

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

In the Matter of the Accusation Against:

LUIS DIEGO ESPARZA

Respondent.

Case No. 2011-38

OAH No. 2011041030

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

The Decision shall become effective on January 7, 2012.

IT IS SO ORDERED December 8, 2011.



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

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

In the Matter of the Accusation Against:

LUIS DIEGO ESPARZA

Respondent.

Case No. 2011-38

OAH No. 2011041030

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings on October 4, 2011, in Ventura, California.

Complainant was represented by Christina Thomas, Deputy Attorney General.

Luis Diego Esparza (Respondent), appeared personally and represented himself.

Oral and documentary evidence was received and the matter was submitted for decision. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Complainant, Kellie Okuma, made and filed the Accusation in her official capacity as Registrar/Executive Officer, Structural Pest Control Board, State of California (Board).

2. On April 27, 2010, the Board issued Field Representative License FR 45461 (Branch 2) to Respondent. This license is in full force and effect and will expire on June 30, 2012, unless renewed.

3. On April 13, 2009, the Board issued Registered Applicator License RA 49801 (Branches 2 and 3) to Respondent. This license is in full force and effect and will expire on April 12, 2012, unless renewed.

4. On November 5, 2010, in the Superior Court of California, County of Ventura, in Case No. 2010035021, respondent was convicted after his plea of guilty to one count charging a violation of Penal Code section 487, subdivision (a), embezzlement, a

misdemeanor. Imposition of sentence was suspended and Respondent was placed on conditional revocable release for 36 months on certain conditions, including a condition ordering Respondent to pay restitution to the victim. Respondent was also ordered to serve 15 days in the Ventura County Jail.

5. The facts and circumstances underlying the conviction were that Respondent, after leaving the employ of Terminx, used the company gas credit card on numerous occasions to purchase gasoline for his personal vehicle from May 25, 2010, to September 30, 2010. Total losses to Terminx exceeded \$400.

6. Respondent testified that he learned his lesson after spending time in jail and would never commit such a crime again. He stated that he paid restitution as ordered by the Superior Court.

7. Complainant submitted costs of enforcement in the amount of \$1,767.50. This amount is deemed reasonable under Business and Professions Code section 125.3

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke the respondent's Field Representative License (Branch 1) under Business and Professions Code sections 8620 and 8649, for the conviction of a crime that is substantially related to the duties, functions and qualifications of a licensee, as set forth in Factual Finding 4.

2. Cause exists to suspend or revoke the respondent's Registered Applicator's License (Branches 2 and 3) under Business and Professions Code sections 8620 and 8649, for the conviction of a crime that is substantially related to the duties, functions and qualifications of a licensee, as set forth in Factual Finding 4.

3. The public welfare demands that licensees of the Board be held to a high standard of honesty and ethical conduct because they are generally allowed access to individuals' homes for inspections and/or applications. Respondent's conviction was based on a continuous course of dishonest conduct that occurred over a four month period. Revocation is the appropriate discipline under the facts of this case

4. Cause exists to order Respondent to pay costs of investigation and enforcement under Business and Professions Code section 125.3, in the amount of 1767.50.

ORDER

1. Field Representative License No. FR 45461 issued to Respondent Luis Diego Esparza is revoked.

2. Registered Applicator License No. RA 49801 issued to Respondent Luis Diego Esparza is revoked.

3. Respondent Luis Diego Esparza is ordered to pay costs of enforcement in the amount of \$1,767.50 to the Board pursuant to Business and Professions Code section 125.3.

DATED: October 5, 2011

Humberto Flores
HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 MARC GREENBAUM
Supervising Deputy Attorney General
3 CHRISTINA THOMAS
State Bar No. 171168
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2557
Facsimile: (213) 897-2804
6 *Attorneys for Complainant*

FILED

Date 2/28/11 by Kelli Okuma

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

11 In the Matter of the Accusation Against:
12 **LUIS DIEGO ESPARZA**
2171 Portola Road, Suite A
13 Ventura, CA 93003
Field Representative's License No. FR 45461,
14 Branch 2
Registered Applicator License No. RA 49801,
15 Branch 3
16 Respondent.

Case No. 2011-38
ACCUSATION

18 Complainant alleges:

19 **PARTIES**

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

23 **Field Representatives License**

24 2. On or about April 27, 2010, the Board issued Field Representative's License Number
25 FR 45461 in Branch 2 to Luis Diego Esparza ("Respondent"). The field representative's license
26 was in full force and effect at all times relevant to the charges brought herein and will expire on
27 June 30, 2012, unless renewed.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Registered Applicator License

3. On or about April 13, 2009, the Board issued Registered Applicator License Number RA 49801, in Branches 2 and 3 to Respondent. On April 27, 2010, the registered applicator license was downgraded to Branch 3 due to the issuance of Field Representative's License Number FR 45461, in Branch 2. The registered applicator license was in full force and effect at all times relevant to the charges brought herein and will expire on April 12, 2012, unless renewed.

STATUTORY PROVISIONS

4. 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 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.

5. Code section 8625 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.

6. Code section 8649 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.

COST RECOVERY

7. 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.

///
///
///

1 CAUSE FOR DISCIPLINE

2 (Criminal Conviction)

3 8. Respondent's licenses are subject to disciplinary action under Code sections 8620 and
4 8649, in that on November 5, 2010, in the Superior Court, County of Ventura, California, in the
5 matter entitled *People vs. Luis Diego Esparza*, Case No. 2010035021 M A, Respondent was
6 convicted by the Court following his plea of guilty to a violation of Penal Code section 487,
7 subdivision (a) (grand theft by embezzlement), a misdemeanor. The circumstances of the crime
8 are that between May 25, 2010, and September 30, 2010, after leaving the employ of Terminix,
9 Respondent unlawfully took money and personal property belonging to Terminix exceeding \$400
10 by using the company gas card on numerous occasions for his own personal use. Such conduct is
11 substantially related to the qualifications, functions, and duties of a licensed field representative
12 and applicator.

13 OTHER MATTERS

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

19 10. Pursuant to Code section 8654, if discipline is imposed on Field Representative's
20 License Number 45461, issued to Luis Diego Esparza and Registered Applicator's License
21 Number RA 49801, issued to Luis Diego Esparza, then Luis Diego Esparza, shall be prohibited
22 from serving as an officer, director, associate, partner or responsible managing employee of a
23 licensee, and any licensee which employs, elects, or associates him shall be subject to disciplinary
24 action.

25 ///

26 ///

27 ///

28 ///

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 Number FR 45461, issued to Luis Diego Esparza;

2. Revoking or suspending Registered Applicator License Number RA 49801, issued to Luis Diego Esparza;

3. Ordering Luis Diego Esparza 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,

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

DATED: 2/28/11

Kelli Okuma

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

LA2010601438
10651838.doc