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7
8 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2009-40

12 **TIMOTHY FLOYD SMITH**

736 Musick Avenue
13 Modesto, California 95351

DEFAULT DECISION
AND ORDER

14 Field Representative's License No. FR 41181

[Gov. Code, §11520]

15 Respondent.

16
17 **FINDINGS OF FACT**

18 1. On or about February 3, 2009, Complainant Kelli Okuma, in her official
19 capacity as the Registrar of the Structural Pest Control Board, Department of Consumer Affairs,
20 filed Accusation No. 2009-40 against Timothy Floyd Smith ("Respondent") before the Structural
21 Pest Control Board.

22 2. On or about December 29, 2006, the Structural Pest Control Board
23 ("Board") issued Field Representative's License No. FR 41181 to Respondent. The Field
24 Representative's License will expire on June 30, 2009, unless renewed.

25 3. On or about February 10, 2009, an employee of the Department of Justice,
26 served by Certified and First Class Mail a copy of Accusation No. 2009-40, and Statement to
27 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
28 11507.6, and 11507.7 ("Related Documents") to Respondent's address of record with the Board,

1 which was 736 Musick Avenue, Modesto, California 95351 and to Respondent (Inmate No.
2 CDCR #G00029) at La Palma Correctional Center, 5501 North La Palma Road, Elroy, Arizona,
3 85231. True and correct copies of the Accusation, the related documents, and Declaration of
4 Service are attached hereto, are collectively marked as **Exhibit A**, and are incorporated herein by
5 this reference.

6 4. Service of the Accusation was effective as a matter of law under the
7 provisions of Government Code section 11505, subdivision (c).

8 5. Government Code section 11506 states, in pertinent part:

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

14 6. Respondent failed to file a Notice of Defense within 15 days after service
15 upon him of the Accusation and therefore waived his right to a hearing on the merits of
16 Accusation No. 2009-40:

17 7. California Government Code section 11520 states, in pertinent part:

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

22 8. Pursuant to its authority under Government Code section 11520, the Board
23 finds Respondent is in default. The Board will take action without further hearing and, based on
24 Respondent's express admissions by way of default and the evidence before it, contained in
25 **Exhibit A**, finds that the allegations in Accusation No. 2009-40, are true.

26 9. The total costs for investigation and enforcement are \$1,331.25, as of
27 March 19, 2009.

28 DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Timothy Floyd Smith
has subjected his Field Representative's License No. FR 41181 to discipline.

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2. A copy of the Accusation and the Related Documents and Declarations of Service are attached hereto as **Exhibit A**.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Structural Pest Control Board, Department of Consumer Affairs, is authorized to revoke Respondent's Field Representative's License No. FR 41181 based upon violations of Business and Professions Code sections 8649 and 490 (criminal convictions), as alleged in Accusation No. 2009-40.

ORDER

IT IS SO ORDERED that Field Representative's License No. FR 41181, heretofore issued to Respondent Timothy Floyd Smith, is **REVOKED**.

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

This Decision shall become effective on May 22, 2009.

It is so ORDERED . April 22, 2009

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

Attachments:

Exhibit A: Accusation No. 2009-40, Related Documents, and Declaration of Service

Exhibit A

Accusation No. 2009-40

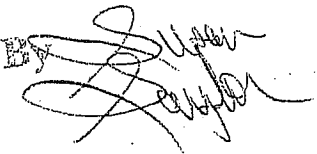
Related Documents and Declaration of Service

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Attorneys for Complainant

FILED

Date 7/3/09

By 

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2009-40

TIMOTHY FLOYD SMITH
736 Musick Avenue
Modesto, California 95351

ACCUSATION

Field Representative's License No. FR 41181

Respondent.

Kelli Okuma ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Registrar of the Structural Pest Control Board, Department of Consumer Affairs.

License Information

2. On or about December 29, 2006, the Structural Pest Control Board issued Field Representative's License No. FR 41181 ("license") in Branch 2 to Timothy Floyd Smith ("Respondent"). The license will expire on June 30, 2009, unless renewed.

JURISDICTION

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

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1 a 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
7 board of jurisdiction to proceed with any investigation of or action or disciplinary
8 proceeding against such licensee or company, or to render a decision suspending
9 or revoking such license or registration.

8 STATUTORY PROVISIONS

9 5. Code section 8649 states:

10 Conviction of a crime substantially related to the qualifications, functions,
11 and duties of a structural pest control operator, field representative, applicator, or
12 registered company is a ground for disciplinary action. The certified record of
13 conviction shall be conclusive evidence thereof.

13 6. Code section 490 states:

14 A board may suspend or revoke a license on the ground that the licensee
15 has been convicted of a crime, if the crime is substantially related to the
16 qualifications, functions, or duties of the business or profession for which the
17 license was issued. A conviction within the meaning of this section means a plea
18 or verdict of guilty or a conviction following a plea of nolo contendere. Any
19 action which a board is permitted to take following the establishment of a
20 conviction may be taken when the time for appeal has elapsed, or the judgment of
21 conviction has been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a subsequent order
23 under the provisions of Section 1203.4 of the Penal Code.

20 COST RECOVERY

21 7. Code section 125.3 provides, in pertinent part, that the Registrar may
22 request the administrative law judge to direct a licensee found to have committed a violation or
23 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
24 and enforcement of the case.

25 CAUSE FOR DISCIPLINE

26 (Criminal Conviction)

27 8. Respondent's license is subject to disciplinary action under Code section
28 8649 and section 490, in that on October 11, 2007, in the Superior Court, Stanislaus County,

1 California, in the matter entitled *People vs. Timothy Floyd Smith*, 2007, Case No. 1226727,
2 Respondent was convicted by a jury of violating Penal Code section 245, subdivision (a)(1)
3 (assault with a deadly weapon, to wit, a vehicle), a felony, with an enhancement pursuant to
4 Penal Code section 667, subdivision (a) (prior 1993 conviction); and, Penal Code section 484
5 (petty theft), a misdemeanor. Respondent was sentenced to an aggregate term of 11 years in
6 State prison.

7 The circumstances of the crime are that on April 11, 2007, Respondent and an
8 accomplice entered a K-Mart store in Modesto, California, and took various items from the store
9 without paying for them. Further, while store employees were holding Respondent's accomplice,
10 Respondent, in an attempt to free his accomplice, drove his vehicle at the store employees, barely
11 missing them. Such conduct is substantially related to the qualifications, functions or duties of a
12 licensed field representative.

13 9. On or about October 24, 2008, the California Appellate Court, in the case
14 of *People v. Timothy Floyd Smith*, Appellate Case No. F054514 [unpublished], affirmed the trial
15 courts judgment described in paragraph 8, above, and directed the trial court to issue an amended
16 abstract of judgment that correctly indicates that the court imposed a restitution fine and to
17 forward the amended abstract to the California Department of Corrections and Rehabilitation.

18 OTHER MATTERS

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

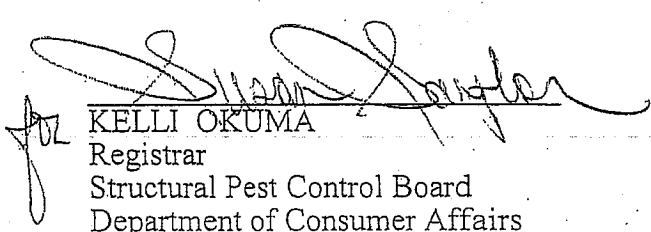
24 11. Pursuant to Code section 8654, if discipline is imposed on Field
25 Representative's License Number FR 4111, issued to Respondent, then Timothy Floyd Smith
26 shall be prohibited from serving as an officer, director, associate, partner or responsible
27 managing employee of a licensee, and any licensee which employs, elects, or associates him shall
28 be subject to disciplinary 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 No. FR 41181, issued to Timothy Floyd Smith;
2. Ordering Timothy Floyd Smith to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/3/09


for KELLI OKUMA
Registrar
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant