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

In the Matter of the First Amended Accusation Against: VLAD NAYNODIN, Field Representative License No. FR 45779, Branch 3 Applicator License No. RA 50173, Branch 2 Respondent.	Case No. 2011-27 OAH No. 2011031082

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Structural Pest Control Board as the Decision in the above-entitled matter.

This Decision shall become effective on November 12, 2011.

IT IS SO ORDERED October 13, 2011.

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

In the Matter of the First Amended Accusation Against: VLAD NAYNODIN, Field Representative License No. FR 45779, Branch 3 Applicator License No. RA 50173, Branch 2 Respondent.	Case No. 2011-27 OAH No. 2011031082

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on July 18, 2011, in Oakland, California.

Deputy Attorney General Justin Surber represented complainant William H. Douglas, Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer Affairs.

Respondent Vlad Naynodin represented himself and was present throughout the administrative hearing.

The record was left open for receipt of additional evidence of rehabilitation from respondent which was timely received, marked as exhibits and admitted as administrative hearsay. The matter was submitted for decision on August 14, 2011.

FACTUAL FINDINGS

1. William H. Douglas made the accusation in his official capacity as the Registrar/Executive Officer of the Structural Pest Control Board (Board), Department of Pesticide Regulation.

2. On July 22, 2010, the Board issued Field Representative License Number FR 45779 in Branch 3 to Vlad Naynodin (respondent). The license will expire on June 30, 2013, unless renewed. On August 3, 2009, the Board issued Applicator License Number RA

50173 in Branch 2 to respondent. The applicator license will expire on August 3, 2012, unless renewed.

3. On October 28, 2010, in the Superior Court of California, County of Santa Clara, respondent was convicted of violating Penal Code section 32 (accessory to a felony), a felony that is substantially related to the qualifications, functions or duties of a structural pest control field representative and applicator. Respondent's sentence of nine months in county jail was suspended and respondent was placed on formal probation for a period of three years on terms and conditions that included serving six months in the work furlough program through the Amicus House, performing 200 hours of community service, and the payment of various fines and fees.

4. The facts and circumstances underlying this conviction involve a gang-related shooting that occurred on March 18, 2009, in a park near the apartment complex where respondent grew up in Palo Alto, California. The shooting suspect, Daniel Gil, fled the scene following the shooting. Gil called respondent, who was not at the scene, to ask him for a ride to a friend's home. Respondent picked Gil up and dropped him off at another location. Respondent then went to his mother's apartment and saw police investigating a shooting and learned that the police were looking for Gil, who was the suspect. Respondent did not contact the police concerning his knowledge of Gil's location. The next day, on March 19, 2009,[1] respondent picked Gil up and rented a motel room for Gil in Mountain View under respondent's name. Respondent did not contact the police to disclose the Gil's whereabouts. The police interviewed respondent several days later and respondent admitted giving Gil a ride following the shooting, but he did not reveal that he had checked Gil into a motel under his name. Gil surrendered himself on April 26, 2009. On February 24, 2010, respondent was arrested for being an accessory to a felony as a result of concealing Gil after the shooting.

5. The Board has requested cost recovery in the amount of $5,400.00 for the investigation and enforcement of this matter. These costs are reasonable.

Respondent's Evidence

6. Respondent was born in Russia, but came to the Bay Area in 1996 at the age of twelve. His family moved into public housing in a gang-ridden neighborhood in Palo Alto. Respondent came to know Gil and his family because they lived in the same apartment complex. Gil is five years younger than respondent and was a troubled youth who later became associated with a gang. When respondent was a manager at Round Table Pizza, he hired Gil in an effort to help straighten him out.

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[1] The accusation alleges that respondent's misconduct occurred between March 18 and 20, 2010, however, the police report and criminal complaint state that the incidents occurred on March 18 and 19, 2009.

7. Respondent testified credibly concerning the facts underlying his conviction. When Gil called respondent on the day of the shooting he said that "something bad had happened" and he needed a ride. Respondent suspected that Gil had been in a fight with his girlfriend. Gil did not tell respondent what had occurred, but while respondent was with him, Gil was acting strangely. When respondent went to his mother's home at the apartment complex to get ready for work, he saw police there and learned that there had been a shooting and Gil was the suspect. Respondent left and went to his job at Macy's department store. Gil contacted respondent again that evening, stating he could not stay where he had originally planned. Respondent took him to another friend's home in East Palo Alto. Gil called again later, stating that he was in Mountain View, where respondent's father resides. Gil wanted to stay with respondent's father; respondent instructed him not to go to his father's apartment. Respondent did not want to be involved further. He was worried because Gil was desperate and possibly armed; if Gil went to his father's home, his father might call the police and violence could erupt. He also feared that Gil and his friends would seek revenge against him and his family if he declined to help Gil. Respondent agreed to take Gil to a nearby motel and check him into a room under respondent's name. Gil promised respondent that he would never hear from him again; respondent later changed his cell phone number and has not had any contact with Gil since that night.

8. The police contacted respondent a week or so after the shooting and interviewed him. He told the police that he had unknowingly driven Gil away from the scene following the shooting, but did not reveal that he checked Gil into a motel room later that night. Respondent understands that his concealment of Gil in the days after the shooting was wrong..

9. Respondent pled no contest to being an accessory to a felony on October 28, 2010 and will be on probation until October 28, 2013. Respondent successfully completed the six-month work release program at the Amicus House on May 8, 2011. His probation officer, Virginia Montelongo, confirmed in writing that as of May 27, 2011, respondent's case has been assigned to the administrative monitoring program and he is no longer required to make regular contact with his probation officer. Respondent began his community service on May 10, 2011, following his discharge from the work release program. As of June 29, 2011, respondent had completed 68.43 of his 200 hours of community service at the Goodwill. Respondent plans to complete his community service hours in October 2011. Respondent has paid approximately $2,000 of the $5,000 he owes the court. After completing his community service and paying the fines; he plans to seek early termination of probation, a reduction of the charge to a misdemeanor, and an expungement.

10. Respondent has been working since he was 14 years old. He graduated from high school and has attended Foothill and De Anza junior colleges. He needs 15 additional credits to obtain his Associate of Arts degree. Respondent attended school to become an emergency medical technician, but did not complete his classes. He has his first responder and CPR[2] certificates. Respondent's parents have separated and are currently unemployed.

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[2] Cardio pulmonary resuscitation.

He is living with his mother and helping with her expenses while she attends school to become a respiratory therapist.

11. Respondent worked at Round Table Pizza for two to three years and became the manager. He worked at Macy's department store as a salesperson for a total of five years. Since May 2009, respondent has been working with Planet Orange Termite Services (Planet Orange). Respondent feels he has turned his life around with his career at Planet Orange. He works long hours and tries to stay away from neighborhood "troublemakers." Respondent spends his free time with coworkers. Respondent is willing and able to pay the costs of investigation and enforcement of this matter as long as he can pay in monthly installments.

12. Samuel J. Becker, the Vice President of Operations at Planet Orange, submitted a letter on respondent's behalf dated March 13, 2010. He considers respondent to be hardworking, reliable, punctual, an ideal worker and a good person. Respondent is entrusted to work unsupervised in the field and is responsible for the care and maintenance of expensive equipment. Respondent has had many positive customer and workplace reviews and has made himself available to work overtime when asked.

13. Linda Robinson, the Director of Finance at Planet Orange also submitted a letter on behalf of respondent. Robinson has worked with respondent on a daily basis and considers him a pleasure to work with, professional, friendly, loyal, honorable and a "model employee."

14. Patrick Becker, the Vice President of Sales at Planet Orange also wrote a character reference for respondent. He interacts with respondent on a daily basis and considers him to be intelligent, motivated, and good-natured. Becker states, "[q]uite frankly, he is one of the best people I have ever worked with and I cannot say enough good things about his conduct and performance."

15. Jimmie Brown, the manager of applicators at Planet Orange testified at hearing. Brown considers respondent to be an outstanding employee who is very respectful of the homeowners. Brown is aware of respondent's conviction; he believes respondent's behavior in that instance was out of character. Brown hopes to keep respondent as his employee.

16. Respondent submitted a letter from Dean Bays, the Vice President of Sales for HomeAmerica Real Estate and Source America Mortgage. Bays has found respondent to be a caring, selfless and loyal friend. Karen Purvis, the mother of a good friend of respondent's, also submitted a letter. Purvis is a member of the Chief of Police Community Advisory Group in Palo Alto. She considers respondent to be a respectful and trustworthy individual.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 authorizes a board to suspend or revoke a license where the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued. Business and Professions Code section 8649, which is specific to structural pest control licensees, also authorizes the Board to impose discipline as a result of the conviction of a crime that is substantially related to the qualifications, functions or duties of a licensed activity. Respondent's decision to assist Gil in evading the police demonstrated very poor judgment and is substantially related to the qualifications, functions and duties of a licensee. By reason of the matters set forth in Findings 3 and 4, cause for disciplinary action exists.

2. To establish consistency in disciplinary penalties, the Board established uniform disciplinary guidelines at California Code of Regulations, title 16, section 1937.11. Factors to be considered in determining the penalty to be imposed include the actual or potential harm to the public or any consumer, the existence of a prior disciplinary record, the number and variety of current violations, mitigation evidence, compliance with the terms of probation, the overall criminal record, whether the conduct was knowing, willful, reckless or inadvertent, the financial benefit to the respondent, evidence of a pattern of practice of unlawful behavior and whether the respondent is currently on probation.

3. Respondent's conduct created the potential, but no actual, harm to the public. There has been no harm to consumers; instead, respondent has demonstrated that he is a valued employee who receives praise from customers. His behavior did not benefit him financially and there is no previous discipline. There is one conviction, with no pattern of criminal behavior. Although respondent remains on probation, he in complying with the terms of probation and has been transferred to unsupervised probation.

4. In evaluating rehabilitation, the Guidelines suggest consideration of the following: a) the nature and severity of the offense; b) the total criminal record; c) whether the licensee has complied with probation; d) evidence of expungement; and e) evidence of rehabilitation. Respondent made a strong showing of mitigation and rehabilitation. Respondent acted out of fear of the repercussions for himself or his family, while acknowledging that it was the wrong decision. He has stayed away from neighborhood "troublemakers" and now spends time with work colleagues. Respondent is helping his parents who are struggling financially. He has a stable work history and the full support of his employer. Under these circumstances, especially in light of the his excellent job performance reviews, the public interest would be adequately protected by permitting respondent to retain his field representative and applicator licenses under the heightened supervision of a probationary license.

5. Complainant has requested that respondent be ordered to pay the Board the costs of investigating and enforcing this case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual costs of

investigation and enforcement have been found to be $5,400.00. (Factual Finding 5.) The case of *Zuckerman* v. *Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct: Respondent is able to pay these costs if a monthly installment plan is allowed. The actual costs of $5,400.00 are determined to be reasonable.

ORDER

Field Representative License No. FR 45779 and Applicator License No. RA 50173 issued to Vlad Naynodin are hereby revoked. However, the revocation is stayed and respondent is placed on probation for three years on the following terms and conditions.

1. Obey All Laws: Respondent shall obey all laws, and all rules relating to the practice of structural pest control.

2. Quarterly Reports: Respondent shall file quarterly reports with the Board during the period of probation.

3. Tolling of Probation: Should respondent leave California to reside outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

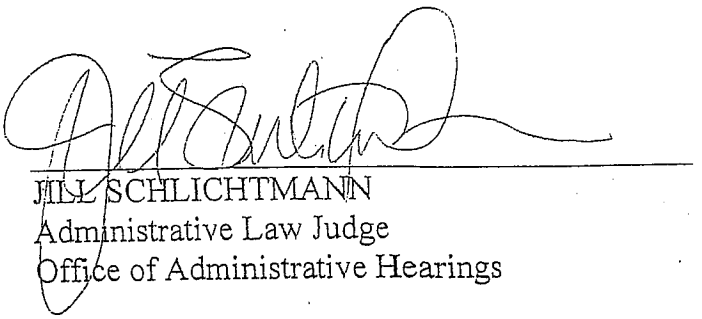
4. Notice to Employers: Respondent shall notify all present and prospective employers of the decision in Case No. 2011-27 and the terms, conditions and restrictions imposed on respondent by said decision. Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in Case No. 2011-27.

5. Completion of Probation: Upon successful completion of probation, respondent's licenses will be fully restored.

6. Violation of Probation: Should respondent violate probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. Reimbursement of Costs: Respondent shall reimburse the Board in the amount of $5,400.00 for costs incurred while investigating and prosecuting the case. The Board shall work out an installment plan with respondent. If respondent has not paid the costs in full by the end of probation, the period of probation shall be extended until full payment is made.

DATED: 9.8.11



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FILED

Date 4/18/11 By William H. Douglas

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

In the Matter of the Accusation Against: **VLAD NAYNODIN** 574 Arastradero Road, Suite 44 Palo Alto, CA 94306 **Field Representative License No. FR 45779, Branch 3** **Applicator License No. RA 50173, Branch 2** Respondent.	Case No. 2011-27 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. William H. Douglas (Complainant) brings this Accusation solely in her official capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation.

2. On or about July 22, 2010, the Structural Pest Control Board issued Field Representative License Number FR 45779, Branch 3 to Vlad Naynodin (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, 2013, unless renewed.

3. On or about August 3, 2009, the Structural Pest Control Board issued Applicator License Number RA 50173, Branch 2 to Vlad Naynodin (Respondent). The Applicator License

was in full force and effect at all times relevant to the charges brought herein and will expire on August 3, 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 unless otherwise indicated.

STATUTORY PROVISIONS

5. 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.

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."

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

8. 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."

9. 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.

CAUSE FOR DISCIPLINE

(Conviction)

10. Respondent is subject to disciplinary action under sections 490 and 8649 of the code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and/or duties of a structural pest field representative and applicator. On or about October 28, 2010 in Santa Clara Superior Court Case No. B1045785, Respondent was convicted of violating Penal Code section 32, accessory to a felony. Between March 18 and 19, 2010, Respondent harbored, concealed, and aided Daniel Gil, a principal in a felony of attempted murder (Penal Code sections 664-187), after the felony had been committed and with the knowledge that Danial Gil had committed the felony with the intent that Daniel Gil might avoid and escape arrest, trial, conviction, and punishment.

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 45779, Branch 3, issued to Vlad Naynodin.

2. Revoking or suspending Applicator License Number RA 50173, Branch 2, issued to Vlad Naynodin

3. Ordering Vlad Naynodin 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: 4/18/11

William H. Douglas

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