

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 ARTHUR D. TAGGART
Supervising Deputy Attorney General
4 State Bar No. 083047
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5339
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

FILED

Date 2/15/11 By *Susan Taylor*

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

12 In the Matter of the Accusation Against:

Case No. 2011-36

13 **GABRIEL DAVILLA**
270 North First Street, Suite B
14 Fresno, California 93702

ACCUSATION

15 **Field Representative's License No. FR 41112**

16 Respondent.

17
18 Kelli Okuma ("Complainant") alleges:

19 **PARTIES**

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

23 **Applicator's License**

24 2. On or about August 30, 2002, the Board issued Registered Applicator's License
25 Number RA 21196, in Branches 2 and 3, to Gabriel Davilla ("Respondent"). On or about
26 December 19, 2006, the license was downgraded to include Branch 2 only due to the issuance of
27 Field Representative License Number FR 41112 in Branch 3. The license will expire on
28 July 29, 2011, unless renewed.

1 **Field Representative's License**

2 3. On or about December 13, 2006, the Board issued Field Representative's License
3 Number FR 41112, in Branch 2, to Respondent. The license will expire on June 30, 2012, unless
4 renewed.

5 **STATUTORY PROVISIONS**

6 4. Business and Professions Code ("Code") section 8620 provides, in pertinent part,
7 that the Board may suspend or revoke a license when it finds that the holder, while a licensee or
8 applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu
9 of a suspension may assess a civil penalty.

10 5. Code section 8625 states:

11 The lapsing or suspension of a license or company registration by operation
12 of law or by order or decision of the board or a court of law, or the voluntary
13 surrender of a license or company registration shall not deprive the board of
14 jurisdiction to proceed with any investigation of or action or disciplinary proceeding
15 against such licensee or company, or to render a decision suspending or revoking
16 such license or registration.

15 6. 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.

19 7. Code section 8593 states, in pertinent part:

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

25 8. Code section 8654 states:

26 Any individual who has been denied a license for any of the reasons
27 specified in Section 8568, or who has had his or her license revoked, or whose license
28 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

1 association whose application for a company registration has been denied for any of
2 the reasons specified in Section 8568, or whose company registration has been
3 revoked as a result of disciplinary action, or whose company registration is under
4 suspension, and while acting as such member, officer, director, associate, qualifying
5 manager, or responsible managing employee had knowledge of or participated in any
6 of the prohibited acts for which the license or registration was denied, suspended or
7 revoked, shall be prohibited from serving as an officer, director, associate, partner,
8 qualifying manager, or responsible managing employee of a registered company, and
9 the employment, election or association of such person by a registered company is a
10 ground for disciplinary action.

11 REGULATORY PROVISIONS

12 9. California Code of Regulations, title 16, section 1950, states, in pertinent
13 part:

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

20 (b) Each licensee is required to gain a certain number of continuing
21 education hours during the three year renewal period. The number of hours required
22 depends on the number of branches of pest control in which licenses are held. The
23 subject matter covered by each activity shall be designated as "technical" or "general"
24 by the Board when the activity is approved. Hour values shall be assigned by the
25 Board to each approved educational activity, in accordance with the provisions of
26 section 1950.5.

27 (d) Field representatives licensed in one branch of pest control shall have
28 completed 16 continuing education hours, field representatives licensed in two
branches of pest control shall have completed 20 continuing education hours, field
representatives licensed in three branches of pest control shall have completed 24
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, the Rules and Regulations, or
structural pest control related agencies' rules and regulations.

29 COST RECOVERY

30 10. Code section 125.3 states, in pertinent part, that a 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.

34 ///

1 **BACKGROUND INFORMATION**

2 11. In or about June 2009, Respondent submitted a license renewal application to the
3 Board. The renewal application did not contain the number of continuing education hours
4 completed.

5 12. On or about July 26, 2009, the Board sent Respondent a notice stating that his
6 renewal application was on hold for failing to enter the number of continuing education hours
7 completed.

8 13. On or about October 5, 2009, the Board received a statement from Respondent
9 wherein he signed under penalty of perjury on September 29, 2009, that he had completed 20
10 hours of continuing education during the renewal period of July 1, 2006, through June 30, 2009.

11 14. On December 3, 2009, February 8, 2010, and May 11, 2010, the Board sent
12 Respondent written requests for copies of his continuing education certificates for the renewal
13 period of July 1, 2006, through June 30, 2009. Respondent was advised on each occasion that if
14 he failed to comply with the request, his field representative's license would be subject to
15 disciplinary action.

16 15. On or about July 7, 2010, the Board received continuing education certificates
17 from Respondent. However, the hours were not acceptable, in that the courses were not
18 completed during the July 1, 2006, through June 30, 2009, renewal period.

19 16. On or about August 23, 2010, the Board received a letter from Respondent stating
20 that he was unable to produce any continuing education certificates for the renewal period of
21 July 1, 2006, through June 30, 2009.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Failure to Verify Completion of Continuing Education)**

24 17. Respondent is subject to discipline under Code section 8641, in that he failed to
25 comply with California Code of Regulation, title 16, section 1950, by failing to verify that he had
26 completed 20 hours of continuing education for the renewal period of July 1, 2006, through
27 June 30, 2009, as requested by the Board on December 3, 2009, February 8, 2010, and
28 May 11, 2010.

OTHER MATTERS

1
2 18. 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 19. Pursuant to Code section 8654, if discipline is imposed on Field Representative's
8 License Number FR 41112, issued to Gabriel Davila, then Gabriel Davila shall be prohibited
9 from serving as an officer, director, associate, partner, qualifying manager, or responsible
10 managing employee for any registered company during the time the discipline is imposed, and
11 any registered company which employs, elects, or associates Gabriel Davila shall be subject to
12 disciplinary action.

PRAYER

13
14 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

16 1. Revoking or suspending Field Representative's License Number
17 FR 41112, issued to Gabriel Davila;

18 2. Prohibiting Gabriel Davila from serving as an officer, director, associate, partner,
19 qualifying manager or responsible managing employee of any registered company during the
20 period that discipline is imposed on Field Representative's License Number FR 41112, issued to
21 Gabriel Davila;

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
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

3. Ordering Gabriel Davila 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,

4. Taking such other and further action as deemed necessary and proper.

DATED: 2/15/11 _____ 

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

SA2010102783
10657843.doc