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FILED

Date 11/31/12 By *William H. Douglas*

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 **RYAN CHRISTOPHER VAN VELZER**
13 **6887 Shearwaters Drive**
14 **Carlsbad, CA 92011**
15 **Field Representative License No. FR 35866**
16 Respondent.

Case No. 2012-31

A C C U S A T I O N

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18 Complainant alleges:

19 **PARTIES**

20 1. William H. Douglas (Complainant) brings this Accusation solely in his official
21 capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board,
22 Department of Pesticide Regulation.

23 2. On or about April 25, 2003, the Structural Pest Control Board issued Field
24 Representative License No. FR 35866, Branch 2, to Ryan Christopher Van Velzer (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, 2014, unless renewed.

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JURISDICTION

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

4. Section 118 of the Code provides 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 Business and Professions Code provides 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.

6. Section 8625 of the Code states:

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

STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering the suspension or revocation of a license under Section 490. Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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1 8. Section 490 of the Code states:

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

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

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

18 (d) The Legislature hereby finds and declares that the application of this section
19 has been made unclear by the holding in *Petropoulos v. Department of Real Estate*
20 (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
21 number of statutes and regulations in question, resulting in potential harm to the
22 consumers of California from licensees who have been convicted of crimes.
23 Therefore, the Legislature finds and declares that this section establishes an
24 independent basis for a board to impose discipline upon a licensee, and that the
25 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session
26 do not constitute a change to, but rather are declaratory of, existing law.

27 9. Section 493 of the Code states:

28 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, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

10. Section 8649 of the Code states:

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

11. Section 8654 of the Code states:

Any individual who has been denied a license for any of the reasons specified in Section 8568, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any partnership, corporation, firm, or association whose application for a company registration has been denied for any of the reasons specified in Section 8568, or whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or 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.

12. 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 aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISION

13. California Code of Regulations, title 16, section 1937.1 states:

For the purposes of denial, suspension or revocation of a license or company registration pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee or registered company under Chapter 14 of Division 3 of the code 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:

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

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

4 (1) Fiscal dishonesty

5 (2) Fraud

6 (3) Theft

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

8 14. California Code of Regulations, title 16, section 1937.2 states:

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

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

16 (2) Total criminal record.

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

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

21 (5) If applicable, evidence of expungement proceedings pursuant to Section
22 1203.4 of the Penal Code.

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

25 (c) When considering a petition for reinstatement of a structural pest control
26 license or company registration, the board shall evaluate evidence of rehabilitation
27 submitted by the petitioner, considering those criteria specified in subsection (b).

28 COST RECOVERY

15. Section 125.3 of the Code provides 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.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(January 16, 2009 Conviction for Driving Under the Influence of Alcohol With a Blood**
3 **Alcohol Level of 0.08% or More [0.18%] on November 18, 2008)**

4 16. Respondent is subject to disciplinary action under Code sections 490 and 8649 in that
5 Respondent was convicted of crimes that are substantially related to the qualifications, functions,
6 and duties of an field representative. The circumstances are as follows:

7 17. On January 16, 2009, in a criminal proceeding entitled *The People of the State of*
8 *California v. Ryan C. Vanvelzer*, in the San Diego Superior Court, Case Number CN255341,
9 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(b)
10 (driving under the influence of alcohol with a blood alcohol content of 0.08% or more [0.18%]), a
11 misdemeanor.

12 18. The facts that led to the conviction are that on November 18, 2008, Carlsbad Police
13 Department officers performed a traffic stop of Respondent. Officers determined Respondent
14 showed signs of being under the influence of alcohol and arrested him. Respondent's breath
15 and/or blood analysis came back at 0.18%.

16 19. As a result of the above convictions, the Court placed Respondent on three years
17 summary probation and ordered to serve 96 hours plus 4 days in the county jail, with 4 days credit
18 for time served, to be served on consecutive weekends beginning on February 21, 2009, to enroll
19 in and complete an alcohol program, and to pay \$2,055 in various fines and fees.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(July 14, 2011 Criminal Conviction for Second Degree Burglary and Grand Theft in**
22 **September of 2008)**

23 20. Respondent is subject to disciplinary action under Code sections 490 and 8649 in that
24 Respondent was convicted of crimes that are substantially related to the qualifications, functions,
25 and duties of an field representative. The circumstances are as follows:

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1 21. On July 14, 2011, in a criminal proceeding entitled *The People of the State of*
2 *California v. Ryan C. Vanvelzer*, in the San Diego Superior Court, North County Division, Case
3 Number CN289768, Respondent was convicted on his plea of guilty of violating Penal Code
4 sections 459 (burglary, 2nd degree) and 487 (grand theft), felonies.

5 22. The circumstances that led to the conviction are that on September 22, 2008, at
6 approximately 0752 hours, Carlsbad Police Department officers were dispatched to Magnolia
7 Elementary School regarding a burglary.

8 23. Upon arrival, officers contacted a representative of the school who told officers that
9 on Friday, September 19, 2008, at approximately 1600 hours, the teacher in classroom #38 locked
10 the windows and doors to the classroom and left the school for the weekend. On Monday,
11 September 22, 2008, at approximately 0745 hours, the teacher returned to the classroom and
12 noticed a window had been removed from the rear of the classroom. The teacher then noticed a
13 laptop and projector missing, which had a combined value of approximately \$2,5050. The
14 representative told officers that the two rear windows that were disturbed were in a locked fenced
15 gated area, therefore, the suspect would have had to climb the gate to make entry into the area.
16 The reporting party told officers that the teacher noticed a radio boom box lying on the floor next
17 to the front door of the classroom and that the teacher suspected the suspects moved the boom
18 box to that area because when the teacher left the previous Friday, the boom box was across the
19 room on a shelf.

20 24. Officers noticed that the window screens of an adjacent classroom had also been
21 removed, but it appeared that the suspects were unable to gain access to the adjacent classroom.
22 During their investigation, officers applied black fingerprint powder with a new brush and bottle
23 of powder to the windows and boom box. The officers made several tape lifts on the outside of
24 the window, on the left sliding area where it appeared the suspects attempted to slide the window,
25 on the outside of the center stationary window, on the outside left sliding area window, and on the
26 radio boom box handle, which latent print lifts were placed in latent print cards and submitted for
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3. Taking such other and further action as deemed necessary and proper.

DATED: 1/31/12

William H. Douglas
WILLIAM H. DOUGLAS
Interim Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

SD2011801302