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FILED

Date 10/13/11 By William H. Douglas

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

In the Matter of the Accusation Against: **WAGNER TERMITE CONTROL, INC.; STEVEN TY WAGNER, QUALIFYING MANAGER** **4867 Gage Avenue** **Bell, California 90201** **Company Registration Certificate No. PR 737** **Operator's License No. OPR 10014** Respondents.	Case No. 2012-19 **ACCUSATION**

Complainant alleges:

PARTIES

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

Wagner Termite Control, Inc.

2. On or about September 25, 1987, the Board issued Company Registration Certificate Number PR 737 in Branch 3 to Wagner Termite Control, Inc. ("Respondents") with Wilmot Eugene Wagner as President and Qualifying Manager, Gregory Howard Wagner as Vice President and Elaine Wright Wagner as Secretary. On or about December 31, 1993, Company Registration Certificate Number PR 737 reflected a change of corporate officers to Gregory

Howard Wagner as President and Elaine Wright Wagner as Secretary and reflected a change of Qualifying Manager to Gregory Howard Wagner. On or about February 21, 2001, Company Registration Certificate Number PR 737 reflected a change of Qualifying Manager to Steven Ty Wagner ("Respondents or Respondent Wagner").

Steven Ty Wagner

3. On or about April 12, 1999, the Board issued Operator's License Number OPR 10014 in Branch 2 to Respondent Wagner, owner and qualifying manager of Wagner Termite Control, Inc. Respondent Wagner's operator's license is currently in effect and renewed through June 30, 2013.

JURISDICTION

4. Business and Professions Code ("Code") section 8620 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 8624 states, in pertinent part:

> . . . .
>
> 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.

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7. Code section 8654 states:

Any individual who has been denied a license for any of the reasons specified in Section 8568, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any partnership, corporation, firm, or association whose application for a company registration has been denied for any of the reasons specified in Section 8568, or whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or revoked, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of a registered company, and the employment, election or association of such person by a registered company is a ground for disciplinary action.

STATUTORY AND REGULATORY PROVISIONS

(Statutory Provisions)

8. Code section 125.9 states, in pertinent part:

(a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

. . . .

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

. . . .

(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

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9. Code section 8652 states:

> Failure of a registered company to make and keep all inspection reports, field notes, contracts, documents, notices of work completed, and records, other than financial records, for a period of not less than three years Failure to complete of a registered company to make and keep all inspection reports, field notes, contracts, documents, notices of work completed, and records, other than financial records, for a period of not less than three years after completion of any work or operation for the control of structural pests or organisms, is a ground for disciplinary action. These records shall be made available to the executive officer of the board or his or her duly authorized representative during business hours.

10. Code section 8641 states:

> Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action.

Regulatory Provisions

11. California Code of Regulations, title 16, section ("Regulation") 1920 states, in pertinent part:

> (d) Compliance with Orders of Abatement: When a citation is not contested or if the citation is appealed and the person cited does not prevail, failure to comply with the order of abatement or to pay the fine in the citation within the time allowed by a licensee may result in disciplinary action being taken by the Board against the person cited, or where the cited person is unlicensed in appropriate judicial relief being taken against the person cited.

COST RECOVERY

12. 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.

FACTUAL SUMMARY

13. On or about April 28, 2009, Respondent Wagner was issued Citation CF 09-64 for violating Business and Professions Code section 8652 (the failure to make records available to a duly authorized representative of the Board during business hours). The Citation included a fine of $500 which was to be paid within 30 days after receipt of the Citation Order. The Citation also

included an order of abatement directing Respondent Wagner to contact a representative of the Board within 30 days of receipt of the Order on the Citation to schedule an appointment to make the records of the registered company available to the Executive Officer or her duly appointed representative of the Board.

14. On or about May 22, 2009, the post office returned the Citation to the Board as a return to sender-unclaimed-unable to forward. On or about May 11, 2010, a follow-up letter was sent to Respondent Wagner indicating to Respondent Wagner that the Board had not received payment of the $500 fine and that Respondent Wagner had failed to cooperate with the Order of Abatement. On or about June 5, 2010, the post office returned the follow-up letter to the Board as return to sender-unclaimed-unable to forward. On or about August 17, 2010, the Board staff called Respondent Wagner and Respondent Wagner was informed that his license would not be renewed and will be canceled on September 30, 2010 if he did not pay the outstanding fine of $500 and comply with the order of abatement. On or about August 17, 2010, the Board emailed copies of both Citation No. CF 09-64 and the CF 09-64 follow up letter to Respondent.

15. On or about September 28, 2010, Respondent Wagner paid Citation No. CF 09-64 in full. However, this occurred after the time allowed for by Citation No. CF 09-64. Moreover, to date, Respondents have failed to comply with the order of abatement to allow the Board or its designated representative to inspect the company's records.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Citation and Order of Abatement)

16. Respondents Wagner Termite Control, Inc. and Wagner are subject to disciplinary action pursuant to Code sections 125.9, subsection (5), 8652, and 8641 and California Code of Regulations, regulation 1920 subsection (d) in that Respondents have failed to comply with payment of $500 within the time allotted by the Order in Citation No. CF 09-64 and have failed to comply with the order of abatement contained within the Citation as further set forth in paragraphs 13 through 15 which are incorporated herein by reference.

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MATTERS IN AGGRAVATION

17. By way of aggravation, the Board alleges the following against Respondent's Company Registration Certificate No. PR 737:

a. On or about June 3, 2004, Respondent's Company Registration Certificate No. PR 737 paid a $100 fine levied by the Los Angeles County Agricultural Commissioner for violation of section 8505.17 of the Business and Professions Code;

b. On or about January 30, 2007, Respondent's Company Registration Certificate No. PR 737 paid a $50 fine levied by the Los Angeles County Agricultural Commissioner for violation of section 8505.17 of the Business and Professions Code;

c. On or about September 28, 2010, Respondent's Company Registration Certificate No. PR 737 paid a $500 fine levied by the Board for violation of section 8690 of the Business and Professions Code;

18. By way of aggravation, the Board alleges the following against Respondent's Operator License No. OPR 10014:

a. On or about September 28, 2010, Respondent's Operator License No. OPR 10014 paid a $500 fine levied by the Board for violation of section 8652 of the Business and Professions Code.

OTHER MATTERS

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

20. Pursuant to Code section 8624, the causes for discipline established as to Respondent Wagner Termite Control, Inc. likewise constitute causes for discipline against Respondent Steven

Ty Wagner regardless of whether he had knowledge of or participated in the acts or omissions which constitute causes for discipline against Respondent Wagner Termite Control, Inc..

21. Pursuant to Code section 8624, if Operator's License Number OPR 10014, issued to Respondent Steven Ty Wagner, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 737, issued to Respondent Wagner Termite Control, Inc.

22. Respondent Steven Ty Wagner, the owner and qualifying manager for Respondent Wagner Termite Control, Inc., had knowledge of and participated in, the acts or omissions which constitute causes for discipline against Respondent Wagner Termite Control, Inc.

23. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 737, issued to Respondent Wagner Termite Control, Inc., Respondent Steven Ty Wagner shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Steven Ty Wagner shall be subject to disciplinary action.

24. Code section 8622 provides, in pertinent part, that Respondents shall submit an inspection fee of not more than $125. If a reinspection is necessary, a commensurate reinspection fee shall be charged.

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 Company Registration Certificate Number PR 737, issued to Wagner Termite Control, Inc.;

2. Revoking or suspending Operator's License Number OPR 10014, issued to Steven Ty Wagner;

3. Prohibiting Steven Ty Wagner from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the

period that discipline is imposed on Company Registration Certificate Number PR 737, issued to Wagner Termite Control, Inc.;

4. Ordering Wagner Termite Control, Inc. and Steven Ty Wagner 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;

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

DATED: 10/13/11

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

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