

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

In the Matter of the Accusation Against:

Case No. 2012-34

MICHAEL A. GUEVARA
1605 East Pine Avenue
Lompoc, CA 93436
Field Representative's License No. FR 43691


Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

This Decision shall become effective on May 25, 2012.

It is so ORDERED April 25, 2012.



FOR THE STRUCTURAL PEST CONTROL
BOARD
DEPARTMENT OF PESTICIDE REGULATION

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

11 In the Matter of the Accusation Against:
12 **MICHAEL A. GUEVARA**
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14 **Lompoc, CA 93436**
15 **Field Representative's License No. FR 43691**
Respondent.

Case No. 2012-34
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. William H. Douglas (Complainant) is the Interim Registrar/Executive Officer of the
21 Structural Pest Control Board. He brought this action solely in his official capacity and is
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
23 Gregory J. Salute, Supervising Deputy Attorney General.

24 2. Respondent Michael A. Guevara (Respondent) is representing himself in this
25 proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about October 14, 2008, the Structural Pest Control Board issued Field
27 Representative's License No. FR 43691 to Michael A. Guevara (Respondent). The Field
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1 Representative's License was in full force and effect at all times relevant to the charges brought in
2 Accusation No. 2012-34 and will expire on June 30, 2014, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2012-34 was filed before the Structural Pest Control Board (Board),
5 Department of Pesticide Regulation, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 February 29, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2012-34 is attached as exhibit A and incorporated herein
9 by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 2012-34. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order.

14 7. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 9. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 2012-34.

26 10. Respondent agrees that his Field Representative's License is subject to discipline and
27 he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary
28 Order below.

1 CIRCUMSTANCES IN MITIGATION

2 11. Respondent Michael A. Guevara has never been the subject of any disciplinary
3 action. He is admitting responsibility at an early stage in the proceedings.

4 CONTINGENCY

5 12. This stipulation shall be subject to approval by the Structural Pest Control Board.
6 Respondent understands and agrees that counsel for Complainant and the staff of the Structural
7 Pest Control Board may communicate directly with the Board regarding this stipulation and
8 settlement, without notice to or participation by Respondent. By signing the stipulation,
9 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
10 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
11 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
12 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
13 the parties, and the Board shall not be disqualified from further action by having considered this
14 matter.

15 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
16 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
17 effect as the originals.

18 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
19 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
20 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
21 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
22 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
23 writing executed by an authorized representative of each of the parties.

24 15. In consideration of the foregoing admissions and stipulations, the parties agree that
25 the Board may, without further notice or formal proceeding, issue and enter the following
26 Disciplinary Order:
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DISCIPLINARY ORDER

Complainant William H. Douglas, Interim Registrar/Executive Officer of the Structural Pest Control Board, shall withdraw the pending Accusation No. 2012-34 upon the issuance of a citation to Field Representative License No. FR 43691, Branch 2, issued to Respondent, pursuant to California Code of Regulations, title 16, section 1920, as follows:

(a) Respondent shall be cited for violation Business and Professions Code section 8593, in that he failed to submit timely proof to the Board that he completed 16 hours of courses of continuing education in pest control for the 2011 renewal period;

(b) Within six months of the issuance of the Citation, Respondent shall successfully complete ten units of continuing education which shall consist of four (4) hours of rules and regulations, three (3) hours technical in Branch 2, two (2) hours general and one (1) hour IPM.

These hours must be Board approved continuing education courses and these courses are in addition to and cannot be used to satisfy continuing education license renewal requirements; and

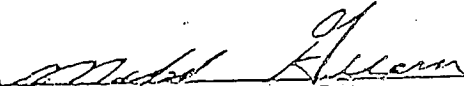
(c) Within six months of the issuance of the citation provided for in this Stipulation, Respondent shall pay to the Registrar a citation fine of \$800.00. Respondent shall be permitted to pay this fine in a Board approved payment plan, however, the fine must be paid in full prior to Respondent's next license renewal period on June 30, 2014.

16. Failure to comply with this agreement within the time agreed upon will subject Respondent's license to discipline.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Field Representative's License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Structural Pest Control Board.

DATED: March 20 - 2012


MICHAEL A. GUEVARA
Respondent

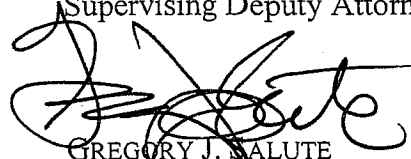
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Structural Pest Control Board of the Department of Pesticide Regulation.

Dated: 3-26-2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General



GREGORY J. MALUTE
Supervising Deputy Attorney General
Attorneys for Complainant

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Guevara stip.docx

Exhibit A

Accusation No. 2012-34

1 KAMALA D. HARRIS
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2 ALFREDO TERRAZAS
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3 GREGORY J. SALUTE
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Attorneys for Complainant

FILED

Date 2/8/12

By *William H. Douglas*

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8 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
9 **DEPARTMENT OF PESTICIDE REGULATION**
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10 In the Matter of the Accusation Against:

Case No. 2012-34

11 **MICHAEL A GUEVARA**
12 **1605 E Pine Avenue,**
13 **Lompoc, CA 93436**
14 **Field Representative's License No. FR 43691**
Branch 2

ACCUSATION

15 Respondent

16 Complainant alleges:

17 **PARTIES**

- 18 1. William H. Douglas ("Complainant") brings this Accusation solely in his official
19 capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board
20 ("Board"), Department of Pesticide Regulation.
- 21 2. On or about October 14, 2008, the Board issued Field Representative's License
22 Number FR 43691 in Branch 2 (general pest) to Michael A. Guevara ("Respondent").
23 Respondent's field representative's license will expire on June 30, 2014, unless renewed.
- 24 3. On or about March 21, 2007, the Board issued Applicator License Number RA 47095
25 in Branch 2 (general pest) and Branch 3 (termite) to Michael A. Guevara ("Respondent"). On or
26 about October 14, 2008, Applicator License No. RA 47095 was downgraded to Branch 3
27 (termite) due to the issuance of a field representative license. On or about March 21, 2010,
28 Respondent's Applicator license expired and has not been renewed.

1 STATUTORY AND REGULATORY PROVISIONS

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

6 5. Code section 8654 states:

7 Any individual who has been denied a license for any of the reasons
8 specified in Section 8568, or who has had his or her license revoked, or whose license
9 is under suspension, or who has failed to renew his or her license while it was under
10 suspension, or who has been a member, officer, director, associate, qualifying
11 manager, or responsible managing employee of any partnership, corporation, firm, or
12 association whose application for a company registration has been denied for any of
13 the reasons specified in Section 8568, or whose company registration has been
14 revoked as a result of disciplinary action, or whose company registration is under
15 suspension, and while acting as such member, officer, director, associate, qualifying
16 manager, or responsible managing employee had knowledge of or participated in any
17 of the prohibited acts for which the license or registration was denied, suspended or
18 revoked, shall be prohibited from serving as an officer, director, associate, partner,
19 qualifying manager, or responsible managing employee of a registered company, and
20 the employment, election or association of such person by a registered company is a
21 ground for disciplinary action.

22 6. Code section 8641 states:

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

28 7. Code section 8593 states:

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

In lieu of submitting that proof, the licenseholder, if he or she so desires,
may take and successfully complete an examination given by the board, designed to
test his or her knowledge of developments in the field of pest control since the
issuance of his or her license.

The board shall develop a correspondence course or courses with any
educational institution or institutions as it deems appropriate. This course may be
used to fulfill the requirements of this section. The institution may charge a
reasonable fee for each course.

The board may charge a fee for the taking of an examination in each

1 branch of pest control pursuant to this section in an amount sufficient to cover the
2 cost of administering each examination, provided, however, that in no event shall the
3 fee exceed fifty dollars (\$ 50) for each examination.

4 8. California Code of Regulations, title 16, section ("Regulation") 1950 states, in
5 pertinent part:

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

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

19 (d) Field representatives licensed in one branch of pest control shall have
20 completed 16 continuing education hours, field representatives licensed in two
21 branches of pest control shall have completed 20 continuing education hours, field
22 representatives licensed in three branches of pest control shall have completed 24
23 continuing education hours during each three year renewal period. In each case, a
24 minimum of four continuing education hours in a technical subject directly related to
25 each branch of pest control held by the licensee must be gained for each branch of
26 pest control licensed and a minimum of eight hours must be gained from Board
27 approved courses on the Structural Pest Control Act, the Rules and Regulations, or
28 structural pest control related agencies' rules and regulations . . .

COST RECOVERY

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

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FIRST CAUSE FOR DISCIPLINE

(Failure to Verify Completion of Continuing Education)

1 10. In or before June 2011, Respondent submitted a license renewal
2 application to the Board wherein Respondent certified under penalty of perjury that he
3 successfully completed four (4) hours of continuing education during his last renewal period.

4 11. On or about July 25, 2011, a representative of the Board sent Respondent
5 a letter indicating that his renewal application was deficient in that his personal signature and/or
6 date were missing from the application and his continuing education hours were insufficient in
7 that Respondent had only reported completing four (4) hours of continuing education during his
8 last renewal period. On or about July 27, 2011, Respondent sent back to the Board a completed
9 statement under penalty of perjury that he had completed sixteen (16) hours of continuing
10 education required for renewal of his license.

11 12. On or about October 20, 2011, a representative of the Board sent
12 Respondent a letter asking Respondent to submit copies of course completion that verify his
13 continuing education hours for the renewal period of July 1, 2008 through June 30, 2011, to the
14 Board.

15 13. On or about November 7, 2011, Respondent sent to the Board a letter to
16 the Board detailing his financial difficulties but failing to supply the Board with certificates of
17 completion verifying his continuing education hours for the renewal period in question. On or
18 about November 28, 2011, a representative of the Board sent Respondent a letter indicating that
19 Respondent was eight (8) hours short on Rules and Regulations, three (3) hours short on
20 Technical Branch 2, two (2) hours short on general and one (1) hour short on IPM and that
21 Respondent needed to produce the certificates to the Board on or before December 12, 2011. On
22 or about December 5, 2011, Respondent sent a letter to the Board indicating that he was not able
23 to produce any more certificates verifying his continuing education hours for the renewal period
24 in question.

25 14. Respondent is subject to disciplinary action pursuant to Code sections
26 8641 and 8593 in that he failed to comply with Regulation 1950 by failing to verify that he
27 completed all of the required courses of continuing education in pest control approved by the
28 Board. Specifically, Respondent failed to produce copies documenting completion of sixteen

1 (16) hours of continuing education for the 2011 renewal cycle as requested by the Board's
2 representative.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Misrepresentation of Material Fact)**

5 15. Respondent is subject to disciplinary action pursuant to Code sections
6 8641 and 8637 in that he made a misrepresentation of a material fact to the Board or its designee
7 in that on or about July 27, 2011, Respondent sent back to the Board a completed statement under
8 penalty of perjury that he had completed all sixteen (16) hours of continuing education required
9 for renewal of his license when in fact he had completed only two (2) of the hours required for
10 renewal of his license. Paragraphs 10-14 are hereby incorporated by reference as though alleged
11 herein.

12 **OTHER MATTERS**

13 16. Code section 8620 provides, in pertinent part, that a respondent may
14 request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of
15 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request
16 must be made at the time of the hearing and must be noted in the proposed decision. The
17 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

18 17. Pursuant to Code section 8654, if discipline is imposed on Field
19 Representative's License Number FR 43691, issued to Michael A. Guevara, Michael A. Guevara
20 shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or
21 responsible managing employee for any registered company during the time the discipline is
22 imposed, and any registered company which employs, elects, or associates Michael A. Guevara
23 shall be subject to disciplinary action.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters
26 herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

- 27 1. Revoking or suspending Field Representative's License Number
28 FR 43691, issued to Michael A. Guevara;

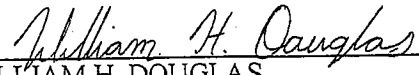
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2. Prohibiting Michael A. Guevara from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Field Representative's License Number FR 43691, issued to Michael A. Guevara;

3. Ordering Michael A. Guevara 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;

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

DATED: 2/8/12


WILLIAM H. DOUGLAS
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

LA2012601917