EDMUND G. BROWN JR.
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
GREGORY J. SALUTE
Supervising Deputy Attorney General
State Bar No. 164015
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2520
Facsimile: (213) 897-2804

Attorneys for Complainant

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **TIMOTHY DUBE** 1132 E. 32nd Street Signal Hill, California 90755 **Field Representative's License No. FR 37477** **Registered Applicator's License No. RA 41123** Respondent.	Case No. 2009-59 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 28, 2009, Complainant Kelli Okuma, in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer Affairs, filed Accusation No. 2009-59 against Timothy Dube (Respondent) before the Structural Pest Control Board.

2. On or about December 19, 2003, the Structural Pest Control Board (Board) issued Field Representative License No. FR37477 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 12, 2012, unless renewed.

3. On or about June 24, 2004, the Structural Pest Control Board issued Registered Applicator License No. RA41123 to Respondent. The Registered Applicator License was in full force and effect at all times relevant to the charges brought herein and will expire on December 9, 2009, unless renewed.

4. On or about July 29, 2009, Teresa Sutton, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2009-59, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:

1132 E. 32nd Street, Signal Hill, CA 90755.

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

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

4. On or about July 30, 2009, the signed certified receipt return card was returned by the U.S. Postal Service to the Department of Justice.

5. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial 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.

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2009-59.

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

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

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in Accusation No. 2009-59 are true.

9. The total cost for investigation and enforcement in connection with the Accusation are $1592.76 as of August 18, 2009.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Timothy Dube has subjected his Field Representative License No. FR37477 and Registered Applicator License No. RA41123 to discipline.

2. A copy of the Accusation is attached.

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 No. FR37477 and Registered Applicator License No. RA41123 based upon the following violations alleged in the Accusation:

a. Failure to Comply with Laws - Contracting for and Performing Pest Control Work on Own Behalf--Respondent's applicator's license and field representative's license are subject to discipline under Code section 8641, in that between April 2008 and August 2008, Respondent failed to comply with Code sections 8507 and 8507.1, by contracting for pest control work or performing pest control work on his own behalf,

b. Failure to Comply with Laws - Unlicensed Activity--Respondent's applicator's license and field representative's license are subject to discipline under Code section 8641, in that between April 2008 and August 2008, Respondent violated Code section 8552 by representing that pest control work performed had been performed by a registered company, when in fact, it had not.

c. Failure to Comply with Laws - Acting in the Capacity as a Pest Control Company Without a License--Respondent's applicator's license and field representative's license are subject to discipline under Code section 8641, in that between April 2008 and August 2008,

Respondent failed to comply with Code section 8610(a), by engaging in the practice of structural pest control without being registered by the Board.

ORDER

IT IS SO ORDERED that Field Representative License No. FR37477, and Registered Applicator's License No. RA 41123 heretofore issued to Respondent Timothy Dube, are both 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 November 11, 2009.

It is so ORDERED October 12, 2009

Clifford J. Rattey

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

60449218.DOC
DOJ docket number:LA2008900637

Attachment:

Exhibit A: Accusation No.2009-59

EDMUND G. BROWN JR., Attorney General
of the State of California
ALFREDO TERRAZAS
Senior Assistant Attorney General
GREGORY J. SALUTE, State Bar No. 164015
Supervising Deputy Attorney General
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2520
Facsimile: (213) 897-2804

Attorneys for Complainant

FILED

Date 5/28/09 By Kelli Okuma

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **TIMOTHY DUBE** 1132 E. 32nd Street Signal Hill, California 90755 **Field Representative's License No. FR 37477** **Registered Applicator's License No. RA 41123** Respondent.	Case No. 2009-59 **ACCUSATION**

Kelli Okuma ("Complainant") alleges:

PARTIES

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

Field Representative's License

2. On or about June 24, 2004, the Board issued Field Representative's License No. FR 37477, in Branch 2, to Timothy Dube ("Respondent"). The license will expire on June 30, 2009, unless renewed.

///

///

Registered Applicator's License

3. On or about December 19, 2003, the Board issued Registered Applicator's License No. RA 41123, in Branches 2 and 3 to Respondent. On or about June 24, 2004, the license was downgraded to Branch 3 only due to the issuance of Field Representative License No. FR 37477. The license will expire on December 19, 2009, unless renewed.

STATUTORY PROVISIONS

4. Business and Professions Code ("Code") section 8620 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.

5. Code section 8625 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.

6. Code section 8641 states:

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

7. Code section 8507(a) states:

> "Structural pest control field representative" is any individual who is licensed by the board to secure structural pest control work, identify infestations or infections, make inspections, submit bids for or otherwise contract, in behalf of a registered company.
>
> A pest control field representative shall not contract for pest control work or perform pest control work in his or her own behalf.

8. Code section 8507.1(a) states:

> A structural pest control applicator is any individual who is licensed by the board to apply a pesticide, rodenticide, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests or organisms included in Branch 2, Branch 3, or wood roof cleaning and treatment on behalf of a registered company.

A structural pest control applicator shall not contract for pest control work or perform pest control work in his or her own behalf.

9. Code section 8610(a) states, in pertinent part, that every company that engages in the practice of structural pest control, as a sole proprietorship, partnership, corporation, or other organization or any combination thereof, shall be registered with the Structural Pest Control Board.

10. Code section 8552 states:

"It is unlawful for any person to advertise or represent in any manner that any pest control work, in whole or in part, has been done upon any structure, unless the work has been performed by a company registered under this chapter."

COST RECOVERY

11. Code section 125.3 states, 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.

Unlicensed Activity

12. On or about April 10, 2008, Respondent left his employment with Corky's Pest Control, Inc.

13. On or about July 17, 2008, the Board received a complaint from Barbara Casino, Corporate Counsel for Corky's Pest Control, Inc. ("Corky's"), stating that Respondent was continuing to serve Corky's customers by giving them his personal cell phone number and having them contact him directly. In turn, the customers would cancel their service contract with Corky's.

14. On or about August 20, 2008, Respondent admitted to contracting for Branch 2 pest control work and performing pest control work on his own behalf. On that same day, the Board issued Respondent a Notice of Violation/Cease and Desist Notice for contracting for pest control work on his behalf.

///

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Laws - Contracting for and Performing Pest Control Work on Own Behalf)

15. Respondent's applicator's license and field representative's license are subject to discipline under Code section 8641, in that between April 2008 and August 2008, Respondent failed to comply with Code sections 8507 and 8507.1, by contracting for pest control work or performing pest control work on his own behalf, as more particularly set forth above in paragraphs 13 and 14.

SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with Laws - Unlicensed Activity)

16. Respondent's applicator's license and field representative's license are subject to discipline under Code section 8641, in that between April 2008 and August 2008, Respondent violated Code section 8552 by representing that pest control work performed had been performed by a registered company, when in fact, it had not.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Laws - Acting in the Capacity as a Pest Control Company Without a License)

17. Respondent's applicator's license and field representative's license are subject to discipline under Code section 8641, in that between April 2008 and August 2008, Respondent failed to comply with Code section 8610(a), by engaging in the practice of structural pest control without being registered by the Board.

///

///

///

///

///

///

///

OTHER MATTERS

18. Notice is hereby given that 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.

19. Pursuant to Code section 8624, if Field Representative's License No. FR 37477, issued to Respondent, is suspended or revoked, the Board may suspend or revoke Registered Applicator's License No. RA 41123, issued to Respondent.

20. Pursuant to Code section 8654, if discipline is imposed on Field Representative's License No. FR 37477 and/or Registered Applicator's License No. RA 41123, issued to Respondent, then Respondent shall be prohibited from serving as an officer, director, associate, partner or responsible managing employee of a licensee, and any licensee which employs, elects, or associates Respondent shall be subject to disciplinary action.

21. Government Code section 11519(d) provides, in pertinent part, that the Board may require restitution of damages suffered as a condition of probation in the event probation is ordered.

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 FR 37477, issued to Timothy Dube;

2. Revoking or suspending Registered Applicator's License Number RA 41123, issued to Timothy Dube;

3. Revoking or suspending any other license for which Timothy Dube is furnishing the qualifying experience or appearance;

///

4. Prohibiting Timothy Dube 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 37477, issued to Timothy Dube;

5. Prohibiting Timothy Dube 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 Registered Applicator's License Number RA 41123, issued to Timothy Dube;

6. Ordering Timothy Dube 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;

7. Ordering restitution of all damages according to proof suffered by any persons as a condition of probation in the event probation is ordered; and,

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

DATED: 5/28/09

Kelli Okuma

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

LA2008900637
Accusation (kdg) 5/4/09