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7
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. 2011-31

11 **GERALD WAYNE FINLEY, II**
12 **4219 Shadow Crest Drive**
13 **Santa Maria, CA 93455**
14 **Field Representative's License No. FR 32663**

OAH No. 2011060617

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Respondent.

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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. William H. Douglas (Complainant) is the Interim Registrar/Executive Officer of the
21 Structural Pest Control Board. He brought this action solely in his official capacity and is
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by M.
23 Travis Peery, Deputy Attorney General.

24 2. Respondent Gerald Wayne Finley, II (Respondent) is representing himself in this
25 proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about August 22, 2000, the Structural Pest Control Board issued Field
27 Representative's License No. FR 32663 to Gerald Wayne Finley, II (Respondent). The Field
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1 Representative's License was in full force and effect at all times relevant to the charges brought in
2 Accusation No. 2011-31 and will expire on June 30, 2012, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2011-31 was filed before the Structural Pest Control Board (Board),
5 Department of Pesticide Regulation, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 February 28, 2011. Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2011-31 is attached as exhibit A and incorporated herein
9 by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 2011-31. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order.

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

21 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 9. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 2011-31.

26 10. Respondent agrees that his Field Representative's License is subject to discipline and
27 he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
28 below.

CONTINGENCY

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

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

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

21 14. In consideration of the foregoing admissions and stipulations, the parties agree that
22 the Board may, without further notice or formal proceeding, issue and enter the following
23 Disciplinary Order:

DISCIPLINARY ORDER

24
25 IT IS HEREBY ORDERED that Field Representative's License No. FR 32663 issued to
26 Respondent Gerald Wayne Finley, II (Respondent) is revoked. However, the revocation is stayed
27 and Respondent is placed on probation for three (3) years on the following terms and conditions.

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1 1. **Obey All Laws.** Respondent shall obey all federal, state, and local laws including all
2 laws and rules relating to the practice of structural pest control.

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

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

8 4. **Notice to Employers.** Respondent shall notify all present and prospective employers
9 of the decision in case no. 2011-31 and the terms, conditions and restriction imposed on
10 Respondent by said decision.

11 Within 30 days of the effective date of this decision, and within 15 days of Respondent
12 undertaking new employment, Respondent shall cause his/her employer to report to the Board in
13 writing acknowledging the employer has read the decision in case No. 2011-31.

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

20 6. **Completion of Probation.** Upon successful completion of probation, Respondent's
21 license will be fully restored.

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

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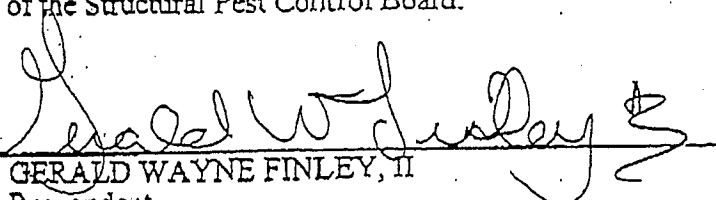
8. **Cost Recovery.** Respondent shall reimburse the Board for their costs of investigation and enforcement in this matter pursuant to Business and Professions Code section 125.3 in the amount of \$2,500.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the agreed upon payment schedule, Respondent shall be considered to be in violation of probation. A period of non-practice by Respondent shall not relieve Respondent of his obligation to reimburse the board for its costs.

9. **Continuing Education.** Respondent shall successfully complete continuing education courses approved by the Board which shall consist of eight (8) hours of Rules and Regulations, four (4) hours of Technical in Branch 1, four (4) hours of Technical in Branch 3, two (2) hours of IPM, and two (2) hours General. Continuing education hours previously completed by Respondent in June of 2010 shall not be credited toward this total.

ACCEPTANCE

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

DATED: 6-10-2012


 GERALD WAYNE FINLEY, II
 Respondent

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ENDORSEMENT

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

Dated: 6/11/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General



M. TRAVIS PEERY
Deputy Attorney General
Attorneys for Complainant

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

In the Matter of the Accusation Against:

GERALD WAYNE FINLEY, II
4219 Shadow Crest Drive
Santa Maria, CA 93455
Field Representative's License No. FR 32663

Respondent.

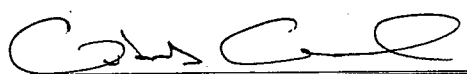
Case No. 2011-31
OAH No. 2011060617

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 August 17, 2012.

It is so ORDERED July 18, 2012.



FOR THE STRUCTURAL PEST CONTROL
BOARD
DEPARTMENT OF PESTICIDE REGULATION

Exhibit A

Accusation No. 2011-31

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Attorneys for Complainant

FILED

Date 2/1/11

By Kelli Okuma

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

In the Matter of the Accusation Against:
GERALD WAYNE FINLEY, II
4219 Shadow Crest Drive
Santa Maria, CA 93455
Field Representative's License No. FR 32663
Respondent.

Case No. 2011-31
ACCUSATION

Kelli Okuma ("Complainant") alleges:

PARTIES

1. Complaint brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.

2. On or about May 14, 2003, the Structural Pest Control Board issued Field Representative's License Number FR 32663 to Gerald Wayne Finley, II ("Respondent"). On or about August 2, 2005, the license was upgraded to include Branch 2. The license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

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1 STATUTORY PROVISIONS

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

6 4. Code section 8625 states:

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

11 5. Code section 8641 states:

12 Failure to comply with the provisions of this chapter, or any rule or
13 regulation adopted by the board, or the furnishing of a report of inspection without
14 the making of a bona fide inspection of the premises for wood-destroying pests or
15 organisms, or furnishing a notice of work completed prior to the completion of the
16 work specified in the contract, is a ground for disciplinary action.

15 6. Code section 8593 states, in pertinent part:

16 The board shall require as a condition to the renewal of each operator's and
17 field representative's license that the holder submit proof satisfactory to the board that
18 he or she has informed himself or herself of developments in the field of pest control
19 either by completion of courses of continuing education in pest control approved by
20 the board or equivalent activity approved by the board. In lieu of submitting that
21 proof, the licenseholder, if he or she so desires, may take and successfully complete
22 an examination given by the board, designed to test his or her knowledge of
23 developments in the field of pest control since the issuance of his or her license.

21 REGULATORY PROVISIONS

22 7. California Code of Regulations, title 16, section 1950, states, in pertinent
23 part:

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

1 (b) Each licensee is required to gain a certain number of continuing
2 education hours during the three year renewal period. The number of hours required
3 depends on the number of branches of pest control in which licenses are held. The
4 subject matter covered by each activity shall be designated as "technical" or "general"
5 by the Board when the activity is approved. Hour values shall be assigned by the
6 Board to each approved educational activity, in accordance with the provisions of
7 section 1950.5.

8 (d) Field representatives licensed in one branch of pest control shall have
9 completed 16 continuing education hours, field representatives licensed in two
10 branches of pest control shall have completed 20 continuing education hours, field
11 representatives licensed in three branches of pest control shall have completed 24
12 continuing education hours during each three year renewal period. In each case, a
13 minimum of four continuing education hours in a technical subject directly related to
14 each branch of pest control held by the licensee must be gained for each branch of
15 pest control licensed and a minimum of eight hours must be gained from Board
16 approved courses on the Structural Pest Control Act, the Rules and Regulations, or
17 structural pest control related agencies' rules and regulations.

18 COST RECOVERY

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

23 BACKGROUND INFORMATION

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

28 10. On December 8, 2009, February 8, 2010, and May 11, 2010, the Board sent
Respondent written requests for copies of his continuing education certificates to verify the 20
hours of continuing education set forth on his renewal application dated June 1, 2009.
Respondent was advised on each occasion that if he failed to comply with the Board's request, his
field representative's license would be subject to disciplinary action.

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FIRST CAUSE FOR DISCIPLINE

(Failure to Verify Completion of Continuing Education)

11. Respondent is subject to discipline under Code section 8641, for failure to comply with California Code of Regulation, title 16, section 1950, by failing to verify that he had completed 20 hours of continuing education. Respondent failed to submit copies of the continuing education certificates as requested by the Board on December 8, 2009, February 8, 2010, and May 11, 2010.

OTHER MATTERS

12. Code section 8620 provides, in pertinent 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.

13. Pursuant to Code section 8654, if discipline is imposed on Field Representative's License Number FR 32663, issued to Gerald W. Finley, II, then Gerald W. Finley, II 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 him shall be subject to disciplinary action.

PRAAYER

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 32663, issued to Gerald W. Finley, II;
- 2. Prohibiting Gerald W. Finley, II 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 32663, issued to Gerald W. Finley, II;

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3. Ordering Gerald W. Finley, II 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; and,

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

DATED: 2/1/11

Kelli Okuma

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

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