FILED

Date 8/20/12 By Susan Saylor

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

In the Matter of the Accusation Against: **CHARLES L. SHELBY III** 11642 Knott Street, Suite 9 Garden Grove, CA 92841 9636 Swallow Lane Garden Grove, CA 92841 Applicator's License No. RA 49485, Branch 2 and 3 Field Representative License No. FR 46160, Branch 3 Respondent.	Case No. 2013-9 **ACCUSATION**

Complainant alleges:

PARTIES

1. Susan Saylor ("Complainant") brings this Accusation solely in his official capacity as the Assistant Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation.

2. On or about November 21, 2008, the Structural Pest Control Board issued Applicator's License Number RA 49485, Branch 2 and 3 to Charles L. Shelby III ("Respondent"). The Applicator's License expired on November 21, 2011, and has not been renewed.

3. On or about November 15, 2010, the Structural Pest Control Board issued Field Representative License Number FR 46160, Branch 3 to 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.

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

6. 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.

STATUTORY PROVISIONS

7. Section 482 of the Code states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
>
> (a) Considering the denial of a license by the board under Section 480; or
>
> (b) Considering suspension or revocation of a license under Section 490.
>
> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially

related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. 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.
>
> As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

10. Section 8624 of the Code states:

> If the board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.
>
> If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration.
>
> The performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who, at the time the act or omission occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm, association, or registered company whether or not he or she had knowledge of, or participated in, the prohibited act or omission.

11. 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.

REGULATORY PROVISIONS

12. California Code of Regulations title 16, section 1937.1 provides

> 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.

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the 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

(October 5, 2011 Conviction of Attempted Grand Theft on March 6, 2011)

14. Respondent is subject to disciplinary action under sections 490 and 8640 of the Code in conjunction with California Code of Regulations title 16, section 1937.1 in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of an applicator and field representative. The circumstances are as follows:

a. On or about October 5, 2011, in the criminal proceeding entitled *The People of the State of California v. Charles Shelby,* Superior Court of California, County of Los Angeles, Case No. VA118899), Respondent pled nolo contendere to and was convicted of violating Penal Code section 664-487(a), attempted grand theft, a felony.

b. As a result of the conviction, the court denied probation, enhanced the sentence pursuant to Penal Code section 667.5(b) (prison prior) and ordered Respondent to serve 30

months in county jail. In addition, Respondent was ordered to pay all fines, fees and assessments, pay restitution to the victim, and ordered to provide samples for law enforcement identification.

c. The facts that lead to the conviction are that on or about March 6, 2011, Los Angeles Sheriff's Department officers responded to a burglary in Lakewood, California. A resident of the home heard someone enter her backyard via a side fence and observed two males standing in the backyard of the home. The resident observed one of the men open the unlocked kitchen door, and both suspects entered the home. Both men remained in the home for a short period of time. The resident observed one suspect run westbound through the backyard. Respondent was detained by officers one block west of the victim's home and was identified by the resident as one of the men who entered the home.

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 Applicator's License Number RA 49485, Branch 2 and 3, issued to Charles L. Shelby III;

2. Revoking or suspending Field Representative License Number FR 46160, Branch 3, issued to Charles L. Shelby III;

3. Ordering Charles L. Shelby III 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: 8/20/12

SUSAN SAYLOR
Assistant Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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