

FILED

Date _____ By _____

10/3/12
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9 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
10 **DEPARTMENT OF PESTICIDE REGULATION**
11 **STATE OF CALIFORNIA.**

12 In the Matter of the Accusation Against:
13 **BENJAMIN H. SCHULTZ**
615 South State College Boulevard
14 Fullerton, California 92831
15 **Operator License No. 10243**
Field Representative License No. 30822
16 **Applicator License No. 7603**
17 Respondent.

Case No. 2013-17
A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

- 20 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity
21 as the Assistant Executive Officer of the Structural Pest Control Board, Department of Pesticide
22 Regulation.
- 23 2. On or about August 8, 1997, the Structural Pest Control Board issued Applicator
24 License Number 7603 to Benjamin H. Schultz (Respondent). The Applicator License expired on
25 August 8, 2000, and has not been renewed.
- 26 3. On or about April 23, 1999, the Structural Pest Control Board issued Field
27 Representative License Number 30822 to Benjamin H. Schultz (Respondent). The Field
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1 Representative License was cancelled on June 29, 2000, due to issuance of an Operator's
2 License.

3 4. On or about June 12, 2000, the Structural Pest Control Board issued Operator
4 License Number 10243 to Benjamin H. Schultz (Respondent). The Operator License was in full
5 force and effect at all times relevant to the charges brought herein and will expire on June 30,
6 2014, unless renewed.

7 JURISDICTION

8 5. This Accusation is brought before the Structural Pest Control Board (Board),
9 Department of Pesticide Regulation, under the authority of the following laws. All section
10 references are to the Business and Professions Code unless otherwise indicated.

11 6. Section 8620 of the Code provides, in pertinent part, that the Board may suspend
12 or revoke a license when it finds that the holder, while a licensee or applicant, has committed any
13 acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess
14 a civil penalty.

15 7. Section 8625 of the Code states:

16 The lapsing or suspension of a license or company registration by
17 operation of law or by order or decision of the board or a court of law, or the
18 voluntary surrender of a license or company registration shall not deprive the
19 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.

20 8. Section 8654 of the Code states:

21 Any individual who has been denied a license for any of the reasons
22 specified in Section 8568, or who has had his or her license revoked, or whose
23 license is under suspension, or who has failed to renew his or her license while it
24 was under suspension, or who has been a member, officer, director, associate,
25 qualifying manager, or responsible managing employee of any partnership,
26 corporation, firm, or association whose application for a company registration has
27 been denied for any of the reasons specified in Section 8568, or whose company
28 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

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1 association of such person by a registered company is a ground for disciplinary
2 action.

3 STATUTORY PROVISIONS

4 9. Section 8593 of the Code states:

5 The board shall require as a condition to the renewal of each operator's
6 and field representative's license that the holder submit proof satisfactory to the
7 board that he or she has informed himself or herself of developments in the field
8 of pest control either by completion of courses of continuing education in pest
9 control approved by the board or equivalent activity approved by the board. In
lieu of submitting that proof, the licenseholder, if he or she so desires, may take
and successfully complete an examination given by the board, designed to test his
or her knowledge of developments in the field of pest control since the issuance of
his or her license.

10 The board shall develop a correspondence course or courses with any
11 educational institution or institutions as it deems appropriate. This course may be
used to fulfill the requirements of this section. The institution may charge a
reasonable fee for each course.

12 The board may charge a fee for the taking of an examination in each
13 branch of pest control pursuant to this section in an amount sufficient to cover the
cost of administering each examination, provided, however, that in no event shall
14 the fee exceed fifty dollars (\$50) for each examination.

15 10. Section 8593.1 of the Code states:

16 The board shall require as a condition to the renewal of each applicator's
17 license that the holder thereof submit proof satisfactory to the board that he or she
18 has completed courses of continuing education in pesticide application and use
19 approved by the board or equivalent activity approved by the board. In lieu of
submitting that proof, the licenseholder, if he or she so desires, may successfully
apply for and pass an appropriate written applicator's examination for renewal of
a license given by the board.

20 11. Section 8637 of the Code states in pertinent part that "[m]isrepresentation of a
21 material fact by the applicant in obtaining a license or company registration is a ground for
22 disciplinary action."

23 12. Section 8641 of the Code states in pertinent part that "[f]ailure to comply with the
24 provisions of this chapter, or any rule or regulation adopted by the board, . . . is a ground for
25 disciplinary action."

26 REGULATORY PROVISION

27 13. Title 16, California Code of Regulations ("Regulation"), section 1950,
28 subdivision (a), states:

1 Except as provided in section 1951, every licensee is required, as a
2 condition to a renewal of a license, to certify that he or she has completed the
3 continuing education requirements set forth in this article. A licensee who cannot
4 verify completion of continuing education by producing certificates of activity
5 completion, whenever required to do so by the Board, may be subject to
6 disciplinary action under section 8641 of the code.

7 COST RECOVERY

8 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request
9 the administrative law judge to direct a licentiate found to have committed a violation or
10 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
11 and enforcement of the case.

12 FACTS

13 15. On or before October 7, 2011, Respondent submitted a renewal application for his
14 Operator License to the Board in which he certified to the Board that he had taken all required
15 continuing education coursework. Specifically, Respondent signed a License Renewal
16 Application, which provided in pertinent part:

17 Continuing Education Certification – I have completed 16 [blank filled in with the
18 number 16] hours of continuing education required for renewal of my license. I DECLARE
19 UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA
20 THAT THE FOREGOING IS TRUE AND CORRECT.

21 Respondent signed his name below the above certification, and dated his signature
22 “9/30/11.”

23 16. Thereafter, on October 20, 2011, Respondent was notified that he had been
24 selected for a continuing education (CE) audit by the Board. Respondent was informed in
25 writing that he was to submit to the Board copies of his certificates of course completion for the
26 renewal period of July 1, 2008 through June 30, 2011. On November 18, 2011, the Board
27 received Respondent’s response to its request, with CE certificates attached all dated prior to
28 July 1, 2008. On December 9, 2011, Respondent was sent a second letter from the Board
requesting his lacking certificates of completion of CE courses for the renewal period of July 1,
2008 to June 30, 2011. Respondent was given two weeks to respond to the Board’s request or

1 risk disciplinary action being taken against his license. Respondent failed to submit any
2 certificates of completion of courses taken during the renewal period of July 1, 2008, through
3 June 30, 2011. On January 26, 2012, the Board sent a third letter requesting his lacking
4 certificates of completion of CE courses for the renewal period of July 1, 2008 to June 30, 2011.
5 Respondent was given two weeks to respond to the Board's request or risk disciplinary action
6 being taken against his license. The Board sent a fourth and final letter to Respondent requesting
7 his continuing education certificates for the time period of July 1, 2008 through June 30, 2011.
8 He was given until March 15, 2012 to respond. Respondent failed to provide the Board with any
9 certificates of completion of CE requirements for the renewal period of July 1, 2008 through
10 June 30, 2011.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Failure To Provide Proof Of Continuing Education)**

13 17. Respondent's Operator License is subject to disciplinary action under Code
14 section 8641, for failure to comply with Code section 8593 and Regulation section 1950,
15 subdivision (a), in that Respondent failed to provide the Board with verifiable documentation to
16 demonstrate that he completed the continuing education requirements as a condition of renewal
17 of his Operator's License, as set forth above in paragraphs 15 and 16.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Misrepresentation of Fact Regarding Continuing Education)**

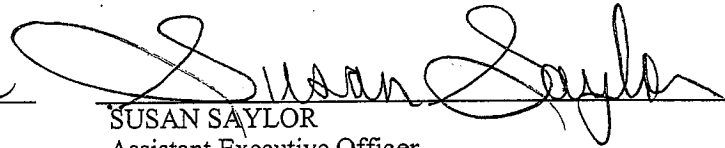
20 18. Respondent's Operator License, Field Representative License, and Applicator
21 License are subject to disciplinary action under Code section 8637, in that Respondent
22 misrepresented that he had completed 16 hours of continuing education coursework in his license
23 renewal application, when in fact he had failed to fulfill the Board's continuing education
24 requirements as a condition of renewal of his Operator's License as set forth above in paragraphs
25 15 and 16.

26 **PRAYER**

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

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1. Revoking or suspending Operator License Number 10243, issued to Benjamin H. Schultz;
2. Revoking or suspending Field Representative License Number 30822, issued to Benjamin H. Schultz;
3. Revoking or suspending Applicator License Number 7603, issued to Benjamin H. Schultz;
4. Ordering Benjamin H. Schultz 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: 10/3/12 
SUSAN SAYLOR
Assistant Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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