1 2 3 4 5 6 7	EDMUND G. BROWN JR. Attorney General of California WILBERT E. BENNETT Supervising Deputy Attorney General CAROL ROMEO Deputy Attorney General State Bar No. 124910 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550 Telephone: (510) 622-2141 Facsimile: (510) 622-2270 Attorneys for Complainant		
8	REFOR	RE THE	
9	STRUCTURAL PEST CONTROL BOARD DEPARTMENT OF PESTICIDE REGULATION		
10	STATE OF CALIFORNIA		
11			
12	In the Matter of the Accusation Against:	Case No. 2010-16	
13	OTIS CHARLES ROBERTS 25200 Carlos Bee Blvd., #138		
14	Hayward, California 94541	DEFAULT DECISION AND ORDER	
15	Respondent.	[Gov. Code, §11520]	
16			
17	FINDINGS OF FACT		
18	1. On or about October 6, 2009, Complainant Kelli Okuma, in her official capacity as		
19	the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide		
20	Regulation, filed Accusation No. 2010-16 against Otis Charles Roberts (Respondent) before the		
21	Structural Pest Control Board.		
22	2. On or about June 19, 2006, the Structural Pest Control Board (Board) issued Field		
23	Representative's License No. FR 40315, Branch 3 to Respondent. The Field Representative's		
24	License was in full force and effect at all times relevant to the charges brought herein and will		
25	expire on June 30, 2011, unless renewed.		
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- 3. On or about October 21, 2009, Carol L. Grays, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2010-16, 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 25200 Carlos Bee Blvd., #138, Hayward, California 94541. (A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.)
- 4. On or about October 14, 2009, Carol L. Grays, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2010-16, 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 555 N Guild Avenue, Lodi, California 95240.
- 5. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).
 - 6. 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.
- 7. 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. 2010-16.
 - 8. 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.
- 9. 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. 2010-16 are true.

10. The total costs for investigation and enforcement in connection with the Accusation are \$1,682.00 as of November 23, 2009.

DETERMINATION OF ISSUES

- 1. Based on the foregoing findings of fact, Respondent Otis Charles Roberts has subjected his Field Representative's License No. FR 40315 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's License based upon the following violations alleged in the Accusation:
- a. Business and Professions Code (Code) section 8641 in that Respondent failed to comply with the requirements of Title 16, California Code of Regulations, section 1950, subdivision (d) by failing to provide proof of having acquired 16 hours of continuing education, for the renewal period of July 1, 2005 through June 30, 2008, as he claimed, under penalty of perjury, on his renewal application dated August 14, 2008, after having been requested by the Board to do so in writing on December 15, 2008, January 20, 2009, April 29, 2009, and June 3, 2009.
- b. Section 8637 of the Code in that Respondent obtained the renewal of his field representative's license by misrepresenting the material fact that he had acquired 16 hours of continuing education, when in fact he had not.
- c. Section 8642 of the Code in that Respondent committed a fraudulent act by certifying under penalty of perjury on his renewal application that he had acquired and could demonstrate 16 hours of continuing education in order to meet the license renewal requirements pursuant to Title 16, California Code of Regulations, section 1950, subdivision (d), when in fact he failed to obtain 16 hours of continuing education and/or failed to demonstrate that he had done so.

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ORDER

IT IS SO ORDERED that Field Representative's License No. FR 40315, heretofore issued to Respondent Otis Charles Roberts, is 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 February 10, 2010

It is so ORDERED January 11, 2010

FOR THE STRUCTURAL PEST CONTROL BOARD DEPARTMENT OF PESTICIDE REGULATION

Attachment:

Exhibit A: Accusation No.2010-60

Exhibit A

Accusation No. 2010-16

1 2 3 4 5 6 7	EDMUND G. BROWN JR. Attorney General of California WILBERT E. BENNETT Supervising Deputy Attorney General CAROL ROMEO Deputy Attorney General State Bar No. 124910 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550 Telephone: (510) 622-2141 Facsimile: (510) 622-2270 Attorneys for Complainant	Date 10/6/09 By Kelli Okuma	
9	BEFORE THE STRUCTURAL PEST CONTROL BOARD DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	In the Matter of the Accusation Against:	Case No. 2010–16	
12	OTIS CHARLES ROBERTS 555 N Guild Avenue	ACCUSATION	
13	Lodi, California 95240 Field Representative's License No. FR		
14	40315, Branch 3		
15	Responden	t.	
16			
17			
18	Complainant alleges:		
19	<u>P.</u>	<u>PARTIES</u>	
20	1. Kelli Okuma (Complainant) bring	Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as	
21	the Registrar/Executive Officer of the Structur	rar/Executive Officer of the Structural Pest Control Board, Department of Consumer	
22	Affairs.		
23	2. On or about June 19, 2006, the Str	On or about June 19, 2006, the Structural Pest Control Board issued Field	
24	Representative's License Number FR 40315, I	ative's License Number FR 40315, Branch 3, to Otis Charles Roberts (Respondent).	
25	The Field Representative's License was in full	he Field Representative's 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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Accusation

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JURISDICTION

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

STATUTORY PROVISIONS

- 4. Section 8620 of the Business and Professions Code (Code) 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. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
 - 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."

7. Section 8593 of the Code states, in pertinent part:

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

8. Section 8637 of the Code states:

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

9. Section 8641 of the Code 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."

10. Section 8642 of the Code states:

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

11. Title 16, California Code of Regulations, section 1950, subdivision (d) states, in pertinent part:

"Field representatives licensed in one branch of pest control shall have completed 16 continuing education hours, field representatives licensed in two branches of pest control shall have completed 20 hours continuing education hours, field representative licensed in three branches of pest control shall have completed 24 hours continuing education hours during each three year renewal period. In each case, a minimum of four continuing education hours in a technical subject directly related to each branch of pest control held by the licensee must be gained for each branch of pest control licensed and a minimum of eight hours must be gained from Board approved courses on the Structural Pest Control Act and its rules and regulations."

12. Section 125.3 of the Code states, in pertinent part, that the 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.

APPLICATION INFORMATION

13. At some time after on or about August 14, 2008, the Board received an application to renew Field Representative's License Number FR 40315, Branch 3, from Respondent. On or about August 14, 2008, Respondent certified under penalty of perjury that the information contained in the application was true and correct, including information regarding continuing education requirements. In order to assure compliance with the continuing education requirements for the 2008 renewal period, Respondent was instructed by letters dated December 15, 2008, January 20, 2009, April 29, 2009, and June 3, 2009 to submit to the Board copies of continuing education completion certificates for the renewal period of July 1, 2005 through June 30, 2008.

FIRST CAUSE FOR DISCIPLINARY ACTION

(Failure to Provide Proof of Continuing Education)

14. Respondent has subjected his field representative's license to disciplinary action under Section 8641 of the Code in that he failed to comply with the requirements of Title 16, California Code of Regulations, section 1950, subdivision (d) by failing to provide proof of having acquired 16 hours of continuing education, for the renewal period of July 1, 2005 through June 30, 2008, as he claimed on his renewal application dated August 14, 2008, after having been requested by the Board to do so in writing on December 15, 2008, January 20, 2009, April 29, 2009, and June 3, 2009.

SECOND CAUSE FOR DISCIPLINARY ACTION

(Misrepresentation)

15. Respondent has subjected his field representative's license to disciplinary action under Section 8637 of the Code in that he obtained the renewal of his field representative's license by misrepresenting the material fact that he had acquired 16 hours of continuing education, when in fact he had not.

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THIRD CAUSE FOR DISCIPLINARY ACTION 1 (Fraudulent Act) 2 16. Respondent has subjected his field representative's license to disciplinary action 3 under Section 8642 of the Code in that he committed a fraudulent act by certifying under penalty 4 of perjury on his renewal application that he had acquired and could demonstrate 16 hours of 5 continuing education in order to meet the license renewal requirements pursuant to Title 16. 6 California Code of Regulations, section 1950, subdivision (d), when in fact he failed to obtain 16 7 hours of continuing education and/or failed to demonstrate that he had done so. 8 PRAYER 9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 10 and that following the hearing, the Structural Pest Control Board issue a decision: 11 Revoking or suspending Field Representative's License Number FR 40315, issued to 12 Otis Charles Roberts (Respondent); 13 Ordering Respondent to pay the Structural Pest Control Board the reasonable costs of 2. 14 the investigation and enforcement of this case, pursuant to Business and Professions Code section 15 125.3; and 16 3. Taking such other and further action as deemed necessary and proper. 17 10/6/09 18 DATED: 19 Registrar/Executive Officer Structural Pest Control Board 20 Department of Consumer Affairs State of California 21 Complainant 22 23 SF2009404863 24 CSR: 09/23/09 25 26 27 28