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**FILED**

**Date** 9/8/11

**By** *William H. Douglas*

8 **BEFORE THE**  
9 **STRUCTURAL PEST CONTROL BOARD**  
10 **DEPARTMENT OF PESTICIDE REGULATION**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2012-15

12 **ENRIQUE ABAYA JOSON**  
13 **8355 Lullaby Lane**  
14 **Panorama City, California 91402**  
15 **Operator's License No. OPR 10561**

**ACCUSATION**

16 Respondents.

17 Complainant alleges:

18 **PARTIES/LICENSE INFORMATION**

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

22 **Enrique Abaya Joson**

23 2. On or about April 29, 2002, the Board issued Operator's License Number OPR 10561  
24 in Branch 3 (termite) to Enrique Abaya Joson ("Respondent"), employee of Cornerstone, Inc. dba  
25 Acme Termite ("Cornerstone"). On or about March 15, 2002, Respondent left the employ of  
26 Cornerstone. On or about September 17, 2002, Respondent became the owner and qualifying  
27 manager of Brown Termite Company. Respondent's operator's license was in full force and effect

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1 at all times relevant to the charges brought herein and will expire on June 30, 2013, unless  
2 renewed.

3 **STATUTORY AND REGULATORY PROVISIONS**

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

8 4. Code section 8624 states, in pertinent part:

9 . . . .

10 If the operator is the qualifying manager, a partner, responsible officer, or  
11 owner of a registered structural pest control company, the suspension or revocation  
may be applied to the company registration . . .

12 5. Code section 8654 states:

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

21 6. Code section 8641 states:

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

25 7. Code section 8642 states that “[t]he commission of any grossly negligent or  
26 fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a  
27 registered company is a ground for disciplinary action.”

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1 8. Code section 8593 states:

2 The board shall require as a condition to the renewal of each operator's  
3 and field representative's license that the holder submit proof satisfactory to the board  
4 that he or she has informed himself or herself of developments in the field of pest  
5 control either by completion of courses of continuing education in pest control  
6 approved by the board or equivalent activity approved by the board.

7 In lieu of submitting that proof, the licenseholder, if he or she so desires,  
8 may take and successfully complete an examination given by the board, designed to  
9 test his or her knowledge of developments in the field of pest control since the  
10 issuance of his or her license.

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

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

19 9. California Code of Regulations, title 16, section ("Regulation") 1950 states, in  
20 pertinent part:

21 (a) Except as provided in section 1951, every licensee is required, as a  
22 condition to renewal of a license, to certify that he or she has completed the  
23 continuing education requirements set forth in this article. A licensee who cannot  
24 verify completion of continuing education by producing certificates of activity  
25 completion, whenever requested to do so by the Board, may be subject to disciplinary  
26 action under section 8641 of the code.

27 (b) Each licensee is required to gain a certain number of continuing  
28 education hours during the three year renewal period. The number of hours required  
depends on the number of branches of pest control in which licenses are held. The  
subject matter covered by each activity shall be designated as "technical" or "general"  
by the Board when the activity is approved. Hour values shall be assigned by the  
Board to each approved educational activity, in accordance with the provisions of  
section 1950.5.

(c) Operators licensed in one branch of pest control shall complete 16  
continuing education hours during each three year renewal period. Operators licensed  
in two branches of pest control shall complete 20 continuing education hours during  
each three year renewal period. Operators licensed in three branches of pest control  
shall complete 24 continuing education hours during each three year renewal period.  
In each case, a minimum of four continuing education hours in a technical subject  
directly related to each branch of pest control held by the licensee must be completed  
for each branch license, a minimum of two hours in Integrated Pest Management as  
defined in section 1984 must be completed by Branch 2 and/or 3 licensees renewing  
on or after June 30, 2010, and a minimum of eight hours must be completed from  
Board approved courses on the Structural Pest Control Act, the Rules and  
Regulations, or structural pest control related agencies' rules and regulations . . .

1 **COST RECOVERY**

2 10. Code section 125.3 states, in pertinent part, that a Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Failure to Verify Completion of Continuing Education)**

8 11. In or about June 2010, Respondent submitted a license renewal application to the  
9 Board. On or about June 4, 2010, Respondent certified under penalty of perjury on the  
10 application form that he successfully completed 16 hours of continuing education during his last  
11 renewal period.

12 12. On December 22, 2010, a representative of the Board sent Respondent a written  
13 request for copies of his continuing education certificates for the renewal period of July 1, 2007,  
14 through June 30, 2010. The representative informed Respondent that he would be subject to  
15 disciplinary action if he failed to verify his continuing education requirements or hours.

16 13. On or about January 31, 2011, the Board received a letter from Respondent, stating  
17 that he did not have any certificates for the renewal period of July 1, 2007, through June 30, 2010.

18 14. Respondent is subject to disciplinary action pursuant to Code section 8641 in that  
19 Respondent failed to comply with Regulation 1950 by failing to verify that he completed courses  
20 of continuing education in pest control approved by the Board. Specifically, Respondent failed to  
21 submit copies of any continuing education certificates for the renewal period of July 1, 2007,  
22 through June 30, 2010, upon request by the Board's representative.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Fraud)**

25 15. Complainant incorporates by reference as though fully set forth herein the allegations  
26 contained in paragraphs 12 through 15 above.

27 16. Respondent is subject to disciplinary action pursuant to Code section 8642 in that he  
28 committed a fraudulent act, as follows: On or about June 4, 2010, Respondent falsely represented

1 on his license renewal application that he successfully completed 16 hours of continuing  
2 education during his last renewal period, July 1, 2007, through June 30, 2010, with the intent to  
3 substantially benefit himself or another, or substantially injure another.

4 **OTHER MATTERS**

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

10 18. Pursuant to Code section 8624, if Operator's License Number OPR 10561, issued to  
11 Respondent Enrique Abaya Josen, is suspended or revoked, the Board may suspend or revoke  
12 Company Registration Certificate Number PR 4195, issued to Brown Termite Company with  
13 Respondent as owner and qualifying manager.

14 19. Pursuant to Code section 8654, if discipline is imposed on Operator's License  
15 Number OPR 10561, issued to Respondent Enrique Abaya Josen, Enrique Abaya Josen shall be  
16 prohibited from serving as an officer, director, associate, partner, qualifying manager, or  
17 responsible managing employee for any registered company during the time the discipline is  
18 imposed, and any registered company which employs, elects, or associates Enrique Abaya Josen  
19 shall be subject to disciplinary action.

20 **PRAYER**

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

23 1. Revoking or suspending Operator's License Number OPR 10561, issued to Enrique  
24 Abaya Josen;

25 2. Prohibiting Enrique Abaya Josen from serving as an officer, director, associate,  
26 partner, qualifying manager or responsible managing employee of any registered company during  
27 the period that discipline is imposed on Operator's License Number OPR 10561, issued to  
28 Enrique Abaya Josen;

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3. Ordering Enrique Abaya Josen 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; and,

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

DATED: 9/8/11

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

LA2011501255