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FILED

Date 5/31/13 By *Susan Saylor*

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2013-48

**MAGIK EXTERMINATING,
MATTHEW CARLTON VILLA, OWNER
13715 El Rio Lane
Desert Hot Springs, CA 92240**

ACCUSATION

**Company Registration Certificate
No. PR 6178
Field Representative License No. FR 40746
Applicator License No. RA 44916**

Respondent.

Complainant alleges:

PARTIES

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

2. On or about September 18, 2006, the Structural Pest Control Board issued Field Representative License Number FR 40746 in Branch 2 to Matthew Carlton Villa, owner of Magik Exterminating (Respondent). The Field Representative License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2015, unless renewed.

3. On or about December 15, 2005, the Structural Pest Control Board issued Applicator License Number RA 44916 in Branch 2 and 3 to Matthew Carlton Villa, owner of Magik Exterminating (Respondent). The Applicator License was in full force and effect at all times relevant to the charges brought herein and will expire on December 15, 2014, unless renewed.

4. On or about November 15, 2010, the Structural Pest Control Board issued Company Registration Certificate Number PR 6178 in Branch 2 to Magik Exterminating, with Matthew Carlton Villa as 51% owner (Respondent). The Company Registration Certificate was suspended on February 8, 2011 and cancelled in January of 2012. The Company Registration Certificate was cancelled at all times relevant to the charges brought herein.

JURISDICTION

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

6. Section 8620 of the 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.

7. 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.

8. Section 8654 of the Code states:

Any individual who has been denied a license for any of the reasons specified in Section 8568, or who has had his or her license revoked, or whose license 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 association whose application for a company registration has been denied for any of the reasons specified in Section 8568, or whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer,

1 director, associate, qualifying manager, or responsible managing employee
2 had knowledge of or participated in any of the prohibited acts for which the
3 license or registration was denied, suspended or revoked, shall be prohibited
4 from serving as an officer, director, associate, partner, qualifying manager,
or responsible managing employee of a registered company, and the
employment, election or association of such person by a registered company
is a ground for disciplinary action.

5 STATUTORY PROVISIONS

6 9. Section 8505 of the Code states:

7 'Structural pest control' and "pest control" as used in this chapter are
8 synonymous. Except as provided in Section 8555 and elsewhere in this
chapter, it is, with respect to household pests and wood destroying pests or
9 organisms, or such other pests which may invade households or other
structures, including railroad cars, ships, docks, trucks, airplanes, or the
10 contents thereof, the engaging in, offering to engage in, advertising for,
soliciting, or the performance of, any of the following: identification of
11 infestations or infections; the making of an inspection or inspections for the
purpose of identifying or attempting to identify infestations or infections of
12 household or other structures by such pests or organisms; the making of
inspection reports, recommendations, estimates, and bids, whether oral or
13 written, with respect to such infestations or infections; and the making of
contracts, or the submitting of bids for, or the performance of any work
14 including the making of structural repairs or replacements, or the use of
insecticides, pesticides, rodenticides, fumigants, or allied chemicals or
15 substances, or mechanical devices for the purpose of eliminating,
exterminating, controlling or preventing infestations or infections of such
16 pests, or organisms.

17 'Household pests' are defined for the purpose of this chapter as those
pests other than wood destroying pests or organisms, which invade
18 households and other structures, including, but not limited to, rodents,
vermin and insects.

19
20 10. Section 8506.1 of the Code states:

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

24 A registered company may secure structural pest control work, submit
bids, or otherwise contract for pest control work. A registered company may
25 employ licensed field representatives and licensed operators to identify
infestations or infections, make inspections, and represent the company in
26 the securing of pest control work. A registered company may hire or employ
individuals who are not licensed under this chapter to perform work on
27 contracts covering wood-destroying organisms only after an operator or field
representative has fully completed the negotiation or signing of the contract
28 covering a given job.

1 A registered company may hire and use individuals who are not
2 licensed under this chapter on service contracts already established.

3 11. Section 8507 of the Code states:

4 (a) 'Structural pest control field representative' is any individual who is
5 licensed by the board to secure structural pest control work, identify
6 infestations or infections, make inspections, submit bids for or otherwise
7 contract, in behalf of a registered company.

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

10 (b) As used in this chapter, 'field representative' refers to 'structural
11 pest control field representative.'

12 12. Section 8507.1 of the Code states:

13 (a) 'Structural pest control applicator' is any individual who is licensed
14 by the board to apply a pesticide, rodenticide, or allied chemicals or
15 substances for the purpose of eliminating, exterminating, controlling, or
16 preventing infestation or infections of pests or organisms included in Branch
17 2 or Branch 3 on behalf of a registered company.

18 A structural pest control applicator shall not contract for pest control
19 work or perform pest control work in his or her own behalf.

20 (b) As used in this chapter, "applicator" refers to 'structural pest
21 control applicator.'

22 13. Section 8625 of the Code states:

23 The lapsing or suspension of a license or company registration by
24 operation of law or by order or decision of the board or a court of law, or the
25 voluntary surrender of a license or company registration shall not deprive the
26 board of jurisdiction to proceed with any investigation of or action or
27 disciplinary proceeding against such licensee or company, or to render a
28 decision suspending or revoking such license or registration.

14. Section 8550 of the Code states:

(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.

...

(c) It is unlawful for an unlicensed individual, soliciting pest control
work on behalf of a registered structural pest control company pursuant to
subdivision (b), to perform or offer to perform any act for which an operator,
field representative, or applicator license is required, including, but not

1 limited to, performing or offering pest control evaluations or inspections,
2 pest identification, making any claims of pest control safety or pest control
3 efficacy, or to offer price quotes other than what is provided and printed on
the company advertising or literature, or both.

4 (d) It is also unlawful for any unlicensed individual to offer any
5 opinion, or to make any recommendations, concerning the need for structural
6 pest control work in general, or in connection with a particular structure.

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

11 15. Section 8552 of the Code states:

12 It is unlawful for any person to advertise or represent in any manner
13 that any pest control work, in whole or in part, has been done upon any
14 structure, unless the work has been performed by a company registered
15 under this chapter.

16 16. Section 8610 of the Code states:

17 (a) Every company that engages in the practice of structural pest
18 control, as a sole proprietorship, partnership, corporation, or other
19 organization or any combination thereof, shall be registered with the
20 Structural Pest Control Board.

21 ...

22 17. Section 8641 of the Code states:

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

29 COST RECOVERY

30 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
31 administrative law judge to direct a licentiate found to have committed a violation or violations of
32 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
33 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
34 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
35 included in a stipulated settlement.

1 **FACTS**

2 19. The Structural Pest Control Board is empowered to issue Company Registration
3 Certificates in Branch 2. A Company Registration Certificate in Branch 2 is a general pest
4 control registration allowing a company to identify general pests, make recommendations for
5 treatment, apply pesticides, advertise pest control services and enter into contracts for pest
6 eradication. A Company Registration Certificate is required to operate a pest control business.

7 20. Respondent held a Company Registration Certificate beginning in 2010 under the
8 company name Magik Exterminating (Magik). Respondent was the majority owner of Magik but
9 not a qualifying manager. The Board suspended Magik's Company Registration Certificate in
10 February of 2011 when the qualifying manager dissociated from the company. In October of
11 2011, the Board issued a further suspension of Magik's Company Registration Certificate based
12 on the lapsing of Magik's liability insurance coverage.

13 21. On or about January 30, 2012, per Respondent's written request, Magik's Company
14 Registration Certificate status was cancelled.

15 22. Beginning on or about June 2012 through January of 2013, Respondent used the
16 company name "Magik Termite and Pest Exterminating" to advertise for work, enter into pest
17 control contracts, make service agreements and apply pesticide, despite not having a current
18 Company Registration Certificate or insurance coverage.

19 23. The company Registration for Magik Exterminating has never been reactivated since
20 its initial suspension in February of 2011.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Unlicensed Practice of Structural Pest Control)**

23 24. Respondent's Company Registration Certificate, Field Representative License and
24 Applicator License are subject to disciplinary action under Code section 8641, for violations of
25 Code sections 8506.1, 8550 and 8610 in that between June 2012 and January 2013, he engaged in
26 the practice of structural pest control without a valid Company Registration Certificate, as set
27 forth in paragraphs 19 through 23 above, which are incorporated herein by reference.

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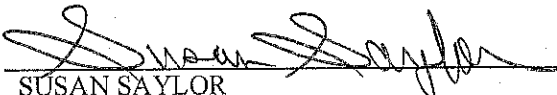
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- 1 2. Revoking or suspending Field Representative License Number FR 40746, issued to
2 Matthew Carlton Villa, owner of Magik Exterminating;
3 3. Revoking or suspending Applicator License Number RA 44916, issued to Matthew
4 Carlton Villa, owner of Magik Exterminating;
5 4. Prohibiting Respondent from serving as an officer, director, associate, partner,
6 qualifying manager, or responsible managing employee of a registered company;
7 5. Ordering Matthew Carlton Villa to pay the Structural Pest Control Board the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 125.3;
10 6. Taking such other and further action as deemed necessary and proper.

11
12
13 DATED: 5/31/13


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

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