

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 NICOLE R. COOK
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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 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
26 or potential unfitness of such licensee or registered company to perform the
27 functions authorized by the license or company registration in a manner consistent
28 with the public health, safety, or welfare. Such crimes or acts shall include, but not
 be limited to, the following:

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

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

1 (1) Fiscal dishonesty

2 (2) Fraud

3 (3) Theft

4 (4) Violations relating to the misuse of pesticides.

5
6 13. California Code of Regulations, title 16, section 1937.2 states, in part:

7

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

13 (1) Nature and severity of the act(s) or offense(s).

14 (2) Total criminal record.

15 (3) The time that has elapsed since commission of the act(s) or
16 offense(s).

17 (4) Whether the licensee or registered company has complied with
18 any terms of parole, probation, restitution or any other sanctions
19 lawfully imposed against the licensee or registered company.

20 (5) If applicable, evidence of expungement proceedings pursuant to
21 Section 1203.4 of the Penal Code.

22 (6) Evidence, if any of rehabilitation submitted by the licensee or
23 registered company.

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25 **COST RECOVERY**

26 14. Section 125.3 of the Code states, in pertinent part, that a Board may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations of
28 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.
18
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20 DATED: 6/17/10

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