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

12 In the Matter of the Accusation Against:

Case No. 2010-28

13 **FERNANDO ALCERA AQUINO**
23761 Hollingworth Drive
14 **Murrieta, CA 92562**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 **Field Representative License No. FR 39147**

16 Respondent.

17 FINDINGS OF FACT

18 1. On or about November 9, 2009, Complainant Kelli Okuma, in her official capacity as
19 the Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation,
20 filed Accusation No. 2010-28 against Fernando Alcera Aquino (Respondent) before the Structural
21 Pest Control Board.

22 2. On or about August 26, 2005, the Structural Pest Control Board (Board) issued Field
23 Representative License No. FR 39147 to Respondent. The Field Representative License was in
24 full force and effect at all times relevant to the charges brought herein and will expire on June 30,
25 2011, unless renewed.

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1 3. On or about December 18, 2009, S. Sotelo, an employee of the Department of Justice,
2 served by Certified and First Class Mail a copy of the Accusation No. 2010-28, Statement to
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
4 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 23761
5 Hollingsworth Drive, Murrieta, CA 92562. A copy of the Accusation is attached as Exhibit A,
6 and is incorporated herein by reference.

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

9 5. The aforementioned documents have not been returned to the Office of the Attorney
10 General.

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

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 2010-28.

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

25 9. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 evidence on file herein, finds that the allegations in Accusation No. 2010-28 are true.

28 10. The total cost for investigation and enforcement in connection with the Accusation
are \$910.00 as of March 15, 2010.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Fernando Alcera Aquino has
3 subjected his Field Representative License No. FR 39147 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 Field
7 Representative License based upon the following violations alleged in the Accusation:

8 a. Respondent failed to verify the completion of his continuing education courses by
9 producing certificates of completion as required. Respondent misrepresented a material fact on
10 his July 12, 2008 license renewal by stating that he had completed the required continuing
11 education hours when in fact he had not done so.

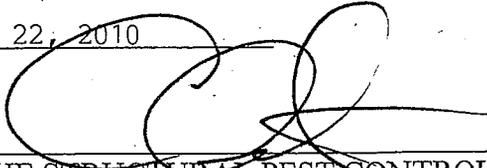
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13 ORDER

14 IT IS SO ORDERED that Field Representative License No. FR 39147, heretofore issued to
15 Respondent Fernando Alcera Aquino, is revoked.

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

20 This Decision shall become effective on May 22, 2010.

21 It is so ORDERED April 22, 2010

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23 
24 FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

25 80441186.DOC
26 DOJ docket number:SD2009804688

27 Exhibit A: Accusation No.2010-28
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Exhibit A
Accusation No. 2010-28

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FILED

Date 11/9/09 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:

Case No. 2010-28

12 **FERNANDO ALCERA AQUINO**
13 **23761 Hollingsworth Drive**
14 **Murrieta, CA 92562**

ACCUSATION

15 **Field Representative License No. FR 39147**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 26, 2005, the Structural Pest Control Board issued Field
24 Representative License Number FR 39147 in Branch 2 to Fernando Alcera Aquino (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, 2011, unless renewed.

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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 118 of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license.

8 5. Section 8620 of the Code provides, in pertinent part, that the Board may suspend or
9 revoke a license when it finds that the holder, while a licensee or applicant, has committed any
10 acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a
11 civil penalty.

12 6. Code section 8637 states:

13 Misrepresentation of a material fact by the applicant in obtaining a license
14 or company registration is a ground for disciplinary action.

15 7. Code section 8641 states:

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

STATUTORY PROVISIONS.

20 8. Code section 8593 states, in pertinent part:

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

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FIRST CAUSE FOR DISCIPLINE
(Failure to Verify Completion of Continuing Education)

14. Respondent is subject to discipline under Code sections 8641 and 8593, in that Respondent failed to comply with California Code of Regulation, title 16, section 1950(a), by failing to submit verification of completing continuing education courses by producing certificates of completion for the renewal period of July 1, 2005 through June 30, 2008, as requested by the Board on December 15, 2008, January 20, May 15, June 23, and July 14, 2009.

SECOND CAUSE FOR DISCIPLINE
(Misrepresentation in Renewing License)

15. Respondent is subject to discipline under Code sections 8637 and 8641, in that Respondent misrepresented a material fact on his July 12, 2008 license renewal by stating that he had completed the required continuing education hours to renew his license, when in fact he had not done so.

OTHER MATTERS

16. 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.

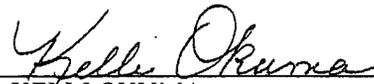
17. Pursuant to Code section 8654, if discipline is imposed on Field Representative's License Number FR 39647, issued to Respondent, then Respondent shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Respondent shall be subject to disciplinary action.

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 License Number FR 39147, issued to Fernando Alcera Aquino.
2. Ordering Fernando Alcera Aquino 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/9/09


KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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