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FILED

Date 3/29/11 By Kelli Okuma

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. 2011-48

13 **MARC R. ALLEN**
2175 Darnis Circle
Morgan Hill, CA 95037

ACCUSATION

14 **Field Representative License No. FR 41718**
15 **(Branch 3)**

16 Respondent.

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18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about May 11, 2007, the Structural Pest Control Board issued Field
25 Representative License Number FR 41718 (Branch 3) to Marc Richard Allen (Respondent). The
26 Field Representative License was in full force and effect at all times relevant to the charges
27 brought in this Accusation and will expire on June 30, 2012, unless renewed.

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1 **JURISDICTION**

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

5 4. Code section 118, subdivision (b), provides that the suspension, expiration, surrender,
6 or cancellation of a license shall not deprive the Board or Registrar of jurisdiction to proceed with
7 a disciplinary action during the period within which the license may be renewed, restored,
8 reissued or reinstated.

9 5. Code section 8620 provides, in pertinent part, that the Board may suspend or revoke a
10 license when it finds that the holder, while a licensee or applicant, has committed any acts or
11 omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil
12 penalty.

13 6. Code section 8625 states:

14 The lapsing or suspension of a license or company registration by operation
15 of law or by order or decision of the board or a court of law, or the voluntary
16 surrender of a license or company registration shall not deprive the board of
17 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.

18 **STATUTORY PROVISIONS**

19 7. Code section 498 states:

20 A board may revoke, suspend, or otherwise restrict a license on the ground
21 that the licensee secured the license by fraud, deceit, or knowing misrepresentation
of a material fact or by knowingly omitting to state a material fact.

22 8. Code section 8593 states, in pertinent part:

23 The board shall require as a condition to the renewal of each operator's and
24 field representative's license that the holder submit proof satisfactory to the board
25 that he or she has informed himself or herself of developments in the field of pest
26 control either by completion of courses of continuing education in pest control
approved by the board or equivalent activity approved by the board. . . .

27 9. Code section 8637 states that misrepresentation of a material fact by the applicant in
28 obtaining a license is a ground for disciplinary action.

1 10. Code section 8641 provides:

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

7 **REGULATORY PROVISION**

8 11. California Code of Regulations, title 16, section 1950, states, in pertinent part:

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

15 (b) Each licensee is required to gain a certain number of continuing
16 education hours during the three year renewal period. . . .

17 . . .

18 (d) Field representatives licensed in one branch of pest control shall have
19 completed 16 continuing education hours, . . .

20 . . .

21 **COST RECOVERY**

22 12. Section 125.3 of the Code states, in pertinent part, that a Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

26 **FIRST CAUSE FOR DISCIPLINE**

27 (Bus. & Prof. Code §§ 8620 and 8593)
28 (Failure to Provide Proof of Continuing Education)

13. Respondent's license is subject to discipline under Code section 8620 for violation of
Code section 8593, in that he failed to submit proof satisfactory to the Board that he completed 16
hours of courses of continuing education in pest control as required. The circumstances are as
follows:

1 a. On or about June 29, 2009, respondent submitted a signed License Renewal
2 Application, under penalty of perjury, stating that he had successfully completed 16 hours of
3 courses of continuing education as required for the renewal.

4 b. In or about December 8, 2009, the Board conducted a random continuing education
5 audit and requested from Respondent certificates of course completion to verify the continuing
6 education hours for the renewal period of July 1, 2006 through June 30, 2009. Respondent did
7 not respond to the Board and did not verify completion of continuing education because he failed
8 to produce certificates of course completion.

9 c. In or about March 23, 2010, as part of its random continuing education audit, the
10 Board made a second request to Respondent for certificates of course completion to verify the
11 continuing education hours for the renewal period of July 1, 2006 through June 30, 2009.
12 Respondent did not respond to the Board and did not verify completion of continuing education
13 because he failed to produce certificates of course completion.

14 d. In or about May 11, 2010, as part of its random continuing education audit, the Board
15 made a third request to Respondent for certificates of course completion to verify the continuing
16 education hours for the renewal period of July 1, 2006 through June 30, 2009. Respondent did
17 not respond to the Board and did not verify completion of continuing education because he failed
18 to produce certificates of course completion.

19 e. In or about October 5, 2010, as part of its random continuing education audit, the
20 Board made a fourth request to Respondent for certificates of course completion to verify the
21 continuing education hours for the renewal period of July 1, 2006 through June 30, 2009.
22 Respondent did not respond to the Board and did not verify completion of continuing education
23 because he failed to produce certificates of course completion.

24 f. Respondent had not completed 16 hours of courses of continuing education at the
25 time he certified his license renewal application. If Respondent had completed the foregoing
26 continuing education, he would have been able to produce certificates of completion.

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SECOND CAUSE FOR DISCIPLINE

**(Bus. & Prof. Code §§ 498, 8620, and 8637)
(Misrepresentation of Material Fact)**

14. Respondent's license is subject to discipline under Code sections 498 and 8620 for violation of Code section 8637, in that Respondent misrepresented that he had completed 16 hours of continuing education, when he certified his license renewal. The circumstances are described in detail in Paragraph 13, subsections a-f, above, and incorporated by reference.

THIRD CAUSE FOR DISCIPLINE

**(Bus. & Prof. Code §§ 8620 and 8641 and Cal. Code Regs., tit. 16, § 1950)
(Failure to Comply with the Statutes and Regulations Adopted by the Board)**

15. Respondent's license is subject to discipline under Code 8620 for violation of code section 8641, in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, section 1950, subdivision (a), by failing to submit to the Board as a condition of renewal of his field representative's license satisfactory proof of his completion of Board-approved courses of continuing education in pest control, or equivalent activity. The circumstances are described in detail in Paragraph 13, subsections a-f, above, and incorporated by reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Field Representative License Number FR 41718 (Branch 3), issued to Marc Richard Allen
2. Ordering Marc Richard Allen 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

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

DATED: 3/29/11

Kelli Okuma

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

SF2011900023/ accusation.rtf