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

In the Matter of the Accusation Against:
MICHAEL S. HERNANDEZ
33721 Plowshare Road
Wildomar, CA 92595

Field Representative License No. FR 35660

Respondent.

Case No. 2010-40

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 29, 2009, Complainant Kelli Okuma, in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Accusation No. 2010-40 against Michael S. Hernandez (Respondent) before the Structural Pest Control Board.

2. On or about March 17, 2003, the Structural Pest Control Board (Board) issued Field Representative License No. FR 35660 to Respondent. The Field Representative License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2001, unless renewed.

3. On or about January 6, 2010, Juana F. Mejia, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2010-40, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections

///

1 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and
2 is:

3 33721 Plowshare Road
4 Wildomar, CA 92595.

5 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

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

8 5. The documents served have not been returned to the Department of Justice by the
9 U.S. Postal Service.

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
18 2010-40.

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

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

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 evidence on file herein, finds that the allegations in Accusation No. 2010-40 are true.

27 10. The total cost for investigation and enforcement in connection with the Accusation
28 are \$637.50 for fiscal year 2009-2010 for attorney fees.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Michael S. Hernandez has
subjected his Field Representative License No. FR 35660 to discipline.

2. A copy of the Accusation is attached.

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

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

- a. Failure to provide proof of continuing education under Business and Professions Code sections 8641 and 8593, and Regulation section 1950, subdivision (a);
- b. Misrepresentation of fact regarding continuing education under Business and Professions Code section 8637.

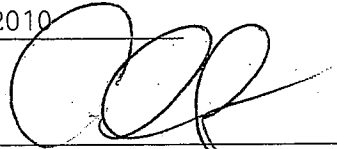
ORDER

IT IS SO ORDERED that Field Representative License No. FR 35660, heretofore issued to Respondent Michael S. Hernandez, is revoked.

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

This Decision shall become effective on May 15, 2010.

It is so ORDERED April 15, 2010



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

80438345.DOC
DOJ docket number:SD2009804745

Attachment:

Exhibit A: Accusation No. 2010-40

Exhibit A
Accusation No. 2010-40

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 SHERRY L. LEDAKIS
Deputy Attorney General
4 State Bar No. 131767
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2078
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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:
12
13 **MICHAEL S. HERNANDEZ**
33721 Plowshare Road
Wildomar, CA 92595
14
15 **Field Representative License No. FR 35660**
16
Respondent.

Case No. 2010-40
ACCUSATION

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about March 17, 2003, the Structural Pest Control Board issued Field
23 Representative License Number FR 35660 to Michael S. Hernandez (Respondent). The Field
24 Representative License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on June 30, 2011, unless renewed.

26 ///

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

9 5. Section 8625 of the Code states:

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

16 6. Section 8654 of the Code states:

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

23 STATUTORY PROVISIONS

24 7. Section 8593 of the Code states:

25 The board shall require as a condition to the renewal of each operator's and
26 field representative's license that the holder submit proof satisfactory to the board that
27 he or she has informed himself or herself of developments in the field of pest control
28 either by completion of courses of continuing education in pest control approved by
the board or equivalent activity approved by the board. In lieu of submitting that
proof, the licenseholder, if he or she so desires, may take and successfully complete

1 an examination given by the board, designed to test his or her knowledge of
developments in the field of pest control since the issuance of his or her license.

2 The board shall develop a correspondence course or courses with any
3 educational institution or institutions as it deems appropriate. This course may be
used to fulfill the requirements of this section. The institution may charge a
4 reasonable fee for each course.

5 The board may charge a fee for the taking of an examination in each branch of
6 pest control pursuant to this section in an amount sufficient to cover the cost of
administering each examination, provided, however, that in no event shall the fee
exceed fifty dollars (\$50) for each examination.

7 8. Section 8593.1 of the Code states:

8 The board shall require as a condition to the renewal of each applicator's
9 license that the holder thereof submit proof satisfactory to the board that he or she has
10 completed courses of continuing education in pesticide application and use approved
by the board or equivalent activity approved by the board. In lieu of submitting that
11 proof, the licenseholder, if he or she so desires, may successfully apply for and pass
an appropriate written applicator's examination for renewal of a license given by the
board.

12 9. Section 8637 of the Code states that "[m]isrepresentation of a material fact by the
13 applicant in obtaining a license or company registration is a ground for disciplinary action."

14 10. Section 8641 of the Code provides in pertinent part that "[f]ailure to comply with the
15 provisions of this chapter, or any rule or regulation adopted by the board, . . . is a ground for
16 disciplinary action."

17 REGULATORY PROVISION

18 11. Title 16, California Code of Regulations ("Regulation"), section 1950, subdivision
19 (a), states:

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

24 COST RECOVERY

25 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case.

1 FACTS

2 13. On or before June 30, 2008, Respondent submitted a renewal application for his Field
3 Representative's License to the Board in which he certified to the Board that that he had taken all
4 required continuing education coursework. Specifically, Respondent signed a License Renewal
5 Application card, which provided in pertinent part:

6 Continuing Education Certification – I have completed 16 [blank filled in with the number
7 16] hours of continuing education required for renewal of my license. I DECLARE UNDER
8 PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT
9 THE FOREGOING IS TRUE AND CORRECT.

10 Respondent signed his name below the above certification, and dated his signature
11 "6/20/08."

12 14. Thereafter, on December 15, 2008, Respondent was notified that he had been selected
13 for a continuing education audit by the Board. Respondent was informed in writing that he was
14 to submit to the Board copies of his certificates of course completion for the renewal period of
15 July 1, 2005 through June 30, 2008. Respondent failed to respond to the Board's request. On
16 January 20, 2009, Respondent was sent a second letter from the Board requesting his certificates
17 of completion of continuing education courses for the renewal period of July 1, 2005 to June 30,
18 2008. Respondent was given two weeks to respond to the Board's request or risk disciplinary
19 action being taken against his license. Respondent failed to respond to the Board's request. On
20 March 19, 2009, the Board sent a third and final letter to Respondent requesting his continuing
21 education certificates for the time period of July 1, 2005 through June 30, 2008. He
22 was given until April 2, 2009 to respond. Respondent has failed to provide the Board with any
23 certificates of completion of continuing education requirements for the renewal period of July 1,
24 2005 through June 30, 2008.

25 FIRST CAUSE FOR DISCIPLINE

26 (Failure to Provide Proof of Continuing Education)

27 15. Respondent's Field Representative License is subject to disciplinary action under
28 Code section 8641, for failure to comply with Code section 8593 and Regulation section 1950,

1 subdivision (a), in that Respondent failed to provide the Board with verifiable documentation to
2 demonstrate that he completed the continuing education requirements as a condition of renewal of
3 his Field Representative License, as set forth above in paragraphs 13 and 14.

4 **SECOND CAUSE FOR DISCIPLINE**

5 (Misrepresentation of Fact Regarding Continuing Education)

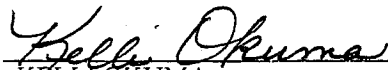
6 16. Respondent's Field Representative License is subject to disciplinary action under
7 Code sections 8637, in that Respondent misrepresented that he had completed 16 hours of
8 continuing education coursework in his license renewal application, when in fact he had failed to
9 fulfill the Board's continuing education requirements as a condition of renewal of his license as
10 set forth above in paragraphs 13 and 14.

11 PRAYER

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

- 14 1. Revoking or suspending Field Representative License Number FR 35660, issued to
15 Michael S. Hernandez.
- 16 2. Ordering Michael S. Hernandez to pay the Structural Pest Control Board the
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: 12/29/09

21 
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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