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FILED

Date 5/17/11 By William H. Douglas

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

In the Matter of the Accusation Against: **EUFEMIO L. HERNANDEZ** 7000 Telegraph Road City of Commerce, CA 90040 **Field Representative's License No. FR 28419** Respondent.	Case No. 2011-60 **ACCUSATION**

Complainant alleges:

PARTIES

1. William H. Douglas ("Complainant") brings this Accusation solely in his official capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.

2. On or about September 11, 1997, the Board issued Field Representative's License Number FR 28419 in Branch 2 (general pest) to Eufemio L. Hernandez ("Respondent"), employee of Terminix International Company LP ("Terminix"). On or about October 9, 1997, Respondent's field representative's license was upgraded to include Branches 2 and 3 (termite). On or about May 1, 2006, Respondent became employed by Dewey Pest Services. Respondent's field representative's license will expire on June 30, 2012, unless renewed.

STATUTORY AND REGULATORY PROVISIONS

3. Business and Professions Code ("Code") section 8620 provides, in part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

4. Code section 8637 provides:

"Misrepresentation of a material fact by the applicant in obtaining a license or company registration is a ground for disciplinary action."

5. Code section 8593 states, in part, that:

"The board shall require as a condition to the renewal of each operator's and field representative's license that the holder submit proof satisfactory to the board that he or she has informed himself or herself of developments in the field of pest control either by completion of courses of continuing education in pest control approved by the board or equivalent activity approved by the board."

6. Code section 8641 states, in part, that:

"Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board . . . is a ground for disciplinary action."

7. California Code of Regulations, title 16, section 1950 states, in part, that:

"(a) Except as provided in section 1951, every licensee is required, as a condition to renewal of a license, to certify that he or she has completed the continuing education requirements set forth in this article. A licensee who cannot verify completion of continuing education by producing certificates of activity completion, whenever requested to do so by the Board, may be subject to disciplinary action under section 8641 of the code.

"(b) Each licensee is required to gain a certain number of continuing education hours during the three year renewal period. The number of hours required depends on the number of branches of pest control in which licenses are held.

. . .

"(d) Field representatives licensed in one branch of pest control shall have completed 16 continuing education hours, field representatives licensed in two branches of pest control shall have completed 20 continuing education hours, field representatives licensed in three branches of pest control shall have completed 24 continuing education hours during each three year renewal period.

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COST RECOVERY

8. Code section 125.3 states, in part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL SUMMARY

9. In or about May 2009, Respondent submitted a license renewal application to the Board. On or about May 6, 2009, Respondent certified under penalty of perjury on the application form that he successfully completed 20 hours of continuing education during his last renewal period, which was July 1, 2006, through June 30, 2009.

10. On or about December 8, 2009, February 8, 2010, May 11, 2010, and October 5, 2010, a representative of the Board sent Respondent written requests for copies of his continuing education certificates for the renewal period of July 1, 2006, through June 30, 2009. Respondent was advised that his failure to verify his continuing education hours or to supply the requested information could subject his field representative's license to disciplinary action.

11. Respondent did not submit copies of his continuing education certificates for the renewal period of July 1, 2006, through June 30, 2009, when requested to do so by the Board.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with the Provisions of this Chapter or Regulations Adopted by the Board: Failure to Verify Completion of Continuing Education)

12. Respondent's license is subject to discipline under Code section 8641, in that Respondent failed to comply with provisions of Code section 8593, and California Code of Regulations, title 16, section 1950, subdivision (a), by failing to verify that he completed continuing education, as required. Specifically, Respondent failed to submit copies of his continuing education certificates of completion for the renewal period of July 1, 2006, through June 30, 2009, as requested by the Board's representative, as more fully described in paragraphs 10 and 11, above.

SECOND CAUSE FOR DISCIPLINE

(Misrepresentation of a Material Fact)

13. Respondent's license is subject to discipline under Code section 8637, in that Respondent misrepresented a material fact in obtaining a license. Specifically, in Respondent's Field Representative License Renewal Application, which was signed under penalty of perjury on or about May 6, 2009, Respondent certified that he had successfully completed 20 hours of continuing education as required for the renewal of his field representative license (Branch 3). In fact, Respondent had not completed 20 hours of continuing education at the time of the certification of his renewal application, as more fully described in paragraphs 10 through 12, above.

THIRD CAUSE FOR DISCIPLINE

(Fraudulent Act)

14. Respondent's license is subject to discipline under Code section 8642, for the commission of a fraudulent act, as more fully described in paragraphs 10 through 13, above.

OTHER MATTERS

15. Code section 8620 provides, in part, that a respondent may request that a civil penalty of not more than $5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not more than $10,000 for an actual suspension of 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

16. Pursuant to Code section 8654, if discipline is imposed on Field Representative's License Number FR 28419, issued to Respondent Eufemio L. Hernandez, Eufemio L. Hernandez shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Eufemio L. Hernandez shall be subject to disciplinary action.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Field Representative's License Number FR 28419, issued to Eufemio L. Hernandez;

2. Prohibiting Eufemio L. Hernandez from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Field Representative's License Number FR 28419, issued to Eufemio L. Hernandez;

3. Ordering Eufemio L. Hernandez to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: 5/17/11

William H. Douglas

WILLIAM H. DOUGLAS
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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