

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

In the Matter of the Statement of Issues Against:

Case No. 2016-18

JAMES BERND MARTY AGPALASIN,

Respondent.

DECISION AND ORDER

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

This Decision shall become effective on May 4, 2016.

IT IS SO ORDERED April 4, 2016.



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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

10 In the Matter of the Statement of Issues Against:
11 **JAMES BERND MARTY AGPALASIN**
12 Respondent.
13

Case No. 2016-18

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

17 PARTIES

18 1. Susan Saylor ("Complainant") is the Registrar/Executive Officer of the Structural
19 Pest Control Board (Board), Department of Consumer Affairs. She brought this action solely in
20 her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of
21 the State of California, by Rosailda Perez, Deputy Attorney General.

22 2. Respondent James Bernd Marty Agpalasin ("Respondent") is representing himself in
23 this proceeding and has chosen not to exercise his right to be represented by counsel.

24 3. On or about April 30, 2015, the Board received an application for an Applicator's
25 License from Respondent. On or about April 28, 2015, Respondent certified under penalty of
26 perjury to the truthfulness of all statements, answers, and representations in the application. The
27 Board denied the application on May 13, 2015.

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1. JURISDICTION

2 4. Statement of Issues No. 2016-18 was filed before the Board and is currently pending
3 against Respondent. The Statement of Issues and all other statutorily required documents were
4 properly served on Respondent on September 25, 2015.

5 5. A copy of Statement of Issues No. 2016-18 is attached as exhibit A and incorporated
6 herein by reference.

7 ADVISEMENT AND WAIVERS

8 6. Respondent has carefully read and understands the charges and allegations in
9 Statement of Issues No. 2016-18. Respondent has also carefully read and understands the effects
10 of this Stipulated Settlement and Disciplinary Order.

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

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

20 CULPABILITY

21 9. Respondent admits the truth of each and every charge and allegation in Statement of
22 Issues No. 2016-18.

23 10. Respondent agrees that his Applicator's License is subject to denial and he agrees to
24 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

25 CONTINGENCY

26 11. This stipulation shall be subject to approval by the Structural Pest Control Board.
27 Respondent understands and agrees that counsel for Complainant and the staff of the Structural
28 Pest Control Board may communicate directly with the Board regarding this stipulation and

1 settlement, without notice to or participation by Respondent. By signing the stipulation,
2 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
3 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
4 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
5 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
6 the parties, and the Board shall not be disqualified from further action by having considered this
7 matter.

8 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
9 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
10 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

17 14. In consideration of the foregoing admissions and stipulations, the parties agree that
18 the Board may, without further notice or formal proceeding, issue and enter the following
19 Disciplinary Order:

20 DISCIPLINARY ORDER

21 IT IS HEREBY ORDERED that an Applicator's License will be issued to Respondent
22 James Bernd Marty Agpalasin and immediately revoked. The revocation will be stayed and the
23 Respondent placed on three (3) years probation on the following terms and conditions.

24 1. **Obey All Laws.** Respondent shall obey all Federal, State, and Local laws and all
25 laws and rules relating to the practice of structural pest control.

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

28 3. **Tolling of Probation.** Should Respondent leave California to reside outside this

1 state, Respondent must notify the Board in writing of the dates of departure and return. Periods
2 of residency or practice outside the state shall not apply to reduction of the probationary period.

3 4. **Notice to Employers.** Respondent shall notify all present and prospective employers
4 of the decision in Case No. 2016-18 and the terms, conditions and restriction imposed on
5 Respondent by said decision.

6 Within 30 days of the effective date of this decision, and within 15 days of Respondent
7 undertaking new employment, Respondent shall cause his/her employer to report to the Board in
8 writing acknowledging the employer has read the decision in Case No. 2016-18.

9 5. **Notice to Employees.** Respondent shall, upon or before the effective date of this
10 decision, post or circulate a notice to all employees involved in structural pest control operations
11 which accurately recite the terms and conditions of probation. Respondent shall be responsible
12 for said notice being immediately available to said employees. "Employees" as used in this
13 provision includes all full-time, part-time, temporary and relief employees and independent
14 contractors employed or hired at any time during probation.

15 6. **Completion of Probation.** Upon successful completion of probation, Respondent's
16 license/certificate will be fully restored.

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

22 8. **Prohibited from Serving as Officer, Director, Associate, Partner or Qualifying**
23 **Manager.** Respondent is prohibited from serving as an officer, director, associate, partner,
24 qualifying manager or branch office manager of any registered company during the period that
25 discipline is imposed on his Applicator's License.

26 9. **No Interest In Any Registered Company.** Respondent shall not have any legal or
27 beneficial interest in any company currently or hereinafter registered by the Board.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Applicator'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: 10/10/15



JAMES BERND MARTY AGPALASIN
Respondent

ENDORSEMENT

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

Dated: 2/2/14

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General


ROSALDA PEREZ
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 2016-18

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Attorneys for Complainant

FILED

Date 9/15/15 By

Susan Saylor

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

Case No. 2016-18

14 **JAMES BERND MARTY AGPALASIN**

STATEMENT OF ISSUES

Respondent.

15 Complainant alleges:

16 **PARTIES**

17 1. Susan Saylor (Complainant) brings this Statement of Issues solely in her official
18 capacity as the Registrar/Executive Officer of the Structural Pest Control Board (Board),
19 Department of Consumer Affairs.

20 2. On or about April 30, 2015, the Board received an application for an Applicator's
21 License from James Bernd Marty Agpalasin (Respondent). On or about April 28, 2015,
22 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
23 representations in the application. The Board denied the application on May 13, 2015.

24 **JURISDICTION**

25 3. This Statement of Issues is brought before the Board under the authority of the
26 following laws. All section references are to the Business and Professions Code (Code) unless
27 otherwise indicated.

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1 (d) A board may deny a license regulated by this code on the ground that the applicant
2 knowingly made a false statement of fact that is required to be revealed in the application for the
3 license.

4 5. Code section **8568** states:

5 After a hearing the board may deny a license or a company registration unless the applicant
6 makes a showing satisfactory to the board that the applicant, if an individual, has not, or if the
7 applicant is a company applying for a company registration, that its manager and each of its
8 officers, directors, employees, members and partners have not:

9 (a) Committed any act or crime constituting grounds for denial of licensure under Section
10 480.

11 ...

12 6. Section **8623** of the Code states, in pertinent part:

13 (a) Notwithstanding Section 8620 or any other provision of law, the board may revoke,
14 suspend, or deny at any time a license under this chapter on any of the grounds for disciplinary
15 action provided in this chapter. The proceedings under this section shall be conducted in
16 accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
17 the Government Code, and the board shall have all the powers granted therein.

18 (b) The board may deny a license to an applicant on any of the grounds specified in Section
19 480.

20 ...

21 7. Code section **8649** states:

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

25 8. Code section **8654** states:

26 Any individual who has been denied a license for any of the reasons specified in Section
27 8568, or who has had his or her license revoked, or whose license is under suspension, or who has
28 failed to renew his or her license while it was under suspension, or who has been a member,

1 officer, director, associate, qualifying manager, or responsible managing employee of any
2 partnership, corporation, firm, or association whose application for a company registration has
3 been denied for any of the reasons specified in Section 8568, or whose company registration has
4 been revoked as a result of disciplinary action, or whose company registration is under suspension,
5 and while acting as such member, officer, director, associate, qualifying manager, or responsible
6 managing employee had knowledge of or participated in any of the prohibited acts for which the
7 license or registration was denied, suspended or revoked, shall be prohibited from serving as an
8 officer, director, associate, partner, qualifying manager, or responsible managing employee of a
9 registered company, and the employment, election or association of such person by a registered
10 company is a ground for disciplinary action.

11 9. Code section **8655** states:

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

22 10. California Code of Regulations, title 16, section **1937.1**, states:

23 For the purposes of denial, suspension or revocation of a license or company registration
24 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
25 considered to be substantially related to the qualifications, functions or duties of a licensee or
26 registered company under Chapter 14 of Division 3 of the code if to a substantial degree it
27 evidences present or potential unfitness of such licensee or registered company to perform the
28 functions authorized by the license or company registration in a manner consistent with the public

1 health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

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

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

5 (1) Fiscal dishonesty

6 (2) Fraud

7 (3) Theft

8 (4) Violations relating to the misuse of pesticides.

9 11. California Code of Regulations, title 16, section 1937.2, states, in pertinent part:

10 (a) When considering the denial of a structural pest control license or company registration
11 under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
12 of the applicant and his or her or its present eligibility for a license or company registration will
13 consider the following criteria:

14 (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for
15 denial.

16 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
17 consideration as grounds for denial which also could be considered as grounds for denial under
18 Section 480 of the Business and Professions Code.

19 (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in
20 subdivision (1) or (2).

21 (4) The extent to which the applicant has complied with any terms of parole, probation,
22 restitution, or any other sanctions lawfully imposed against the applicant.

23 (5) Evidence, if any, of rehabilitation submitted by the applicant.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 (Criminal Convictions)

3 12. Respondent's application is subject to denial under Code section(s) 480(a)(1) and/or
4 480(a)(3)(A), and/or 8568(a), and/or 8623(a), and/or 8623(b), and/or 8649, and/or 8655, in that
5 Respondent has been convicted of a crime or crimes substantially related to the qualifications,
6 functions, and duties of an applicator. The circumstances are as follows:

7 a. On or about March 14, 2006, in Napa Superior Court case number CR127177,
8 Respondent was convicted of having violated California Penal Code section 460(b) (burglary).
9 The conviction was based on an incident which occurred on or about December 27, 2005, during
10 which Respondent entered a Safeway store with the intent to commit theft, and did commit theft.

11 b. On or about May 22, 2012, in Alameda Superior Court case number 139790-9,
12 Respondent was convicted of having violated California Penal Code section 487 (grand theft).
13 The conviction was based on a course of conduct which occurred in or about December 2011
14 through January 2012, during which Respondent embezzled over \$950.00 from his employer,
15 Petsmart.

16 **SECOND CAUSE FOR DENIAL OF APPLICATION**

17 (False Statement in Application)

18 13. Respondent's application is subject to denial under Code section(s) 480(a)(3)(A),
19 and/or 480(d), and/or 8568(a), and/or 8623(a), and/or 8623(b), in that Respondent knowingly
20 made a false statement of fact in his application. The circumstances are as follows:

21 14. In his application, Respondent answered "yes" to question 14, which queried whether
22 Respondent had ever been convicted of a crime. Respondent submitted a detailed statement as
23 required. However, Respondent omitted any mention, in that statement, regarding his 2006
24 burglary conviction.

25 **OTHER MATTERS**

26 15. Pursuant to Code section 8654, if discipline is imposed on Applicator's License, then
27 Respondent shall be prohibited from serving as an officer, director, associate, partner, qualifying
28 manager, or responsible managing employee for any registered company during the time the

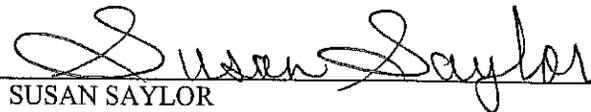
1 discipline is imposed, and any registered company which employs, elects, or associates him, shall
2 be subject to disciplinary action.

3 PRAYER

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

- 6 1. Denying the application of James Bernd Marty Agpalasin for an Applicator's License;
- 7 2. Prohibiting James Bernd Marty Agpalasin from serving as an officer, director,
8 associate, partner, qualifying manager, or responsible managing employee of any registered
9 company;
- 10 3. Taking such other and further action as deemed necessary and proper.

11
12
13 DATED: 9/15/15



SUSAN SAYLOR
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant