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

In the Matter of the Accusation Against:

Case No. 2011-36

GABRIEL DAVILA
270 North First Street, Suite B
Fresno, CA 93702

DEFAULT DECISION AND ORDER

Field Representative License No. FR 41112
Respondent.

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 15, 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. 2011-36 against Gabriel Davila (Respondent) before the Structural Pest Control Board. (Accusation attached as Exhibit A.)

2. On or about December 13, 2006, the Structural Pest Control Board issued Field Representative's License No. FR 41112 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 February 22, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2011-36, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code

1 section 136, is required to be reported and maintained with the Board, which is: 1481 Ventura
2 Street, Kingsburg, California 93631.

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
5 section 124.

6 5. On or about February 24, 2011, the documents described in paragraph 4 were
7 received at 270 North First Street, Suite B, Fresno, California 93702, the address of record for
8 Respondent.

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

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
17 No. 2011-36.

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

19 (a) If the respondent either fails to file a notice of defense or to appear at the
20 hearing, the agency may take action based upon the respondent's express admissions
21 or upon other evidence and affidavits may be used as evidence without any notice to
22 respondent.

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 2011-36, finds
28 that the charges and allegations in Accusation No. 2011-36, are separately and severally, found to
be true and correct by clear and convincing evidence.

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1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on December 21, 2011.

4 It is so ORDERED November 21, 2011

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FOR THE STRUCTURAL PEST CONTROL
BOARD
DEPARTMENT OF PESTICIDE REGULATION

10710265.DOCX
DOJ Matter ID:SA2010102783

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 ARTHUR D. TAGGART
Supervising Deputy Attorney General
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1300 I Street, Suite 125
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Sacramento, CA 94244-2550
6 Telephone: (916) 324-5339
Facsimile: (916) 327-8643
7 Attorneys for Complainant

FILED

Date 7/15/11

By Susan Taylor

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

11 In the Matter of the Accusation Against:
12 **GABRIEL DAVILLA**
13 270 North First Street, Suite B
14 Fresno, California 93702
15 **Field Representative's License No. FR 41112**
16 Respondent.

Case No. 2011-36
ACCUSATION

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 licensee 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.

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BACKGROUND INFORMATION

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

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

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

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

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

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

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FIRST CAUSE FOR DISCIPLINE

(Failure to Verify Completion of Continuing Education)

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

28

OTHER MATTERS

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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.

PRAAYER

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;

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