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8
9 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12
13 **DAVID E. WHITE**
78-465 Via Sevilla
La Quinta, CA 92247
14
15 Field Representative License No
FR 35441 Branches 2 & 3
16 Respondent.

Case No. 2010-1

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

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18 **FINDINGS OF FACT**

19 1. On or about July 1, 2009, Complainant Kelli Okuma, in her official capacity as the
20 Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
21 Affairs, filed Accusation No. 2010-1 against David E. White (Respondent) before the Structural
22 Pest Control Board.

23 2. On or about January 2, 2003, the Structural Pest Control Board (Board) issued Field
24 Representative License No. FR 35441 to Respondent. The Field Representative License was in
25 full force and effect at all times relevant to the charges brought herein and will expire on June 30,
26 2011, unless renewed.
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1 3. On or about July 7, 2009, S. Sotelo, an employee of the Department of Justice, served
2 by Certified and First Class Mail a copy of the Accusation No. 2010-1, Statement to Respondent,
3 Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and
4 11507.7 to Respondent's address of record with the Board, which was and is 78-465 Via Sevilla,
5 La Quinta, CA 92247. A copy of the Accusation is attached as Exhibit A, and is incorporated
6 herein by reference.

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

9 5. On or about July 16, 2009, the aforementioned documents mailed by first class mail
10 were returned by the U.S. Postal Service marked "Return to Sender."

11 6. On or about August 12, 2009, the aforementioned documents mailed by certified mail
12 were returned by the U.S. Postal Service marked "Unclaimed."

13 7. Government Code section 11506 states, in pertinent part:

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

17 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 2010-1.

20 9. California Government Code section 11520 states, in pertinent part:

21 (a) If the respondent either fails to file a notice of defense or to appear at the
22 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.

23 10. 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 evidence on file herein, finds that the allegations in Accusation No. 2010-1 are true.

26 11. The total cost for investigation and enforcement in connection with the Accusation
27 are \$2,437.50 as of August 13, 2009.
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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent David E. White has subjected his
3 Field Representative License No. FR 35441 to discipline.

4 2. A copy of the Accusation is attached.

5 3. The agency has jurisdiction to adjudicate this case by default.

6 4. The Structural Pest Control Board is authorized to revoke Respondent's Field
7 Representative License based upon the following violations alleged in the Accusation:

8 a. Respondent is subject to disciplinary action pursuant to Business and Professions
9 Code sections 490, 493, and 8649 for three criminal convictions. Respondent was convicted on
10 June 29, 2005 for embezzlement in 2004 and 2005. Respondent was convicted on November 17,
11 2008 for embezzlement in 2008. Respondent was convicted on May 11, 2009 of forgeries in
12 January of 2009.

13 b. Respondent is subject to disciplinary action pursuant to Business and Professions
14 Code section 8620 for committing acts of dishonesty for embezzlement and forgery.

15 **ORDER**

16 IT IS SO ORDERED that Field Representative License No. FR 35441, heretofore issued to
17 Respondent David E. White, 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 11, 2009.

23 It is so ORDERED October 12, 2009

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FOR THE STRUCTURAL PEST CONTROL BOARD

26 DEPARTMENT OF CONSUMER AFFAIRS

27 70200369.DOC
DOJ docket number:SD2008803389

28 Attachment: Exhibit A Accusation No.2010-1

Exhibit A

Accusation No. 2010-1

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8 *Attorneys for Complainant*

FILED

Date 7/1/09 By *Kelli Okuma*

9 **BEFORE THE**
10 **STRUCTURAL PEST CONTROL BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 2010-1

14 **DAVID E. WHITE**
78-465 Via Sevilla
La Quinta, CA 92247

ACCUSATION

15 **Field Representative License**
No. FR 35441 Branches 2 & 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 Consumer
22 Affairs.

23 2. On or about January 2, 2003, the Structural Pest Control Board issued Field
24 Representative License Number FR 35441 in Branches 2 and 3 to David E. White (Respondent).
25 The Field Representative License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on June 30, 2011, unless renewed.

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 490 of the Code states:

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. 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 which 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.

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

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be 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,

7. 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.

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1 8. Section 8625 of the Code states:

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

8 **STATUTORY PROVISIONS**

9 9. Section 8649 of the Code states:

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

14 10. Section 8654 of the Code states:

15 Any individual who has been denied a license for any of the reasons
16 specified in Section 8568, or who has had his or her license revoked, or whose
17 license is under suspension, or who has failed to renew his or her license while it
18 was under suspension, or who has been a member, officer, director, associate,
19 qualifying manager, or responsible managing employee of any partnership,
20 corporation, firm, or association whose application for a company registration has
21 been denied for any of the reasons specified in Section 8568, or whose company
22 registration has been revoked as a result of disciplinary action, or whose company
23 registration is under suspension, and while acting as such member, officer, director,
24 associate, qualifying manager, or responsible managing employee had knowledge of
25 or participated in any of the prohibited acts for which the license or registration was
26 denied, suspended or revoked, shall be prohibited from serving as an officer,
27 director, associate, partner, qualifying manager, or responsible managing employee
28 of a registered company, and the employment, election or association of such person
by a registered company is a ground for disciplinary action.

11. Section 8655 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo
contendere made to a charge substantially related to the qualifications, functions,
and duties of a structural pest control operator, field representative, applicator, or
registered company is deemed to be a conviction within the meaning of this article
or Section 8568 of this chapter. The board may order the license or registration
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 side the verdict of guilty, or dismissing the
accusation, information or indictment.

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12. Penal Code section 476 states:

Every person who makes, passes, utters, or publishes, with intent to defraud any other person, or who, with the like intent, attempts to pass, utter, or publish, or who has in his or her possession, with like intent to utter, pass, or publish, any fictitious or altered bill, note, or check purporting to be the bill, note, or check, or other instrument in writing for the payments of money or property of any real or fictitious financial institution as defined in Section 186.9 is guilty of forgery.

13. Penal Code section 476 states:

Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted.

COST RECOVERY

14. Section 125.3 of the Code provides, 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.

REGULATORY PROVISIONS

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

For the purposes of denial, suspension or revocation of a license or company registration . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee or registered company . . . 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:

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (June 29, 2005 Criminal Conviction – Embezzlement in 2004 and 2005)

3 16. Respondent is subject to disciplinary action pursuant to Code sections 490, 493, and
4 8649 in that on or about June 29, 2005, in the criminal proceeding entitled *People v. David*
5 *Edward White*, Superior Court Riverside County Case No. INF050035, Respondent pled guilty to
6 Penal Code section 503 (embezzlement), a crime substantially related to the qualifications,
7 functions, and duties of a field representative. The circumstances of the crime are as follows:

8 17. Respondent, while employed as a manager for Sunglass Hut in Palm Desert, CA,
9 willfully and unlawfully appropriated to his own use, money in the amount of \$188.51 on or
10 about October 31, 2004, \$536.57 on or about January 1, 2005, \$495.59 on or about January 6,
11 2005, \$527.92 on or about January 9, 2005, \$554.86 on or about January 15, 2005, and \$441.67
12 on or about January 16, 2005 for a total of \$2,745.12.

13 18. Pursuant to the Plea Agreement, on or about June 29, 2005, Respondent was
14 sentenced to three (3) years of probation, 121 days in jail, and ordered to pay fines, and
15 restitution.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (November 17, 2008 Criminal Conviction – Embezzlement in 2008)

18 19. Respondent is subject to disciplinary action pursuant to Code sections 490, 493, and
19 8649 in that on or about November 17, 2008, in the criminal proceeding entitled *People v. David*
20 *Edward White*, Superior Court Riverside County Case No. INF063549, Respondent pled guilty to
21 Penal Code section 503 (embezzlement), a crime substantially related to the qualifications,
22 functions, and duties of a field representative. The circumstances of the crime are as follows:

23 20. During 2008 Respondent, while employed as a field technician and book keeper for
24 Fernando's Bust A Bug in La Quinta, CA, willfully and unlawfully appropriated to his own use,
25 money in three separate transactions in the amounts of \$180.00, \$650.00, and \$105.00 for a total
26 of \$935.00.

27 21. Pursuant to the Plea Agreement, on or about November 17, 2008, Respondent was
28 sentenced to three (3) years of probation, 120 days in jail, and ordered to pay fines and restitution.

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THIRD CAUSE FOR DISCIPLINE

(May 11, 2009 Criminal Conviction – Forgeries in January 2009)

22. Respondent is subject to disciplinary action pursuant to Code sections 490, 493, and 8649 in that on or about May 11, 2009, in the criminal proceeding entitled *People v. David Edward White*, Superior Court Riverside County, Indio, Case No. INF065028, Respondent pled guilty to Penal Code section 476 (forgery), a felony, a crime substantially related to the qualifications, functions, and duties of a field representative. The circumstances of the crime are as follows:

23. Respondent deposited into a checking account, three forged checks that he unlawfully made with intent to defraud in the amount of \$915.00 on January 5, 2009, \$915.00 on January 6, 2009, and \$3,750.00 on January 9, 2009, for a total of \$5,580.00.

24. Pursuant to the Plea Agreement, on or about November 17, 2008, Respondent was sentenced to three (3) years of probation, 120 days in jail, and ordered to pay fines and restitution. Respondent's sentence was to run concurrently with his sentences in Case Nos. INF063549 and INF050035.

FOURTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud or Deceit)

25. Respondent is subject to disciplinary action pursuant to Code section 8620 in that Respondent committed acts of dishonesty when he embezzled \$2,745.12 from his employer Sunglass Hut in 2004 and 2005 as set out more fully in paragraphs 16 and 17 above.

26. Respondent is subject to disciplinary action pursuant to Code section 8620 in that Respondent committed acts of dishonesty when he embezzled \$935.00 from his employer Fernando's Bust A Bug in 2008 as set out more fully in paragraphs 19 and 20 above.

27. Respondent is subject to disciplinary action pursuant to Code section 8620 in that Respondent committed acts of dishonesty when he unlawfully made checks in the amount of \$5,580 and deposited those forged checks in his bank in January of 2009 as set out more fully in paragraphs 22 and 23 above.

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OTHER MATTERS

28. 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 one 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.

29. Pursuant to Code section 8654, if discipline is imposed on Field Representative's License Number FR 35441, issued to Respondent David White, he 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 David White shall be subject to disciplinary action.

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 License Number FR 35441, issued to David E. White;

2. Ordering David E. White 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: 7/1/09


KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

SD2008803389
accusation.rtf