

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the Matter of the Accusation Against:  
  
**JOSHUA J. TUCKETT**  
**11955 Jack Benny Drive, Suite 102**  
**Rancho Cucamonga, CA 91739**  
**Field Representative's License No. FR 40813**  
  
Respondent.

Case No. 2011-47

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 21, 2011, Complainant Kelli Okuma in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Accusation No. 2011-47 against Joshua J. Tuckett (Respondent) before the Structural Pest Control Board. (Accusation attached as Exhibit A.)

2. On or about September 27, 2006, the Structural Pest Control Board (Board) issued Field Representative's License No. FR 40813 to Respondent. The Field Representative's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

3. On or about April 6, 2011, Respondent was served by certified and regular mail with copies of the Accusation No. 2011-47; Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 136, is  
2 required to be reported and maintained with the Board, which was and is:

3 11955 Jack Benny Drive, Suite 102  
4 Rancho Cucamonga, CA 91739.

5 4. Service of the Accusation was effective as a matter of law under the provisions of  
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
7 124.

8 5. On or about April 18, 2011, the aforementioned documents served by regular mail  
9 were returned by the U.S. Postal Service marked "Unable to Forward." On or about April 18,  
10 2011, the aforementioned documents served by certified mail were returned by the U.S. Postal  
11 Service marked "Unable to Forward." The address on the documents in both mailings was the  
12 same as the address on file with the Board. Respondent failed to maintain an updated address  
13 with the Board and the Board has made attempts to serve the Respondent at the address on file.  
14 Respondent has not made himself available for service and therefore, has not availed himself of  
15 his right to file a notice of defense and appear at hearing.

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

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

22 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
23 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
24 2011-47.

25 8. California Government Code section 11520 states, in pertinent part:

26 (a) If the respondent either fails to file a notice of defense or to appear at the  
27 hearing, the agency may take action based upon the respondent's express admissions  
28 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

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
3 file at the Board's offices regarding the allegations contained in Accusation No. 2011-47, finds  
4 that the charges and allegations in Accusation No. 2011-47, are separately and severally, found to  
5 be true and correct by clear and convincing evidence.

6 10. Taking official notice of its own internal records, pursuant to Business and  
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
8 and Enforcement is \$1585 as of May 15, 2011.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent Joshua J. Tuckett has subjected  
11 his Field Representative's License No. FR 40813 to discipline.

12 2. The agency has jurisdiction to adjudicate this case by default.

13 3. The Structural Pest Control Board is authorized to revoke Respondent's Field  
14 Representative's License based upon the following violations alleged in the Accusation which are  
15 supported by the evidence contained in the Default Decision Evidence Packet in this case.:

16 a. Failure to Verify Completion of Continuing Education, as required by Business and  
17 Professions Code sec. 8641 and 8593, in conjunction with California Code of Regulations, Title  
18 16, sec. 1950, subd. (a), by failing to submit verification of completing continuing education  
19 courses in the form of certificates of completion for the 2009 renewal period, as requested by the  
20 Board multiple times.

21 ORDER

22 IT IS SO ORDERED that Field Representative's License No. FR 40813, heretofore issued  
23 to Respondent Joshua J. Tuckett, is revoked.

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

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

This Decision shall become effective on July 30, 2011.

It is so ORDERED June 30, 2011

  
\_\_\_\_\_  
FOR THE STRUCTURAL PEST CONTROL  
BOARD  
DEPARTMENT OF PESTICIDE REGULATION

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 SHAWN P. COOK  
Deputy Attorney General  
4 State Bar No. 117851  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-9954  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

**FILED**

Date 3/21/11 By Kelli Okuma

7  
8 **BEFORE THE**  
**STRUCTURAL PEST CONTROL BOARD**  
9 **DEPARTMENT OF PESTICIDE REGULATION**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2011-47

11 **JOSHUA J. TUCKETT**  
12 **11955 Jack Benny Drive, Suite 102**  
**Rancho Cucamonga, CA 91739**  
13 **Field Representative's License No. FR 40813**

**ACCUSATION**

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

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

21 **Field Representative's License**

22 2. On or about September 27, 2006, the Board issued Field Representative's License  
23 Number FR 40813 in Branches 2 and 3 to Joshua J. Tuckett ("Respondent"). The field  
24 representative's license was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on June 30, 2012, unless renewed.

26 **STATUTORY PROVISIONS**

27 3. Section 8620 of the Business and Professions Code ("Code") provides, in pertinent  
28 part, that the Board may suspend or revoke a license when it finds that the holder, while a

1 licensee or applicant, has committed any acts or omissions constituting cause for disciplinary  
2 action or in lieu of a suspension may assess a civil penalty.

3 4. Code section 8625 states:

4 The lapsing or suspension of a license or company registration by  
5 operation of law or by order or decision of the board or a court of law, or the  
6 voluntary surrender of a license or company registration shall not deprive the board of  
7 jurisdiction to proceed with any investigation of or action or disciplinary proceeding  
8 against such licensee or company, or to render a decision suspending or revoking  
9 such license or registration.

8 5. Code section 8641 states:

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

12 6. Code section 8593 states:

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

#### 18 REGULATORY PROVISION

19 7. California Code of Regulations, title 16, section 1950, states, in pertinent part:

20 (a) Except as provided in section 1951, every licensee is required, as a  
21 condition to renewal of a license, to certify that he or she has completed the  
22 continuing education requirements set forth in this article. A licensee who cannot  
23 verify completion of continuing education by producing certificates of activity  
24 completion, whenever requested to do so by the Board, may be subject to disciplinary  
25 action under section 8641 of the code.

#### 24 COST RECOVERY

25 8. Code section 125.3 states, in pertinent part, that a Board may request the  
26 administrative law judge to direct a licensee found to have committed a violation or violations of  
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
28 enforcement of the case.

1 BACKGROUND INFORMATION

2 9. On or about June 30, 2009, the Board received Respondent's renewal application.  
3 Respondent certified that he had successfully completed 20 hours of continuing education.

4 10. On or about December 8, 2009, February 8, 2010, May 11, 2010, and October 5,  
5 2010, the Board sent Respondent written requests instructing him to submit copies of his  
6 continuing education certificates to the Board within fourteen (14) days. On each occasion,  
7 Respondent was advised that if he failed to comply with the request, his license would be subject  
8 to disciplinary action. To date, Respondent has not provided copies of his continuing education  
9 certificates.

10 CAUSE FOR DISCIPLINE

11 (Failure to Verify Completion of Continuing Education)

12 11. Respondent is subject to disciplinary action pursuant to Code sections 8641 and 8593,  
13 in that Respondent failed to comply with California Code of Regulations, title 16, section 1950,  
14 subdivision (a), by failing to submit verification of completing continuing education courses in  
15 the form of certificates of completion for the 2009 renewal period, as requested by the Board on  
16 December 8, 2009, February 8, 2010, May 11, 2010, and October 5, 2010.

17 OTHER MATTERS

18 12. Code section 8620 provides, in pertinent part, that a respondent may request that a  
19 civil penalty of not less than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or  
20 not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made at  
21 the time of the hearing and must be noted in the proposed decision. The proposed decision shall  
22 not provide that a civil penalty shall be imposed in lieu of a suspension.

23 13. Pursuant to Code section 8654, if discipline is imposed on Field Representative's  
24 License Number FR 40813, issued to Joshua J. Tuckett then Joshua J. Tuckett shall be prohibited  
25 from serving as an officer, director, associate, partner, qualifying manager, or responsible  
26 managing employee for any registered company during the time the discipline is imposed, and  
27 any registered company which employs, elects, or associates him shall be subject to disciplinary  
28 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's License Number FR 40813, issued to Joshua J. Tuckett;
2. Ordering Joshua J. Tuckett 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/21/11

*Kelli Okuma*

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

LA2010601437

10651820.doc