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5 **BEFORE THE**
6 **STRUCTURAL PEST CONTROL BOARD**
7 **DEPARTMENT OF PESTICIDE REGULATION**
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

Case No. 2011-60

10 **EUFEMIO L. HERNANDEZ**
11 7000 Telegraph Road
12 City of Commerce, CA 90040

DEFAULT DECISION AND ORDER

13 **Field Representative's License No. FR 28419**
14 Respondent.

[Gov. Code, §11520]

15 FINDINGS OF FACT

16 1. On or about May 17, 2011, Complainant William H. Douglas, in his official capacity
17 as the Interim Registrar/Executive Officer of the Structural Pest Control Board, filed Accusation
18 No. 2011-60 against Eufemio L. Hernandez (Respondent) before the Structural Pest Control
19 Board. (Accusation attached as **Exhibit A.**)

20 2. On or about September 11, 1997, the Structural Pest Control Board (Board) issued
21 Field Representative's License No. FR 28419 to Respondent. The Field Representative's License
22 was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-60
23 and will expire on June 30, 2012, unless renewed.

24 3. On or about June 23, 2011, Respondent was served by Certified and First Class Mail
25 copies of the Accusation No. 2011-60, Statement to Respondent, Notice of Defense, Request for
26 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
27 Respondent's address of record which, pursuant to Business and Professions Code section 136, is
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1 City of Commerce, CA 90040. On or about June 23, 2011, Respondent was likewise served with
2 the same documents at 939 E. Union Street, Pasadena, CA 91106.

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
5 124.

6 5. On or about June 3, 2011, and July 13, 2011, the aforementioned documents were
7 returned by the U.S. Postal Service marked "retired, left no forward" and "return to sender, no
8 longer works here", respectively.

9 6. Government Code section 11506 states, in pertinent part:

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts
12 of the accusation not expressly admitted. Failure to file a notice of defense shall
13 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
14 may nevertheless grant a hearing.

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
17 2011-60.

18 8. California Government Code section 11520 states, in pertinent part:

19 (a) If the respondent either fails to file a notice of defense or to appear at the
20 hearing, the agency may take action based upon the respondent's express admissions
21 or upon other evidence and affidavits may be used as evidence without any notice to
22 respondent.

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board offices regarding the allegations contained in Accusation No. 2011-60, finds that
28 the charges and allegations in Accusation No. 2011-60, are separately and severally, found to be
true and correct by clear and convincing evidence.

1 10. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$1,677.50 as of August 10, 2011.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Eufemio L. Hernandez has
6 subjected his Field Representative's License No. FR 28419 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Structural Pest Control Board is authorized to revoke Respondent's Field
9 Representative's License based upon the following violations alleged in the Accusation which are
10 supported by the evidence contained in the Default Decision Evidence Packet in this case:

11 a. Bus. & Prof. Code, §§ 8641 and 8593, and Cal. Code of Regs., tit. 16, § 1950, subd.

12 (a) (Failure to Verify Completion of Continuing Education),

13 b. Bus. & Prof. Code, § 8637 (Misrepresentation of a Material Fact), and

14 c. Bus. & Prof. Code, § 8642 (Fraudulent Act).

15 ORDER

16 IT IS SO ORDERED that Field Representative's License No. FR 28419, heretofore issued
17 to Respondent Eufemio L. Hernandez, is revoked.

18 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
19 written motion requesting that the Decision be vacated and stating the grounds relied on within
20 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
21 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

22 This Decision shall become effective on November 18, 2011.

23 It is so ORDERED October 19, 2011

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26 FOR THE STRUCTURAL PEST CONTROL BOARD

27 60664498.DOC
DOJ Matter ID:LA2010601266

28 Attachment: Exhibit A: Accusation

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FILED

Date 5/17/11

By *William H. Douglas*

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 2011-60

13 **EUFEMIO L. HERNANDEZ**
7000 Telegraph Road
14 City of Commerce, CA 90040

A C C U S A T I O N

15 **Field Representative's License No. FR 28419**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

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

STATUTORY AND REGULATORY PROVISIONS

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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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1 COST RECOVERY

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

5 FACTUAL SUMMARY

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

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

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

17 FIRST CAUSE FOR DISCIPLINE

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

21 12. Respondent's license is subject to discipline under Code section 8641, in that
22 Respondent failed to comply with provisions of Code section 8593, and California Code of
23 Regulations, title 16, section 1950, subdivision (a), by failing to verify that he completed
24 continuing education, as required. Specifically, Respondent failed to submit copies of his
25 continuing education certificates of completion for the renewal period of July 1, 2006, through
26 June 30, 2009, as requested by the Board's representative, as more fully described in paragraphs
27 10 and 11, above.

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:

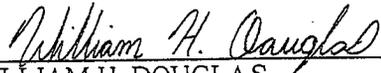
1. Revoking or suspending Field Representative's License Number FR 28419, issued to Eufemio L. Hernandez;

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