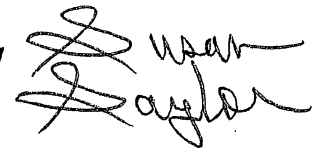


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FILED

Date 3/21/13 By



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

11 In the Matter of the Accusation Against:

Case No. 2013-39

12 **MARK ANTHONY GRUBERT**
13 **6278 Prentis Court**
Magalia, CA 95954

A C C U S A T I O N

14 **Field Representative License No. FR 37981**

15 Respondent.

16
17 Susan Saylor ("Complainant") alleges:

18 **PARTIES**

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

22 2. On or about November 29, 2004, the Board issued Field Representative License
23 Number FR 37981 in Branch 3, to Mark Anthony Grubert ("Respondent"), as an employee of
24 Terminix International Company L P. On or about December 6, 2004, the license was upgraded
25 to include Branch 2. On or about May 20, 2005, Respondent left the employ of Terminix
26 International Company L P. On or about December 2, 2010, Respondent became employed with
27 Hunters Pest Control, Inc. On or about June 2, 2011, Respondent left the employ of Hunters Pest
28 Control, Inc. and became employed with Hunters Services, Inc. On or about March 5, 2012,

1 Respondent left the employ of Hunters Services, Inc. and his license was placed on an inactive
2 status. The license will expire on June 30, 2013, unless renewed.

3 **STATUTORY PROVISIONS**

4 3. Business and Professions Code ("Code") section 8620 provides, in pertinent part, that
5 the Board may suspend or revoke a license when it finds that the holder, while a licensee or
6 applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu
7 of a suspension may assess a civil penalty.

8 4. Code section 8625 states:

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

14 5. Code section 8641 states:

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

20 6. Code section 8507(a) states:

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

26 7. Code section 8610(a) states:

27 Every company that engages in the practice of structural pest control as a sole
28 proprietorship, partnership, corporation, or other organization or any combination thereof,
shall be registered with the Structural Pest Control Board. Each application for a company
registration shall include the name of the company's owner if it is a sole proprietorship, the
name of the partners, if it is partnership, or the names of its officers and shareholders with
10 percent or more ownership interest, if it a corporation, and the address of the company's
principal office in this states.

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8. Code section 8550 states, in pertinent part:

(a) It is unlawful for any individual to engage or offer to engage in the business or practice of structural pest control, as defined in Section 8505, unless he or she is licensed under this chapter. Each registered company shall designate an individual or individuals who hold an operator's license to act as its qualifying manager or managers. The qualifying manager or managers must be licensed in each branch of pest control in which the company engages in business. The designated qualifying manager or managers shall supervise the daily business of the company and shall be available to supervise and assist all employees of the company, in accordance with regulations which the board may establish.

(e) It is unlawful for any firm, sole proprietorship, partnership, corporation, association, or other organization or combination thereof to engage or offer to engage in the practice of structural pest control unless registered in accordance with Article 6 (commencing with Section 8610).

9. Code section 8552 states, in pertinent part:

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.

10. Code section 8506.1 states, in pertinent part:

A "registered company" is any sole proprietorship, partnership, corporation, or other organization or any combination thereof that is registered with the Structural Pest Control Board to engage in the practice of structural pest control.

A registered company may secure structural pest control work submit bids, or otherwise contract for pest control work. A registered company may employ licensed field representatives and licensed operator to identify infestations or infections, make inspections, and represent the company in the securing of pest control work.

11. 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, apply pesticides, submit bids for or otherwise contract, on behalf of a registered company.

A pest control field representative shall not contract for pest control work or perform pest control work on his or her own behalf.

12. Code section 8642 states:

The commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action.

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1 **COST RECOVERY/RESTITUTION**

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

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

9 **BACKGROUND INFORMATION**

10 15. On or about April 4, 2012, the Board received a complaint from Cory Stahl (“Stahl”),
11 the owner of Hunters Pest Control Inc. (“Hunters”). Stahl stated that Respondent, who was
12 terminated from his company on March 2, 2012, had been selling, soliciting, and performing
13 termite treatments on his own behalf without being properly licensed, and had been soliciting his
14 pest control customers after being terminated. Stahl provided the Board representative with a list
15 of customers/real estate agents who Respondent had done work for while employed at his
16 company, and with the name, address, and an invoice dated March 12, 2012, bearing the name
17 “Mark Grubert Services” for one of his customers by the name of Charlyn White (“White”),
18 located at 741 Roberts Rd., Paradise, California, for whom Respondent had performed termite
19 treatment on his own behalf.

20 16. On or about May 9, 2012, a Board representative went to White's property and spoke
21 with White. White stated that she hired Hunters to do an inspection of her home. After White
22 received the inspection report and bid from Hunters, she was contacted by Respondent, who told
23 her that he had left the employment of Hunters and started his own business using a friend's
24 license and could do the work for less than the original bid from Hunters. White hired
25 Respondent to do the work, which was performed on March 13, 2012. White paid Respondent
26 \$800.

27 17. On or about June 27, 2012, a Board representative contacted Respondent to discuss
28 his work and activities. Respondent admitted that he had been doing inspections, repair work,

1 termite treatments, and general pest control work. In addition, Respondent admitted that he had
2 performed 10-12 inspections for real estate agents since being terminated from Hunters, using the
3 name and company registration number of John Moss Pest Control, PR 6242, on inspection
4 reports without John Moss's knowledge or authorization and without disclosing to the real estate
5 agents that he was not properly licensed.

6 18. On or about July 17, 2012, Respondent provided a Board representative with three
7 Wood Destroying Pests and Organisms Inspection Reports (inspection reports) and one Standard
8 Notice of Work Completed and Not Completed ("NOC") that he had performed at the following
9 addresses, bearing the name "John Moss Pest Control" and company registration number
10 PR 6242.

Property	Dated	Ordered by
508-945 Stone Rd., Susanville, California	March 18, 2012	Susan River Realty – LeAnn Smith
478-825 Alta Dr., Susanville, California NOC	March 23, 2012 April 2, 2012	Town & Country – Tina Cordoba
709 North St., Susanville, California	April 2, 2012	Susan River Realty – Dawn

15
16 19. On or about July 18, 2012, a Board representative met with John Moss ("Moss").
17 Moss stated that he did not give Respondent authorization to use his name, company registration
18 number, or issue inspection reports, or any documents with his name or company registration
19 number on it.

20 20. On or about July 19, 2012, a Board representative called and spoke to various real
21 estate companies based on information received during the investigation, including the list of
22 customers and real estate agents provided by Hunters, who may have used Respondent to perform
23 inspections. The Board representative found that Respondent performed inspections and prepared
24 inspection reports using John Moss's name and company registration number at the following
25 locations:

26 ///

27 ///

28 ///

	Property	Dated	Ordered by
1			
2	8648 Cohasset Rd., Cohasset, California	May 7, 2012	Ian Craig
3	101 5 th St., Orland, California	May 25, 2012	Keller Williams- Kristen Horst
4			
5	1095 Overlook, Susanville, California	July 5, 2012	Town & Country- Tina Cordoba
6			
7	470-930 Wingfield Rd., Susanville, California	April 27, 2012	Town & Country – Tina Cordoba
8			
9	2695 Johnstoneville Rd., #2, Susanville, California	July 5, 2012	Town & Country – Ashley Jones
10			
11	710-205 Center Rd., Susanville, California	July 18, 2012	Town & Country – Ashley Jones
12			
13	220 N. McDow St., Susanville, California	May 8, 2012	Century 21 – Noelle Haller-Riggs
14	Supplemental Inspection and NOC	May 15, 2012	
15			
16	820 Ellen Ave., Portola, California	April 20, 2012	Coldwell Banker – Laura Briggs
17	NOC	May 4, 2012	
18			
19	12 Graeagle Meadows, Blairsden-Graeagle, CA	April 27, 2012	Coldwell Banker – Laura Briggs
20			
21	1145 Cherry Cr., Portola, California	May 15, 2012	Coldwell Banker – Bill Hanneman
22	NOC	June 7, 2012	
23			
24	28 White St., Loyalton, California	May 22, 2012	Coldwell Banker – Laura Briggs
25			
26	333 Sixth Ave., Portola, California	July 5, 2012	Coldwell Banker – Laura Briggs
27			
28	708 Roundup Rd., Loyalton, California	July 24, 2012	Coldwell Banker – Laura Briggs
	69950 Mule Deer Rd., Clio, California	July 24, 2012	Coldwell Banker – Laura Briggs
	437 Cedar Ridge, Portola, California	July 31, 2012	Frank McClure
	250 Monument Ct. Chilcoot, California	July 31, 2012	Coldwell Banker – Laura Briggs
	515 Lincoln, Sierraville, California	July 31, 2012	Coldwell Banker – Laura Briggs
	209 Calpine Ave., Calpine, California	July 31, 2012	Coldwell Banker – Laura Briggs

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Contracting for and Performing Pest Control Work on Own Behalf)**

3 21. Respondent's field representative's license is subject to discipline under Code
4 section 8641, in that between March 13, 2012, and July 31, 2012, Respondent secured structural
5 pest control work, identified infestations or infections, performed inspections, and submitted bids
6 on his own behalf, without holding a company registration, in violation of Code section 8507(a).

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unlicensed Activity)**

9 22. Respondent's field representative's license is subject to discipline under Code
10 section 8641, in that between March 13, 2012, and July 31, 2012, Respondent violated the
11 following Code sections:

12 a. **Section 8550:** Respondent engaged in the business or practice of structural pest
13 control on his own behalf without being properly licensed as an operator and/or registered
14 company by the Board, as more particularly set forth above in paragraphs 18 and 20.

15 b. **Section 8552:** Respondent made representations that pest control work performed
16 had been performed by a properly licensed operator and/or registered company when, in fact, it
17 was not, as more particularly set forth above in paragraphs 18 and 20.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Acting in the Capacity of a Registered Company)**

20 23. Respondent's field representative's license is subject to discipline under Code
21 section 8641, in that between March 13, 2012, and July 31, 2012, Respondent failed to comply
22 with Code section 8610(a), by engaging in the practice of structural pest control without being
23 registered with the Board.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Fraudulent Act)**

26 24. Respondent's field representative's license is subject to discipline under Code
27 section 8642, in that between March 13, 2012, and July 31, 2012, Respondent committed acts
28 constituting fraud by engaging in or offering to engage in the practice of structural pest control

1 work on his own behalf without being properly licensed or registered with the Board and
2 performing structural pest control inspections, as more particularly set forth above in paragraphs
3 18 and 20. Furthermore, Respondent fraudulently represented himself as being employed as a
4 field representative for John Moss Pest Control, in that Respondent used the name and company
5 registration number (PR 6242) of John Moss Pest Control on inspection reports and NOC without
6 John Moss's knowledge or authorization.

7 **OTHER MATTERS**

8 25. Notice is hereby given that section 8620 of the Code provides, in pertinent part,
9 that a Respondent may request that a civil penalty of not more than \$5,000 be assessed in lieu of
10 an actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to
11 45 days. Such request must be made at the time of the hearing and must be noted in the proposed
12 decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a
13 suspension.

14 26. Pursuant to Code section 8654, if discipline is imposed on Field Representative's
15 License Number FR 37981, issued to Mark Anthony Grubert, the Respondent shall be prohibited
16 from serving as an officer, director, associate, partner, qualifying manager, or responsible
17 managing employee for any registered company during the time the discipline is imposed, and
18 any registered company which employs, elects, or associates him, shall be subject to disciplinary
19 action.

20 **PRAYER**

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

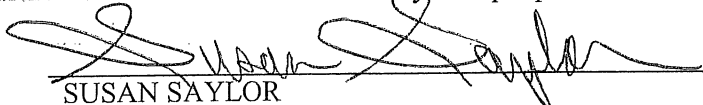
- 23 1. Revoking or suspending Field Representative's License Number 37981, issued to
24 Mark Anthony Grubert;
- 25 2. Revoking or suspending any other license for which Mark Anthony Grubert is
26 furnishing the qualifying experience or appearance;
- 27 3. Ordering restitution of all damages according to proof suffered by any persons as a
28 condition of probation in the event probation is ordered;

1 4. Prohibiting Mark Anthony Grubert from serving as an officer, director, associate,
2 partner, qualifying manager or responsible managing employee of any registered company during
3 the period that discipline is imposed on Field Representative's License Number FR 37981, issued
4 to Mark Anthony Grubert;

5 5. Ordering Mark Anthony Grubert to pay the Structural Pest Control Board the
6 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
7 Professions Code section 125.3; and,

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

9 DATED: 3/21/13



SUSAN SAYLOR
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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