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

10 In the Matter of the Accusation Against:

11 **DAVE MICHAEL MAYLOTT**
12 **10692 Chestnut Avenue**
13 **Stanton, CA 90680**

14 **4412 Canehill Avenue**
15 **Lakewood, CA 90713**

16 **Field Representative License No. FR 28789**

17 Respondent.

Case No. 2010-85

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 FINDINGS OF FACT

19 1. On or about June 17, 2010, Complainant Kelli Okuma, in her official capacity as the
20 Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide
21 Regulation, filed Accusation No. 2010-85 against Dave Michael Maylott (Respondent) before the
22 Structural Pest Control Board. (Accusation No. 2010-85 attached as Exhibit A.)

23 2. On or about December 4, 1997, the Structural Pest Control Board (Board) issued
24 Field Representative License No. FR 28789 to Respondent. The Field Representative License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 June 30, 2012, unless renewed.

27 3. On or about June 24, 2010, Respondent was served by Certified and First Class Mail
28 copies of the Accusation No. 2010-85, Statement to Respondent, blank Notice of Defense,
Request for Discovery and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
11507.7) at Respondent's address of record which, pursuant to Business and Professions Code

1 section 136, is required to be reported and maintained with the Board, which was and is his
2 "business address": 10692 Chestnut Avenue, Stanton, CA 90680. On or about September 22,
3 2010, Respondent was served by Certified and First Class Mail copies of the Accusation No.
4 2010-85, Statement to Respondent, blank Notice of Defense, Request for Discovery and
5 Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's
6 address of record which, pursuant to Business and Professions Code section 136, is required to be
7 reported and maintained with the Board, which was and is his "mailing address": 4412 Canehill
8 Avenue, Lakewood, CA 90713.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c).

11 5. On or about June 28, 2010, the Certified Mail receipt confirming delivery of the
12 aforementioned documents to 10692 Chestnut Avenue, Stanton, CA 90680 was returned by the
13 U.S. Postal Service and signed as received. The aforementioned documents sent to 10692
14 Chestnut Avenue, Stanton, CA 90680 via First Class Mail were not returned by the U.S. Postal
15 Service. The aforementioned documents sent via First Class Mail and Certified Mail to 4412
16 Canehill Avenue, Lakewood, CA 90713 were not returned by the U.S. Postal Service.

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

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

23 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
24 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
25 2010-85.

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

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

1 9. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
4 as well as taking official notice of all the investigatory reports, exhibits and statements contained
5 therein on file at the Board's offices regarding the allegations contained in Accusation No. 2010-
6 85, finds that the charges and allegations in Accusation No. 2010-85, are separately and severally,
7 found to be true and correct by clear and convincing evidence.

8 10. Taking official notice of its own internal records, pursuant to Business and
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
10 and Enforcement is \$1,997.50 as of October 18, 2010.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent Dave Michael Maylott has
13 subjected his Field Representative License No. FR 28789 to discipline.

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

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

19 a. Respondent is subject to disciplinary action under Business and Professions
20 Code sections 490 and 8649, in that he was convicted of crimes that are substantially related to
21 the qualifications, functions, and duties of a structural pest control field representative, in that on
22 or about January 29, 2010, Respondent was convicted of violating Penal Code section 487(a),
23 grand theft, Penal Code section 470(d), acts constituting forgery, and Penal Code section 475(a),
24 possession or receipt of items as forgery, in the criminal proceeding entitled *People of the State of*
25 *California v. Dave Michael Maylott*, Orange County Superior Court case number 10NM00673.

26 b. Respondent is subject to disciplinary action under Business and Professions
27 Code section 8642 in that he committed a fraudulent act as a field representative when he
28 collected a final payment in the form of a check from a customer on behalf of his employer, filled

1 in his name on the payee line, endorsed and then cashed it on August 12, 2009. Respondent
2 admitted that he took money belonging to his employer with the intent to permanently deprive.

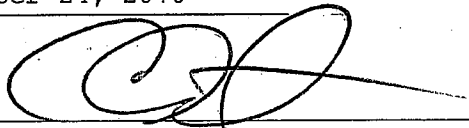
3 ORDER

4 IT IS SO ORDERED that Field Representative License No. FR 28789, heretofore issued to
5 Respondent Dave Michael Maylott, is revoked.

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

10 This Decision shall become effective on January 23, 2011.

11 It is so ORDERED December 24, 2010

12 

13 FOR THE STRUCTURAL PEST CONTROL BOARD
14 DEPARTMENT OF PESTICIDE REGULATION

15 70311639.DOC
16 DOJ docket number:SD2010701052

17 Attachment:

18 Exhibit A: Accusation No. 2010-85
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Exhibit A
Accusation No. 2010-85

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FILED

Date 6/17/10 By Kelli Okuma

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

11
12 In the Matter of the Accusation Against:
13 DAVE MICHAEL MAYLOTT
10692 Chestnut Avenue
14 Stanton, CA 90680
15 Field Representative License No. FR 28789
16 Respondent.

Case No. 2010-85

ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as
21 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide
22 Regulation.

23 2. On or about December 4, 1997, the Structural Pest Control Board issued Field
24 Representative License Number FR 28789 to Dave Michael Maylott (Respondent). The Field
25 Representative License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on June 30, 2012, unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Structural Pest Control Board (Board),
3 Department of Pesticide Regulation, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

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

9 5. Section 8625 of the Code states:

10 The lapsing or suspension of a license or company registration by operation
11 of law or by order or decision of the board or a court of law, or the voluntary
12 surrender of a license or company registration shall not deprive the board of
13 jurisdiction to proceed with any investigation of or action or disciplinary
14 proceeding against such licensee or company, or to render a decision suspending
15 or revoking such license or registration.

16 6. Section 118(b), of the Code provides that the suspension, expiration, surrender, or
17 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
18 action during the period within which the license may be renewed, restored, reissued or
19 reinstated.

18 STATUTORY PROVISIONS

19 7. Section 482 of the Code states:

20 Each board under the provisions of this code shall develop criteria to
21 evaluate the rehabilitation of a person when:

22 (a) Considering the denial of a license by the board under Section 480; or

23 (b) Considering suspension or revocation of a license under Section 490.

24 Each board shall take into account all competent evidence of rehabilitation
25 furnished by the applicant or licensee.

26 8. Section 490 of the Code states, in pertinent part, that the Board may suspend or
27 revoke a license when it finds that the licensee has been convicted of a crime.

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1 9. Section 493 of the Code states:

2 Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or
4 to suspend or revoke a license or otherwise take disciplinary action against a
5 person who holds a license, upon the ground that the applicant or the licensee has
6 been convicted of a crime substantially related to the qualifications, functions, and
7 duties of the licensee in question, the record of conviction of the crime shall be
8 conclusive evidence of the fact that the conviction occurred, but only of that fact,
and the board may inquire into the circumstances surrounding the commission of
the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

9 As used in this section, "license" includes "certificate," "permit,"
10 "authority," and "registration."

11 10. Section 8642 of the Code states:

12 The commission of any grossly negligent or fraudulent act by the licensee
13 as a pest control operator, field representative, or an applicator or by a registered
14 company is a ground for disciplinary action.

15 11. Section 8649 of the Code states:

16 Conviction of a crime substantially related to the qualifications, functions,
17 and duties of a structural pest control operator, field representative, applicator, or
18 registered company is a ground for disciplinary action. The certified record of
conviction shall be conclusive evidence thereof.

19 **REGULATORY PROVISIONS**

20 12. California Code of Regulations, title 16, section 1937.1 states:

21 For the purposes of denial, suspension or revocation of a license or
22 company registration pursuant to Division 1.5 (commencing with Section 475) of
23 the code, a crime or act shall be considered to be substantially related to the
24 qualifications, functions or duties of a licensee or registered company under
25 Chapter 14 of Division 3 of the code if to a substantial degree it evidences present
or potential unfitness of such licensee or registered company to perform the
functions authorized by the license or company registration in a manner consistent
with the public health, safety, or welfare. Such crimes or acts shall include, but not
be limited to, the following:

26 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

27 (b) Commission of any of the following in connection with the practice of
28 structural pest control:

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- (1) Fiscal dishonesty
- (2) Fraud
- (3) Theft
- (4) Violations relating to the misuse of pesticides.

13. California Code of Regulations, title 16, section 1937.2 states, in part:

.....
(b) When considering the suspension or revocation of a structural pest control license or company registration on the grounds that the licensee or registered company has been convicted of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or its present eligibility for a license or company registration will consider the following:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee or registered company has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or registered company.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any of rehabilitation submitted by the licensee or registered company.

.....

COST RECOVERY

14. Section 125.3 of the Code states, in pertinent 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.

1 FIRST CAUSE FOR DISCIPLINE

2 (January 29, 2010 Convictions for Grand Theft, Forgery, and Receipt of Items as Forgery
3 on August 11, 2009)

4 15. Respondent is subject to disciplinary action under sections 490 and 8649 of the
5 Code in that he was convicted of crimes that are substantially related to the qualifications,
6 functions, and duties of a structural pest control field representative. The circumstances are as
7 follows:

8 a. On or about January 29, 2010, in a criminal proceeding entitled *People of*
9 *the State of California v. Dave Michael Maylott* in the Orange County Superior Court case
10 number 10NM00673, Respondent was convicted on his plea of guilty of violation of Penal Code
11 section 487(a), grand theft, Penal Code section, 470(d), acts constituting forgery, and Penal Code
12 section 475(a), possession or receipt of items as forgery. On his change of plea form, Respondent
13 admitted that on August 11, 2009 in Orange County, he willfully and unlawfully, with the intent
14 to defraud, possessed and cashed a check that he forged, amounting to \$1,345 dollars and "took
15 that money belonging to Dynamic Termite Pest Control with the intent to permanently deprive."

16 b. The facts that led to the conviction are that Respondent was employed as a
17 termite and fumigation salesperson from early 2008 until August 31, 2009 with Dynamic Termite
18 & Pest Control, located in Anaheim, California. During that time, Respondent inspected
19 properties and sold termite fumigations, as well as other treatments against wood destroying
20 organisms. Respondent's duties included collecting final payment for the completion of the
21 fumigations from his customers. On or around August 5, 2009, Respondent inspected a property
22 and sold a fumigation service to L.S. and his step-father, D.N. After the property was fumigated,
23 Respondent collected a check from L.S. and D.N. in the total sum of \$1,345.00, for the
24 completion of the job. D.N. filled out check number 675 for \$1,345.00, leaving the payee line
25 and "for" information line blank. The check was given to Respondent. Respondent's name was
26 written on the payee line and "Dynamic Termite" was written on the "for" information line.
27 Respondent endorsed the back of the check. Respondent received the check on August 10, 2009
28 and cashed the check on August 12, 2009 at Union Bank of California.

1 c. As a result of his conviction, Respondent was sentenced to serve 1 day in
2 custody, ordered to pay all fines, fees, and restitution, and sentenced to 3 years of informal
3 probation.

4 **SECOND CAUSE FOR DISCIPLINE**

5 (Commission of a Fraudulent Act By Licensee)

6 16. Respondent is subject to disciplinary action under sections 8642 of the Code in that
7 he committed a fraudulent act as a field representative, as set forth in detail above in paragraph
8 15, incorporated herein by reference.

9 **PRAYER**

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

12 1. Revoking or suspending Field Representative License Number FR 28789, issued to
13 Dave Michael Maylott;

14 2. Ordering Dave Michael Maylott to pay the Structural Pest Control Board the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.
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19

20 DATED: 6/17/10

Kelli Okuma
21 KELLI OKUMA
22 Registrar/Executive Officer
23 Structural Pest Control Board
24 Department of Pesticide Regulation
25 State of California
26 Complainant

25 SD2010701052
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