager of any registered company during the period that
21 discipline is imposed on Field Representative's License No. FR 21710.

22 11. **No Interest In Any Registered Company.** Respondent shall not have any legal or
23 beneficial interest in any company currently or hereinafter registered by the Board.

24 12. **New License.** Should Respondent apply for an Operator's License and pass the
25 examination, the Board shall issue an Operator's License. The Operator's License shall then
26 immediately be placed on probation for the same duration and under the same terms and
27 conditions as set forth in the Decision and Order.


28 13. **Cost Recovery.** Respondent shall pay to the Board costs associated with its

1 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
2 amount of \$2,500.00. Respondent shall be permitted to pay these costs in a payment plan
3 approved by the Board, with payments to be completed no later than three months prior to the end
4 of the probation term.

5 ACCEPTANCE

6 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
7 stipulation and the effect it will have on my Field Representative's License. I enter into this
8 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
9 to be bound by the Decision and Order of the Structural Pest Control Board.

10
11 DATED: 4/29/13


12 _____
13 WENDELL T. POLK, Jr.
14 Respondent


15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
17 submitted for consideration by the Structural Pest Control Board of the Department of Pesticide
18 Regulation.

19 Dated: 5/1/13

Respectfully submitted,

20 KAMALA D. HARRIS
21 Attorney General of California
22 MARC D. GREENBAUM
23 Supervising Deputy Attorney General


24 ZACHARY T. FANSELOW
25 Deputy Attorney General
26 *Attorneys for Complainant*

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