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**FILED**

Date 12/29/09 By Kelli Okuma

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

11 In the Matter of the Accusation Against:

Case No. 2010-37

12 **ISRAEL GUERRERO**  
13 **8709 Spring Canyon Drive**  
14 **Spring Valley, CA 91977**

**A C C U S A T I O N**

15 **Field Representative's License No. 34068,**  
**Br. 3**

16 Respondent.

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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 7, 2001, the Structural Pest Control Board issued Field  
24 Representative's License Number 34068 to Israel Guerrero (Respondent). The Field  
25 Representative's License will expire on June 30, 2010, unless renewed.  
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## JURISDICTION

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

4. Section 118 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Section 8620 of the Code provides, in pertinent 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.

## STATUTORY PROVISIONS

6. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

1           7.    Section 493 of the Code states, in pertinent part:

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 person  
5                who holds a license, upon the ground that the applicant or the licensee has been  
6                convicted of a crime substantially related to the qualifications, functions, and duties  
7                of the licensee in question, the record of conviction of the crime shall be conclusive  
8                evidence of the fact that the conviction occurred, but only of that fact, and the board  
9                may inquire into the circumstances surrounding the commission of the crime in  
10              order to fix the degree of discipline or to determine if the conviction is substantially  
11              related to the qualifications,

12           8.    Section 8625 of the Code states:

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

19           9.    Section 8649 of the Code states:

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

24           10.   Code section 8654 states:

25                Any individual who has been denied a license for any of the reasons  
26                specified in Section 8568, or who has had his or her license revoked, or whose  
27                license is under suspension, or who has failed to renew his or her license while it  
28                was under suspension, or who has been a member, officer, director, associate,  
29                qualifying manager, or responsible managing employee of any partnership,  
30                corporation, firm, or association whose application for a company registration has  
31                been denied for any of the reasons specified in Section 8568, or whose company  
32                registration has been revoked as a result of disciplinary action, or whose company  
33                registration is under suspension, and while acting as such member, officer, director,  
34                associate, qualifying manager, or responsible managing employee had knowledge of  
35                or participated in any of the prohibited acts for which the license or registration was  
36                denied, suspended or revoked, shall be prohibited from serving as an officer,  
37                director, associate, partner, qualifying manager, or responsible managing employee  
38                of a registered company, and the employment, election or association of such person  
39                by a registered company is a ground for disciplinary action.

40           11.   Code section 8655 states:

41                A plea or verdict of guilty or a conviction following a plea of nolo  
42                contendere made to a charge substantially related to the qualifications, functions,  
43                and duties of a structural pest control operator, field representative, applicator, or  
44                registered company is deemed to be a conviction within the meaning of this article  
45                or Section 8568 of this chapter. The board may order the license or registration  
46                suspended or revoked, or may decline to issue a license, when the time for appeal

has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the individual or registered company to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

12. Penal Code section 368 states, in pertinent part:

(a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

...

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding four hundred dollars (\$400); and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine, and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding four hundred dollars (\$400).

13. Penal Code section 484 states, in pertinent part:

(a) Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any failure or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another is guilty of theft.

14. Penal Code section 487 states, in pertinent part:

Grand theft is theft committed in any of the following cases:

(a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400), except as provided in subdivision (b).

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1 **COST RECOVERY**

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

6 **REGULATORY PROVISIONS**

7 16. California Code of Regulations, Title 16, section 1937.1, states, in pertinent part:

8 For the purposes of denial, suspension or revocation of a license or company  
9 registration . . . a crime or act shall be considered to be substantially related to the  
10 qualifications, functions or duties of a licensee or registered company . . . if to a  
11 substantial degree it evidences present or potential unfitness of such licensee or  
12 registered company to perform the functions authorized by the license or company  
13 registration in a manner consistent with the public health, safety, or welfare. Such  
14 crimes or acts shall include, but not be limited to, the following:

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

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

18 (1) Fiscal dishonesty

19 (2) Fraud

20 (3) Theft

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

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(December 17, 2009 Criminal Conviction -**

24 **Grand Theft From Elderly Customers Between July 6, 2007 and April 11, 2009)**

25 17. Respondent is subject to disciplinary action pursuant to Code sections 490, 493, and  
26 8649 in that on or about December 17, 2009, in the criminal proceeding entitled *People v. Israel*  
27 *Guerrero*, Superior Court San Diego County Case No. CD223689, Respondent pled guilty to six  
28 counts of violating Penal Code section 368(d) (theft from elders), six counts of violating Penal  
Code section 487(a) (grand theft of personal property over \$400), and one count of violating  
Penal Code section 484 (petty theft), crimes substantially related to the qualifications, functions,  
and duties of a field representative. The circumstances of the crime are as follows:

1 18. On or about July 6, 2007, Respondent, while working as a field representative,  
2 unlawfully committed theft by taking money of a value exceeding \$400 from customer E.D.  
3 without performing the pest control services that E.D. paid for and knowing that E.D. was an  
4 elder in violation of Penal Code sections 368(d) and 487(a).

5 19. On or about and between August 27, 2007 and August 30, 2007, Respondent, while  
6 working as a field representative, unlawfully committed theft by taking money of a value  
7 exceeding \$400 from customer H.S. without performing the pest control services that H.S. paid  
8 for and knowing that H.S. was an elder in violation of Penal Code sections 368(d) and 487(a).

9 20. On or about August 22, 2007, Respondent unlawfully committed petty theft of  
10 property from H.S. in violation of Penal Code section 484.

11 21. On or about October 15, 2007, Respondent, while working as a field representative,  
12 unlawfully committed theft by taking money of a value exceeding \$400 from customer L.C.  
13 without performing the pest control services that L.C. paid for and knowing that L.C. was an  
14 elder in violation of Penal Code sections 368(d) and 487(a).

15 22. On or about November 29, 2007, Respondent, while working as a field representative,  
16 unlawfully committed theft by taking money of a value exceeding \$400 from customer G.E.  
17 without performing the pest control services that G.E. paid for and knowing that G.E. was an  
18 elder in violation of Penal Code sections 368(d) and 487(a).

19 23. On or about February 27, 2008, Respondent, while working as a field representative,  
20 unlawfully committed theft by taking money of a value exceeding \$400 from customer R.P.  
21 without performing the pest control services that R.P. paid for and knowing that R.P. was an elder  
22 in violation of Penal Code sections 368(d) and 487(a).

23 24. On or about April 11, 2008, Respondent, while working as a field representative,  
24 unlawfully committed theft by taking money of a value exceeding \$400 from customer P.G.  
25 without performing the pest control services that P.G. paid for and knowing that P.G. was an  
26 elder in violation of Penal Code sections 368(d) and 487(a).

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1 25. Respondent's sentencing for these crimes is scheduled for February 24, 2010.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Acts Involving Dishonesty, Fraud, or Deceit)**

4 26. Respondent is subject to disciplinary action pursuant to Code section 8620 in that  
5 Respondent committed acts of dishonesty when he unlawfully committed grand theft from elderly  
6 customers while working as a field representative as set out more fully in paragraphs 18 through  
7 24 above.

8 **OTHER MATTERS**

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

14 28. Pursuant to Code section 8654, if discipline is imposed on Field Representative's  
15 License Number FR 34068, issued to Respondent Israel Guerrero, Israel Guerrero shall be  
16 prohibited from serving as an officer, director, associate, partner, qualifying manager, or  
17 responsible managing employee for any registered company during the time the discipline is  
18 imposed, and any registered company which employs, elects, or associates Israel Guerrero shall  
19 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 34068, issued to Israel Guerrero.
2. Ordering Israel Guerrero 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/29/09

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

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