1 2 3 4	
2 3 4	
3 4	
4	
5	ł
6 BEFORE THE 5 STRUCTURAL PEST CONTROL BOARD	
7 DEPARTMENT OF PESTICIDE REGULATION 7 STATE OF CALIFORNIA	
8	
9 In the Matter of the Accusation Against: Case No. 2011-52	
JOSE CERVANTES 10 12710 Magnolia Avenue	
Riverside, CA 92503 11	
12 Field Representative License No. FR 40628 12 [Gov. Code, §11520]	
13 Respondent.	
14	
15	
16 <u>FINDINGS OF FACT</u>	
17 1. On or about April 15, 2011, Complainant William H. Douglas, in his official ca	
18 as the Interim Registrar/Executive Officer of the Structural Pest Control Board, Departmen	
19 Pesticide Regulation, filed Accusation No. 2011-52 against Jose Cervantes (Respondent) b	before
20 the Structural Pest Control Board. (Accusation attached as Exhibit A.)	1 - 1 1
21 2. On or about August 18, 2006, the Structural Pest Control Board (Board) issued	
22 Representative License No. FR 40628 to Respondent. The Field Representative License v	
full force and effect at all times relevant to the charges brought herein and will expire on J	June 30,
24 2012, unless renewed.	N (~ 1
25 3. On or about April 25, 2011, Respondent was served by Certified and First Cla	4
26 copies of the Accusation No. 2011-52, Statement to Respondent, Notice of Defense, Requ	
Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11	1
28 Respondent's address of record which, pursuant to Business and Professions Code section	1 1 30, 18
1 DEFAULT DECISION AN	D ORDER

• .

. •

.

1	required to be reported and maintained with the Board, which was and is 12710 Magnolia	
2	Avenue, Riverside, CA 92503.	l
3	4. Service of the Accusation was effective as a matter of law under the provisions of	
4	Government Code section 11505, subdivision (c) and/or Business & Professions Code section	
5	124.	
6	5. On or about May 4, 2011, the First Class Mail copies of the Accusation No. 2011-52	
7	and attachments, were returned by the U.S. Postal Service marked "Undeliverable as addressed."	
8	On or about May 5, 2011, the Certified Mail copies of the Accusation No. 2011-52 and	
9	attachments, were returned by the U.S. Postal Service marked "Undeliverable as addressed." The	
10	address on the documents was the same as the address on file with the Board. Respondent failed	
11	to maintain an updated address with the Board and the Board has made attempts to serve the	
12	Respondent at the address on file. Respondent has not made himself available for service and	
13	therefore, has not availed himself of his right to file a notice of defense and appear at hearing.	
14	6. Government Code section 11506 states, in pertinent part:	
15	(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	
16	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	
17	may nevertheless grant a hearing.	
18	7. Respondent failed to file a Notice of Defense within 15 days after service upon him	
19	of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.	
20	2011-52.	
21	8. California Government Code section 11520 states, in pertinent part:	
22	(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	
23	or upon other evidence and affidavits may be used as evidence without any notice to	
24	respondent.	
25		
26	Respondent is in default. The Board will take action without further hearing and, based on the	
27		
28	taking official notice of all the investigatory reports, exhibits and statements contained therein	on
	DEFAULT DECISION AND ORI	лық

1	file at the Board's offices regarding the allegations contained in Accusation No. 2011-52, finds
2	that the charges and allegations in Accusation No. 2011-52, are separately and severally, found to
3	be true and correct by clear and convincing evidence.
4	10. Taking official notice of its own internal records, pursuant to Business and
5	Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6	and Enforcement is \$697.50 as of May 17, 2011.
7	DETERMINATION OF ISSUES
8	1. Based on the foregoing findings of fact, Respondent Jose Cervantes has subjected his
9	Field Representative License No. FR 40628 to discipline.
10	2. The agency has jurisdiction to adjudicate this case by default.
11	3. The Structural Pest Control Board is authorized to revoke Respondent's Field
12	Representative License based upon the following violations alleged in the Accusation which are
13	supported by the evidence contained in the Default Decision Evidence Packet in this case:
14	a. Respondent is subject to discipline under section 8641 of the Code on the grounds
15	that Respondent failed to comply with title 16, California Code of Regulation, section 1950(a), by
16	failing to submit verification of completing continuing education courses by producing
17	certificates of completion for the renewal period of July 1, 2006 through June 30, 2009, as
18	requested by the Board. On or about May 15, 2009, Respondent submitted a License Renewal
19	Application to the Board. Respondent certified under penalty of perjury on the form that he had
20	completed the continuing education hours required to renew his license in accordance with
21	regulations. On or about December 8, 2009, February 8, 2010, May 11, 2010, and October 5,
22	2010, the Board sent Respondent written requests instructing him to submit copies of his
23	continuing education certificates for the renewal period to the Board within fourteen (14) days.
24	Respondent was advised that if he failed to comply with the requests, his license would be subject
25	to disciplinary action. Respondent was unable to provide the Board with any continuing
26	education certificates for the renewal period of July 1, 2006 through June 30, 2009.
27	
28	
	3
	DEFAULT DECISION AND ORDE

· · ·

.

Ц		
1 2 3 4 5	 b. Respondent is subject to discipline under section 8637 of the Code for misrepresentation of a material fact on his May 15, 2009 License Renewal Application by stating that he had completed the required continuing education hours to renew his license, when in fact he had not done so. 	
6	<u>ORDER</u>	
7	IT IS SO ORDERED that Field Representative License No. FR 40628, heretofore issued to	
8	Respondent Jose Cervantes, is revoked.	
9	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a	
10	written motion requesting that the Decision be vacated and stating the grounds relied on within	
11	seven (7) days after service of the Decision on Respondent. The agency in its discretion may	
12	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.	
13	This Decision shall become effective on September 1, 2011	
14	It is so ORDERED August 2, 2011	
15		
16		l
17	FOR THE STRUCTURAL PEST CONTROL	
18	BOARD DEPARTMENT OF PESTICIDE REGULATION	
19		
20 21		
21	80503646.DOC DOJ Matter ID:SD2010703604	
22	Attachment: Exhibit A: Accusation	
23 24		
25		
26		
27		
28	3	
	4	
	DEFAULT DECISION AND ORD	ER

,. ·

Exhibit A

Accusation

KAMALA D. HARRIS 1 Attorney General of California LINDA K. SCHNEIDER By William Daughas FILED 2 Supervising Deputy Attorney General KAREN L. GORDON 3 Deputy Attorney General State Bar No. 137969 4 110 West "A" Street, Suite 1100 San Diego, CA 92101 5 P.O. Box 85266 San Diego, CA 92186-5266 6 Telephone: (619) 645-2073 Facsimile: (619) 645-2061 7 Attorneys for Complainant 8 **BEFORE THE** STRUCTURAL PEST CONTROL BOARD 9 DEPARTMENT OF PESTICIDE REGULATION STATE OF CALIFORNIA 10 11 In the Matter of the Accusation Against: Case No. 2011-52 12 ACCUSATION JOSE CERVANTES 13 12710 Magnolia Avenue Riverside, CA 92503 14 Field Representative License No. FR 40628 15 Branch 2 16 Respondent. 17 18 19 Complainant alleges: PARTIES 20 William Douglas (Complainant) brings this Accusation solely in his official capacity 21 1. as the Interim Executive Officer of the Structural Pest Control Board, Department of Pesticide 22 23 Regulation. On or about August 18, 2006, the Structural Pest Control Board issued Field 24 2. Representative License Number FR 40628 in Branch 2 to Jose Cervantes (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, 2012, unless renewed. 27 28 1

1	3. On or about December 7, 2004, the Structural Pest Control Board issued Applicator
2	License Number RA 42998 to Jose Cervantes (Respondent). The Applicator License was
3	canceled on December 7, 2007.
4	JURISDICTION
5	4. This Accusation is brought before the Structural Pest Control Board (Board),
6	Department of Pesticide Regulation, under the authority of the following laws. All section
7	references are to the Business and Professions Code unless otherwise indicated.
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. Section 8625 of the Code states:
13	The lapsing or suspension of a license or company registration by operation
14	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
15 16	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.
17	STATUTORY PROVISIONS
18	7. Code section 8593 states, in pertinent part:
19	I he board shall require as a condition to the relieval of each operators
20	that he or she has informed himself or nerself of developments in the field of pest
21	approved by the board or equivalent activity approved by the board. In neu of
22	successfully complete an examination given by the board, designed to test ins or nor
23	knowledge of developments in the field of pest control since the issuance of his or her license.
24	8. Section 8637 of the Code states:
2:	Misrepresentation of a material fact by the applicant in obtaining a needse
2	·
2	
2	8
	2 Accusati

Accusation

1	9. Section 8641 of the Code states:	
1 2	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	
3	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.	
4	10. Section 8654 of the Code states:	
5	Any individual who has been denied a license for any of the reasons	
6	specified in Section 8568, or who has had his or her license revoked, or whose license	
7	is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any partnership, corporation, firm, or	
8	association whose application for a company registration has been denied for any of the reasons specified in Section 8568, or whose company registration is under	
9	suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or	
10 11	revoked, shall be prohibited from serving as an officer, director, associate, partner,	
12	the employment, election or association of such person by a registered company is a ground for disciplinary action.	
13	COST RECOVERY	
14	11. Code section 125.3 provides, in pertinent part, that a Board may request the	
15	administrative law judge to direct a licentiate found to have committed a violation or violations	
16	of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and	
17	enforcement of the case.	
18	REGULATORY PROVISIONS	
19	12. California Code of Regulations, Title 16, section 1950(a), states:	
20	The section 1051 sucression is required as a	
21	Except as provided in section 1951, every licensee is required, as a condition to renewal of a license, to certify that he or she has completed the continuing education requirements set forth in this article. A licensee who cannot	
22	verify completion of continuing education by producing certificates of activity completion, whenever requested to do so by the Board, may be subject to disciplinary	
2	action under section 8641 of the code.	
2	4 ///	
2	5 ///	
2	6 ///	
2	7 ///	
2		
	3	
	Accus	111011

1	FACTS	
2	13. On or about May 15, 2009, Respondent submitted a License Renewal Application	1
3	to the Board. Respondent certified under penalty of perjury on the form that he had completed	
4	the continuing education hours required to renew his license in accordance with regulations.	
5	14. On or about December 8, 2009, February 8, 2010, May 11, 2010, and October 5,	
6	2010, the Board sent Respondent written requests instructing him to submit copies of his	
7 8	continuing education certificates for the renewal period to the Board within fourteen (14) days.	
. '9	Respondent was advised that if he failed to comply with the requests, his license would be subject	
10	to disciplinary action. Respondent was unable to provide the Board with any continuing	
11	education certificates for the renewal period of July 1, 2006 through June 30, 2009.	
12 13	FIRST CAUSE FOR DISCIPLINE (Failure to Verify Completion of Continuing Education)	1
14	15. Respondent is subject to discipline under section 8641 of the Code on the grounds	;
15	that Respondent failed to comply with California Code of Regulation, Title 16, section 1950(a),	
16	by failing to submit verification of completing continuing education courses by producing	
17	certificates of completion for the renewal period of July 1, 2006 through June 30, 2009, as	
18 19	requested by the Board on December 8, 2009 February 8, 2010, May 11, 2010, and October 5,	
20		
21	SECOND CAUSE FOR DISCIPLINE	
22	(Misrepresentation in Renewing License)	
23	16. Respondent is subject to discipline under section 8637 of the Code for	
24	4 misrepresentation of a material fact on his May 15, 2009 License Renewal Application by stati	ng
2:	5 that he had completed the required continuing education hours to renew his license, when in fa	ct
2	6 he had not done so.	
2	7	
2	8	
	44	
		auu

1	OTHER MATTERS	
2	17. Code section 8620 provides, in pertinent part, that a respondent may request that a	
3	civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days,	
4	or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made	
5	at the time of the hearing and must be noted in the proposed decision. The proposed decision	
6	shall not provide that a civil penalty shall be imposed in lieu of a suspension.	
7	18. Pursuant to Code section 8654, if discipline is imposed on Field Representative's	
8	License Number FR 40628, issued to Respondent, then Respondent shall be prohibited from	
9	serving as an officer, director, associate, partner, qualifying manager, or responsible managing	
10.		
11	employee for any registered company during the time the discipline is imposed, and any	
12	registered company which employs, elects, or associates Respondent shall be subject to	
13	disciplinary action.	
14		
15	PRAYER	
16	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
17	and that following the hearing, the Structural Pest Control Board issue a decision:	
18	1. Revoking or suspending Field Representative License Number FR 40628, issued to	
19	Jose Cervantes	
20	2. Ordering Jose Cervantes to pay the Structural Pest Control Board the reasonable cos	ts
21	of the investigation and enforcement of this case, pursuant to Business and Professions Code	
22	section 125.3;	
23		
24	+ ///	
25	5 ///	

5

25

26

27

28

///

///

///

Accusation

