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

12 In the Matter of the Accusation Against:

Case No. 2009-48

13 EDMUND M. FURSTMAN
1930 West San Marcos Blvd., Space 447
14 San Marcos, CA 92078-3909

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

15 Field Representative License No. FR 38825

16 Respondent.

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18 **FINDINGS OF FACT**

19 1. On or about March 5, 2009, Complainant Kelli Okuma, in her official
20 capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of
21 Consumer Affairs, filed Accusation No. 2009-48 against Edmund M. Furstman (Respondent)
22 before the Structural Pest Control Board.

23 2. On or about June 21, 2005, the Structural Pest Control Board (Board)
24 issued Field Representative License, Branch 2, No. FR 38825 to Respondent. The Field
25 Representative License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on June 30, 2010, unless renewed.

27 3. On or about March 19, 2009, Charlette Sheppard, an employee of the
28 Department of Justice (DOJ), served by Certified and First Class Mail a copy of the Accusation

1 No. 2009-48, Statement to Respondent, Notice of Defense, Request for Discovery, and
2 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record
3 with the Board, which was and is:
4 1930 West San Marcos Blvd., Space 447
5 San Marcos, CA 92078-3909

6 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by
7 reference.

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

10 5. On or about March 23, 2009, the DOJ received a certified mail receipt
11 from the U.S. Postal Service indicating that Respondent signed for and took receipt of the
12 Accusation on or about March 21, 2009.

13 6. 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
16 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.

17 7. Respondent failed to file a Notice of Defense within 15 days after service
18 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
19 Accusation No. 2009-48.

20 8. 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
22 the hearing, the agency may take action based upon the respondent's express
23 admissions or upon other evidence and affidavits may be used as evidence
without any notice to respondent.

24 9. Pursuant to its authority under Government Code section 11520, the Board
25 finds Respondent is in default. The Board will take action without further hearing and, based on
26 the evidence on file herein, finds that the allegations in Accusation No. 2009-48 are true.

27 10. The total cost for investigation and enforcement in connection with the
28 Accusation are \$367.75 as of April 10, 2009.

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Edmund M. Furstman
3 has subjected his Field Representative License No. FR 38825 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
7 Field Representative License based upon the following violation alleged in the Accusation:

8 a. On or about December 18, 2008, in a criminal proceeding entitled
9 *People of the State of California v. Edmund M. Furstman*, in San Diego County Superior Court
10 (North County Division), case number CN254171, Respondent pled guilty to violating Penal
11 Code section 484-490.5, petty theft of retail merchandise, a misdemeanor, conduct substantially
12 related to the qualifications, functions or duties of a registered applicator.

13 ORDER

14 IT IS SO ORDERED that Field Representative License No. FR 38825, heretofore
15 issued to Respondent Edmund M. Furstman, is revoked.

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

21 This Decision shall become effective on June 4, 2009.

22 It is so ORDERED May 5, 2009

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25 FOR THE STRUCTURAL PEST CONTROL BOARD
26 DEPARTMENT OF CONSUMER AFFAIRS

27 80351519.wpd
28 DOJ docket number: SD2009803726

28 Attachment: Exhibit A: Accusation No.2009-48

Exhibit A
Accusation No. 2009-48

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of the State of California
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9 **BEFORE THE**
10 **STRUCTURAL PEST CONTROL BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2009-48

13 EDMUND M. FURSTMAN
14 1930 West San Marcos Blvd., Space 447
San Marcos, CA 92078-3909

ACCUSATION

15 Field Representative License, Branch 2
16 No. FR 38825

Respondent.

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18 Complainant alleges:

19 PARTIES

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

23 2. On or about June 21, 2005, the Structural Pest Control Board issued Field
24 Representative License, Branch 2, No. FR 38825 to Edmund M. Furstman (Respondent). The
25 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, 2010, unless renewed.

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FILED

Date 3-5-09. By Kelli Okuma

1 JURISDICTION

2 3. This Accusation is brought before the Structural Pest Control Board
3 (Board), Department of Consumer Affairs, 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 Business and Professions Code (Code) provides, in
6 pertinent part, that the Board may suspend or revoke a license when it finds that the holder,
7 while a licensee or applicant, has committed any acts or omissions constituting cause for
8 disciplinary action or in lieu of a suspension may assess a civil penalty.

9 5. Section 8625 of the Code states:

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

14 STATUTORY PROVISIONS

15 6. Section 490 of the Code provides, in pertinent part, that a board may
16 suspend or revoke a license on the ground that the licensee has been convicted of a crime
17 substantially related to the qualifications, functions, or duties of the business or profession for
18 which the license was issued.

19 7. Section 8649 of the Code states:

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

23 8. Section 8654 of the Code states, in pertinent part, that if discipline is
24 imposed on Field Representative License No. FR 38825, Respondent shall be prohibited from
25 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
26 employee for any registered company during the time the discipline is imposed, and any
27 registered company which employs, elects, or associates Respondent shall be subject to
28 disciplinary action.

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9. 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 PROVISIONS

10. Title 16, California Code of Regulations 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:

- (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.

11. Title 16, California Code of Regulations section 1020, states:

....

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

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- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee or registered company has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or registered company.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any of rehabilitation submitted by the licensee or registered company.

.....
COST RECOVERY

12. Section 125.3 of the Code states, in pertinent part, that a Board may request the administrative law judge to direct a licensee 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.

CAUSE FOR DISCIPLINE

(December 18, 2008 Criminal Conviction for Petty Theft on October 23, 2008)

13. Respondent has subjected his license to disciplinary action under sections 490 and 8649 of the Code in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a registered applicator. The circumstances are as follows:

a. On or about December 18, 2008, in a criminal proceeding entitled *People of the State of California v. Edmund M. Furstman*, in San Diego County Superior Court (North County Division), case number CN254171, Respondent pled guilty to violating Penal Code section 484-490.5, petty theft of retail merchandise, a misdemeanor.

b. As a result of the conviction, on or about December 18, 2008, Respondent was sentenced to one day in the custody of the sheriff, three years summary probation, and payment of fines, fees, and restitution in the amount of \$566. Respondent must

1 also submit to a Fourth Amendment Waiver, and was ordered to stay away from his victim
2 Holiday Wine Cellar in Escondido.

3 c. The facts that led to the conviction were that on or about the
4 afternoon of October 23, 2008, an officer from the Escondido Police Department responded to
5 the Holiday Wine Cellar in regards to a shoplifter being detained at the store. A store employee
6 had been in an office at the front of the store which had two-way reflective glass so that
7 customers could not see inside. The employee recognized Respondent as the same person who
8 came into the store three months earlier and had shoplifted cigars. The employee watched as
9 Respondent filled the pockets of his shorts with cigars from the display cases. The employee
10 went to the front door of the store as Respondent paid for a bottle of orange juice. When
11 Respondent attempted to exit the store without paying for the cigars, the employee stopped him
12 and asked Respondent to empty his pockets. Respondent removed several cigars from a front
13 pocket. Respondent was asked to remove the cigars from his rear pockets and Respondent
14 complied. Respondent was escorted to a back office where additional cigars were located in
15 Respondent's pockets. Respondent admitted to the employee that he had taken the cigars and
16 that he had stolen cigars from the store 7-8 times over the past year. The employee stated to the
17 police officer that he saw Respondent in the store three months prior acting suspiciously. The
18 employee did not observe Respondent stealing, but viewed the store's closed circuit surveillance
19 video after Respondent left which confirmed that Respondent had selected cigars from the
20 display cases and hid them in his pockets. Respondent gave the police officer a voluntary
21 statement that he had stolen cigars from the store a half a dozen times in the last year.
22 Respondent stated that although he had \$50 in his pocket, he stole the cigars because he had
23 gotten away with stealing them in the past. An inventory of the stolen merchandise was
24 conducted; Respondent stole 29 cigars worth \$325.42.

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PRAYER

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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 38825 issued to Edmund M. Furstman;
2. Prohibiting Edmund M. Furstman 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 License No. FR 38825, issued to Edmund M. Furstman;
3. Ordering Edmund M. Furstman 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;
4. Taking such other and further action as deemed necessary and proper.

DATED: 3-5-09


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

SD2009803726