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FILED

Date 11/18/10 By Kelli Okuma

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

In the Matter of the Accusation Against: **GUILLERMO J. GONZALEZ** **Clark's Pest Control** **8316 Miramar Mall Road** **San Diego, CA 92121** **Field Representative License No. FR 45385** **Registered Applicator License No. RA 49679** Respondent.	Case No. 2011-15 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about April 13, 2010, the Structural Pest Control Board issued Field Representative License (Branch 3) Number FR 45385 to Guillermo J. Gonzalez (Respondent). The Field Representative 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 18, 2009, the Structural Pest Control Board issued Registered Applicator License (Branch 2) Number RA 49679 to Respondent. The Registered Applicator

License was in full force and effect at all times relevant to the charges brought herein and will expire on February 18, 2012, unless renewed.

JURISDICTION

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

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

6. Section 8625 of the Code states:

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

STATUTORY PROVISIONS

7. Section 490 of the Code states, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime.

8. Section 493 of the Code states:

> Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.
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> As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

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9. Section 8649 of the Code states:

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

10. Section 8655 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is deemed to be a conviction within the meaning of this article or Section 8568 of this chapter. The board may order the license or registration suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the individual or registered company to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

11. California Code of Regulations, Title 16, section 1937.1, states:

For the purposes of denial, suspension or revocation of a license or company registration pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee or registered company under Chapter 14 of Division 3 of the code if to a substantial degree it evidences present or potential unfitness of such licensee or registered company to perform the functions authorized by the license or company registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

(a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

(b) Commission of any of the following in connection with the practice of structural pest control:

(1) Fiscal dishonesty

(2) Fraud

(3) Theft

(4) Violations relating to the misuse of pesticides.

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12. California Code of Regulations, Title 16, section 1937.2, states:

. . .

(b) When considering the suspension or revocation of a structural pest control license or company registration on the grounds that the licensee or registered company has been convicted of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or its present eligibility for a license or company registration will consider the following:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee or registered company has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or registered company.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee or registered company.

(c) When considering a petition for reinstatement of a structural pest control license or company registration, the board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).

COSTS

13. Section 125.3 of the Code 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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CAUSE FOR DISCIPLINE

(September 13, 2010 Criminal Conviction for Petty Theft on September 3, 2010)

14. Respondent has subjected his licenses to disciplinary action under sections 490 and 8649 of the Code, in conjunction with California Code of Regulations, Title 16, section 1937.1, subdivision (b)(3), in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a Registered Applicator and Field Representative. The circumstances are as follows:

a. On or about September 13, 2010, in a criminal proceeding entitled *People of the State of California v. Guillermo Javier Gonzalez,* in San Diego County Superior Court (East County Division), case number C303347, Respondent was convicted on his plea of guilty of violating Penal Code section 484, petty theft, a misdemeanor.

b. As a result of the conviction, on or about September 13, 2010, Respondent was sentenced to three (3) years summary probation, ordered to serve two (2) days in jail (with credit for two days), and pay fees and fines in the amount of $305. Respondent was further ordered to submit to a Fourth Amendment Waiver to expire on September 12, 2013.

c. The facts that led to the conviction are that on or about the afternoon of September 3, 2010, Respondent entered a Rite-Aid drug store in Spring Valley, selected a $70 memory card, removed it from its packaging, and concealed it in his pocket. Respondent exited the store without paying for the memory card and was intercepted by the store's loss prevention officer who observed Respondent's actions. Respondent denied stealing the item and quickly re-entered the store. Respondent tossed the memory card on the floor and then charged at the loss prevention officer who was blocking the store's exit to prevent Respondent from leaving. Respondent hit and kicked the loss prevention officer but he was successfully detained until the San Diego County Sheriff's Department arrived and took Respondent into custody. The entire incident was captured on the store's closed circuit surveillance system.

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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 License Number FR 45385, issued to Guillermo J. Gonzalez;

2. Revoking or suspending Registered Applicator License Number RA 49679, issued to Guillermo J. Gonzalez ;

3. Ordering Guillermo J. Gonzalez 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: 11/18/10

Kelli Okuma

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

SD2010702966