

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

In the Matter of the Accusation Against:

PROBLEM SOLVED PEST CONTROL,  
STEPHEN ARTHUR ADAMS, QM/OWNER

Company Registration Certificate No. PR 4378

and

Operator's License No. OPR 10762

Respondents.

Case No.: 2014-14

OAH No.: 2014051083

**ORDER OF DENIAL FOR PETITION FOR RECONSIDERATION**

Respondent's Petition for Reconsideration is hereby denied. The Board's  
Decision becomes effective on **May 6, 2015.**

IT IS SO ORDERED this 1<sup>st</sup> day of May 2015.

  
SUSAN SAYLOR, Registrar/Executive Officer  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE  
STRUCTURAL PEST CONTROL BOARD  
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In the Matter of the Accusation Against:

PROBLEM SOLVED PEST CONTROL,  
Company Registration Certificate No. PR 4378

STEPHEN ARTHUR ADAMS, QM  
Operator's License No. OPR 10762

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**DECISION**

The Proposed Decision of Jonathan Lew, Administrative Law Judge, dated March 19, 2015, in Sacramento, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 2, footnote number 1, "Business and Professions Code section 9697" is stricken and replaced with "Business and Professions Code section 8697".
2. On page 12, paragraph number 14, "Business and Professions Code section 1235.3" is stricken and replaced with "Business and Professions Code section 125.3".
3. On page 13, paragraph number 17, "Manager for and registered company" is stricken and replaced with "Manager for any registered company".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Consumer Affairs, State of California.

This Decision shall become effective on May 6, 2015.

IT IS SO ORDERED April 6, 2015

  
FOR THE STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against:

PROBLEM SOLVED PEST CONTROL  
STEPHEN ARTHUR ADAMS, QM  
1400 N. 9<sup>th</sup> Street  
Modesto, California 95350

Company Registration Certificate No. PR 4378

Operator's License No. OPR 10762

Respondents.

Case No. 2014-14

OAH No. 2014051083

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, on February 27, 2015, and March 5, 2015, in Sacramento, California.

Geoffrey S. Allen, Deputy Attorney General, represented complainant Susan Saylor, the Registrar/Executive Officer of the Structural Pest Control Board (Board), Department of Consumer Affairs.

James D. Struck, Attorney at Law, represented respondent Stephen Arthur Adams, the owner of Problem Solved Pest Control.

Testimony and documentary evidence were received, the record was closed and the matter was submitted for decision on March 5, 2015.

## FACTUAL FINDINGS

### *Company Registration Certificate and Operator License*

1. On August 7, 2003, the Board issued Company Registration Certificate Number PR 4378 (registration), in Branch 2, to Problem Solved Pest Control with Stephen Arthur Adams (respondent) as the owner and Qualifying Manager.<sup>1</sup>

2. On July 24, 2003, Operator's License No. OPR 10762 was issued inactive in Branch 2 to respondent. On August 7, 2003, respondent became the Owner and Qualifying Manager of Problem Solved Pest Control. The license will expire on June 30, 2015, unless renewed.

### *Jurisdictional Matters*

3. On September 10, 2013, complainant signed and issued the Accusation in her official capacity as the Registrar/Executive Officer of the Board. The Accusation alleges that between February 2011 and September 17, 2012, respondent had in his employ an unlicensed individual who worked as the Operations Manager of Problem Solved Pest Control. Complainant contends that respondent failed to supervise the daily activities of this individual, and allowed him to perform duties requiring a field representative license. Complainant more specifically alleges that respondent: 1) failed to comply with rules or regulations relating to supervision (first cause for discipline); 2) aided and abetted or allowed his company registration to be used by an unlicensed individual (second cause for discipline); 3) committed grossly negligent or fraudulent acts (third cause for discipline); and 4) failed to comply with rules or regulations relating to application of pesticides by unlicensed individuals (fourth cause for discipline).

The Accusation was served on respondent, who filed a timely notice of defense.

### *Unlicensed Activities*

4. Bryan Scobey. The Board issued Bryan Scobey Field Representative License No. FR 30367 on January 14, 1999. By May 11, 2010, the Board was advised that he was employed with Problem Solved Pest Control. On February 23, 2011, pursuant to a Stipulated

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<sup>1</sup> On December 6, 2011, the registration was upgraded to include Branch 3 with Roger Dalton Baker as the Branch 3 Qualifying Manager. On March 23, 2012, Roger Dalton Baker disassociated as the Branch 3 Qualifying Manager. On April 3, 2012, the registration was downgraded to include Branch 2 only. On August 3, 2012, the registration was suspended for no Qualifying Manager due to respondent's failure to renew Operator's License Number OPR 10762 by June 30, 2012. On August 8, 2012, the registration was reinstated due to the renewal of Operator's License Number OPR 10762. On November 28, 2012, the registration was suspended for failing to maintain a surety bond as required by Business and Professions Code section 9697. On December 10, 2012, the registration was reinstated.

Surrender of License and Order, Mr. Scobey surrendered his license to the Board. Disciplinary action had been filed by the Board against Mr. Scobey pursuant to Business and Professions Code sections 8642 and 8650 for fraudulent conduct and deviating from the name or address given in the license, and pursuant to Business and Professions Code sections 8649 and 490 for conviction of a crime substantially related to the qualifications, functions, or duties of a Board licensee.

5. Respondent has known Mr. Scobey personally and professionally over the past 20 years. He hired Mr. Scobey to do sales for Problem Solved Pest Control. At that time he was aware that Mr. Scobey had a felony conviction (theft and unlawful driving or taking of a vehicle), but was satisfied that Mr. Scobey had since gotten his "life together." Respondent hoped that Mr. Scobey would eventually work his way up to a management position with his business. Mr. Scobey continued in the employ of respondent until his termination on September 17, 2012.

#### *2011 Unlicensed Activities*

6. Roger Baker is the owner of Castle Pest Management. He testified at hearing. Between September 2011 and March 2012, Mr. Baker was employed by Problem Solved Pest Control as the operating manager of termite operations, handling all of respondent's termite operations. He currently holds both Branch 2 and 3 licenses. Over the first two weeks of his employment, Mr. Baker regularly went out to do field work with Mr. Scobey. Mr. Scobey was responsible for training Mr. Baker over this period. The two subsequently did field work on a dozen other occasions. In September and October 2011, Mr. Baker recalls observing Mr. Scobey apply pesticides on three occasions. On one occasion, the two were applying pesticides at a Stockton apartment complex. Mr. Baker was applying pesticides on the exterior. Mr. Scobey was applying interior pesticides, using indoor foggers ("565" and Phantom). A license was required to apply these indoor foggers.

On a second occasion prior to November 2011, Mr. Baker and Mr. Scobey were doing pest control work at an apartment complex in Modesto. Mr. Scobey again applied an indoor fogger ("565") at a time when he was not licensed to do so.

On a third occasion, Mr. Baker and Mr. Scobey were both doing pest control work at a Stockton apartment complex. Mr. Scobey applied the same pesticide as before.

7. Michael Green works as a service technician for Mr. Baker at Castle Pest Management. He was previously employed by respondent between 2010 and October 2012. He testified at hearing. Mr. Green and Mr. Scobey went out to do work together on a half dozen occasions when they were at Problem Solved Pest Control. He considered Mr. Scobey to be his "manager" or "supervisor," and "someone above me who I could go to and have questions answered." Mr. Green recalls at least two occasions when he observed Mr. Scobey apply pesticides. On one occasion they were working at the same time on opposite sides of the street on a residential job. Mr. Scobey applied pesticides that were from his own truck. On a second occasion, also a residential job, Mr. Scobey applied a pesticide ("Termidor")

used for ants and termites. He used a handheld applicator. A license is required to apply this pesticide. Mr. Scobey was driving an unlabeled Ford Taurus on this occasion. There was nothing to suggest that pesticides were being transported in this vehicle.

Mr. Green left employment with respondent in October 2011. He indicated that he became aware of Mr. Scobey's unlicensed status four to five months prior to leaving Problem Solved Pest Control. He became aware when someone in the office showed him information from the Board's website indicating that Mr. Scobey's license had been revoked. Mr. Scobey's unlicensed status was a factor in Mr. Green's decision to leave respondent's employ. Mr. Green gave respondent two-week's notice, at which time he also mentioned Mr. Scobey's unlicensed status. Mr. Green stated that respondent did not appear or act surprised, or otherwise say anything to Mr. Green about Mr. Scobey.

8. Notice to Respondent. In mid-November 2011, Mr. Baker and Scott Cornelius, another employee of Problem Solved Pest Control, met with respondent at a Perko's Restaurant in Modesto. Mr. Cornelius was a pest control technician employed by respondent. Their intent was to confront respondent about the "laws he was breaking" by employing Mr. Scobey. Mr. Baker advised respondent that he went online to obtain information about his own license application, and learned at that time that Mr. Scobey was not profiled. By searching further, he and Mr. Cornelius determined that Mr. Scobey's license had been revoked by the Board. Mr. Baker brought documentation of this with him to the meeting, which he provided to respondent. They asked respondent about Mr. Scobey's license status. Respondent was very defensive and in denial. He appeared "really mad" and frustrated. The three agreed to meet a second time the following day.

The three met the next day at a different Perko's Restaurant. Mr. Scobey joined them. Mr. Scobey indicated at that time that he would no longer be spraying pesticides and that he would be turning in his office key. Mr. Scobey was allowed to stay on with Problem Solved Pest Control, and to use a company truck, but he was to be limited to activities not requiring a license such as lawn aeration, pigeon control and exclusion work.<sup>2</sup>

#### *2012 Unlicensed Activities*

9. Mr. Cornelius testified at hearing. He worked between 2004 and 2012 at Problem Solved Pest Control as a Field Representative and pest control technician. He went out on routes with Mr. Scobey on six to ten occasions. In or around March 2012, he went out with Mr. Scobey to service commercial restaurant accounts. Mr. Cornelius was taking over these accounts from Mr. Scobey, who was present to instruct Mr. Cornelius on each customer's specific needs and preferences. The restaurants included Skewers, Web's,

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<sup>2</sup> Business and Professions Code section 8555, subdivision (g), provides in part that persons/operations exempt from Board licensing provisions include: "Persons engaged in the live capture and removal or exclusion of vertebrate pests, bees, or wasps from a structure without the use of pesticides, provided those persons maintain insurance coverage as described in Section 8692."

Imperial Garden, Thai House and Bon Appetit. On one or more occasions, Mr. Scobey applied pesticides located on the truck. The pesticides applied include Phantom, Cyper and Crosscheck – all of which require application by a licensed operator. Mr. Cornelius believes he serviced Imperial Garden and Thai House on March 28, 2012. He observed Mr. Scobey apply chemical insecticide on the exterior of both establishments. Mr. Cornelius left respondent's employ on March 30, 2012.

10. Board Hearing. On April 25, 2012, Mr. Scobey appeared before the Board on his petition for reinstatement of revoked license. Respondent was present at this hearing and testified on behalf of Mr. Scobey. During the course of examination before the Board, respondent was provided with a copy of a declaration by Mr. Cornelius in which Mr. Cornelius indicated that on March 28, 2012, he had witnessed Mr. Scobey apply chemical pesticides at the Imperial Garden restaurant. When respondent was asked about Mr. Scobey applying chemicals on that date to the exterior of the restaurant establishment, he answered as follows:

I hadn't heard that until today. But my question is, as a licensed field representative, why wouldn't he – he have stopped a non-licensed person? I don't know why Mr. Cornelius let him do that. He should not have, as my service manager.

11. Larson Residence. On June 19, 2012, Mr. Scobey performed pest control at the Larson residence located at 3601 Incline Court, Riverbank, California. He met with Mr. Larson earlier that same day, and the two went to the residence together. Mr. Scobey then performed spraying for ants. Ms. Larson was present the entire time. Mr. Scobey presented her with a Yearly Service Maintenance Agreement with Problem Solved Pest Control. The agreement provided for bi-monthly services through November 2012, for ants and wasps. The line entry next to the "serviced by" section had handwritten "S. Adams." The line entry next to the "Technician" had handwritten "Stephen Adams." Ms. Larson signed the maintenance agreement with Problem Solved Pest Control. Respondent was not present.

12. Ms. Larson understood that the pest control was to be a one-time application, and she was concerned about contracting for ongoing services. She nevertheless signed the agreement and paid Mr. Scobey for the work performed. The check was made out to Problem Solved Pest Control.

13. The Larsons were concerned about having entered into a maintenance agreement with Problem Solved Pest Control. They complained to the Department of Pesticide Regulation, which referred the matter to the Board. The complaint was assigned to Board Specialist Edward J. Ackerman for investigation.

14. On September 17, 2012, Mr. Ackerman contacted respondent by telephone and advised him of the allegations relating to Mr. Scobey. The two met on September 18, 2012. Respondent indicated that he had retained Mr. Scobey to work as his Operations Manager after the April 25, 2012 Board reinstatement hearing and, following the

conversation he had with Mr. Ackerman the day before, had terminated Mr. Scobey on September 17, 2012. Respondent indicated that he had allowed Mr. Scobey to tend to the daily business of the office paperwork and inspections, and that he had been comfortable with Mr. Scobey running the business while respondent was dealing with other personal issues. Respondent indicated that he had only spent 20 to 30 percent of his available time at the office.

Respondent explained that Mr. Scobey would go to a property, present the company to the customer, and would photograph the structure. Respondent indicated that he would identify or attempt to identify the problem based on examination of these photographs or utilize a live feed application via phone. After identifying the problem, respondent stated he would identify the infestation or problem and approve the treatment. A field representative would then service the account the following day.

On September 18, 2012, respondent contacted Mr. Ackerman and modified his previous day's statement, indicating instead that Mr. Scobey had never taken photographs for him to examine. He also prepared and signed a declaration in which he indicated that he had immediately terminated Mr. Scobey upon learning that he had applied pesticides, that Mr. Scobey had signed his name to contracts without respondent's permission, and that Mr. Scobey's action "was without my knowledge."

There was no other direct evidence regarding any complicity respondent may have had in having Mr. Scobey take photographs for his later review in authorizing any work or "Yearly Service Maintenance Agreement" on structures inspected by Mr. Scobey. For this reason, it was not established that respondent engaged in fraudulent acts or gross negligence.

#### *Respondent's Testimony and Evidence*

15. Respondent is the sole owner of Problem Solved Pest Control. He has employed up to seven employees at one time. He knew Mr. Scobey for approximately 20 years, and was aware that he had worked in pest control for 10 years prior to working for respondent. Respondent averred that he first became aware of Mr. Scobey's unlicensed status at the time of the first meeting at Perko's in November 2011. He indicated that he was shocked, confused and caught off-guard by this information. By the next day he had decided to strip Mr. Scobey of his office keys, company truck, and "manager" title. He determined that Mr. Scobey would not do any spraying, even if supervised by a licensed representative. Respondent did not terminate Mr. Scobey's employment, opting to keep him on to handle paperwork and field activities not requiring licensure.

16. By 2011, respondent was involved in difficult divorce proceedings. He had three small children and much of his time and focus was spent on personal matters. He acknowledged difficulty managing time and work over this period. Respondent denied knowing anything about the Larson matter until Mr. Ackerman brought it to his attention. He immediately terminated Mr. Scobey's employment at that time. Mr. Scobey is not an employee and he does not contract or otherwise do business in any capacity with respondent.



Respondent explained that in employing Mr. Scobey as he did he believed he was doing what was best for the company. He knew Mr. Scobey for 20 years and it was difficult for him to let him go earlier.

### *Discussion*

17. Respondent was placed on notice of Mr. Scobey's unlicensed status in November 2011. His employees expressed major concern and he took steps at that time to restrict Mr. Scobey's activities to non-licensed matters. By March 2012, Mr. Scobey had continued to apply chemical pesticides. Mr. Cornelius prepared a declaration indicating that he had observed such activities, which was provided to and read by respondent during the course of his testimony before the Board on April 25, 2012.

18. Over the period between April 25, 2012, and September 17, 2012, Mr. Scobey continued in respondent's employ as his Operations Manager. He was terminated only after Board Specialist Ackerman contacted respondent about the Larsons' complaint. Over the nearly five-month period before his termination, Mr. Scobey was actively engaged in soliciting maintenance agreements and contracts on behalf of Problem Solved Pest Control, and applying pesticides and engaging in unlicensed activities. He was apparently signing respondent's name on maintenance agreements. There is no evidence that respondent took any steps to investigate Mr. Scobey's activities on behalf of the company after he was placed on notice that Mr. Cornelius observed him spraying pesticides on March 28, 2012.

Respondent took earlier actions in November 2011, but these were clearly inadequate. Mr. Scobey continued to use company vehicles and had access to chemical pesticides despite having his office keys taken. Respondent justified retaining Mr. Scobey in part for personal reasons, staffing issues related to employees leaving his employ, and his belief that Mr. Scobey had turned matters around in his life. While that may have informed his earlier judgment in November 2011, by 2012 he was placed on notice again that Mr. Scobey was openly engaged in unlicensed activities. He did nothing to investigate or prevent this from continuing to occur.

Mr. Baker and Mr. Cornelius may have indeed conspired to leave respondent's employ, taking with them his clients and engaging in unfair competition, but this does not take away from the fact that respondent was placed on notice of the unlicensed activities, and that he did nothing about it over a four to five-month period.

19. Respondent had a duty to supervise the daily operations of his company. Once placed on notice that Scobey had engaged in spraying activities, he had a duty to investigate and conform his company's practices with the laws and regulations governing application of pesticides. His failure to do so constituted aiding and abetting, or allowing his company registration to be used by an unlicensed individual. By allowing Mr. Scobey to perform inspections and apply pesticides as he did, respondent allowed an unlicensed individual to evade provisions of the Structural Pest Control Act.

20. Respondent suggested that he took immediate and appropriate action by terminating Mr. Scobey upon being informed by Mr. Ackerman in November 2011. Respondent understood at that time that Mr. Ackerman was investigating his part in employing and supervising Mr. Scobey. Terminating Mr. Scobey at that time was respondent's only reasonable action given past notice and reports of similar unlicensed activities. Of some concern are respondent's statements around that same time to Mr. Ackerman. He admitted to having Mr. Scobey take photographs of the different properties for him. Such would have fully implicated respondent in engaging in gross negligence or fraudulent acts as alleged in the Accusation. Although he later retracted such statements, the fact remains that he acknowledges that he made untrue statements to Mr. Ackerman, a Board Specialist acting as an investigator. Respondent's credibility has been compromised.

### *Disciplinary Guidelines*

21. The Board's highest priority is to protect the public by regulating the pest control industry. To establish consistency in issuing disciplinary penalties for similar offenses, the Board established disciplinary guidelines.

The Board recognizes that the penalties and conditions of probation are merely guidelines and that administrative law judges must be free to exercise their discretion. The Board desires that its guidelines be followed to the extent possible, and the Board requests that an administrative law judge hearing a case include some explanation for any departure or omission from the guidelines.

The Board desires that matters in extenuation or mitigation, as well as those in aggravation, be fully considered and noted. Of primary importance is the effect that a licensee's conduct has had or can have on the public. In determining whether the minimum, maximum, or an intermediate penalty should be imposed, factors such as the following should be considered: (1) the actual or potential harm to the public; (2) the actual or potential harm to any consumer; (3) the licensee's prior disciplinary record; (4) the number and/or variety of current violations; (5) mitigation evidence; (6) in the case of a criminal conviction, the licensee's compliance with terms of sentence; (7) the licensee's overall criminal record; (8) whether the licensee's conduct was knowing, willful, reckless or inadvertent; (9) the financial benefit to the licensee; (10) whether the unlawful act was part of a pattern of practice; and (11) whether the licensee is currently on probation.

22. This disciplinary matter involved a number of serious violations involving pesticide applications by an unlicensed individual. Respondent failed to supervise the daily activities of his company as its Operations Officer. He did so at a time that he acknowledged spending only 20 to 30 percent of his available time at the office. He was placed on notice of Mr. Scobey's activities, in November 2011, and again in April 2012. Over the nearly five-month period between April 25, 2012, and September 17, 2012, Mr. Scobey continued in respondent's employ as his Operations Manager and was actively engaged in soliciting maintenance agreements and contracts on behalf of Problem Solved Pest Control, applying

pesticides and engaging in unlicensed activities. Respondent did nothing to investigate or prevent these activities.

Respondent's conduct cannot be characterized as willful, but it was certainly reckless,

Mitigation evidence included respondent's actions in November 2011, expressly prohibiting Mr. Scobey from engaging in activities requiring a license. Also considered in mitigation were staffing issues and personal problems at the time which apparently informed respondent's judgment about retaining Mr. Scobey on as his Operations Manager. Aggravating evidence included respondent's failure to take any action for nearly five months after being placed on notice, and his dishonest statements to Mr. Ackerman.

23. For the violations alleged in the accusation, the guidelines generally recommend a minimum sanction of suspension, stayed, with three years probation, and a maximum sanction of an outright revocation. Imposing a revocation, staying the revocation, and placing respondent on probation for five years on standard terms and conditions of probation and on special terms and conditions of probation that require respondent pay for the Board's costs of investigation and enforcement, be subject to random inspections, to not serve as an officer, director, associate, partner or qualifying manager of any other licensee, and to not have an ownership interest in any registered company will protect the public.

#### *Costs of Investigation and Enforcement*

24. A certification of Costs of Investigation was submitted that stated Board Specialists provided 30 hours of investigative services, a reasonable amount. Investigative services were billed at the rate of \$27.24 per hour. Total investigative costs were \$817.20.

Deputy Attorney General Geoffrey S. Allen signed a Certification of Prosecution Costs to which a billing summary was attached. The billing summary set forth the dates legal services were provided, the tasks performed, and the amount of time involved in each task. Legal services were billed at \$170 per hour. Legal fees totaled \$5,372.50.

The Board's reasonable cost of investigation and enforcement was \$6,189.70.

## LEGAL CONCLUSIONS

### *The Statutory Scheme*

1. California enacted the Structural Pest Control Act, an elaborate statutory scheme that regulates the industry and structural pest control operators. Operators must be licensed by the state and their methods of operation are regulated. Those seeking licensure must be qualified in the use and understanding of poisonous and other chemicals applied in pest control as well as in the theory and practice of pest control. Those licensed as operators are subject to discipline by the Board for noncompliance with the statute and the governing

regulations. It is important that pest control businesses comply with the statute and supporting regulations because of the serious danger to property posed in California by wood-destroying pests and organisms. Termite clearance is an important aspect of any real estate transaction. The legislative intent is most certainly to protect the public, which necessarily relies on the expertise of companies engaged in the business of structural pest control. Ensuring that property owners are fully informed with respect to the services rendered by registered companies is without a doubt a primary purpose of the reporting requirements. (*Pestmaster Services, Inc. v. Structural Pest Control Bd.* (1991) 227 Cal.App.3d 903, 909-910.)

2. Protection of the public is the highest priority for the Structural Pest Control Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, protection of the public shall be paramount. (Bus. & Prof. Code, § 8520.1.)

#### *Disciplinary Statutes*

3. Business and Professions Code section 8620 authorizes the Board to investigate the actions of any individual acting as a licensee. After a hearing, the Board may temporarily suspend or permanently revoke a license issued if the holder of the license, while a licensee, is guilty of or commits one or more of the acts or omissions constituting grounds for disciplinary action.

4. Business and Professions Code section 8610, subdivision (c) provides:

Each registered company shall designate an individual or individuals who hold an operator's license to act as its qualifying manager or managers. The qualifying manager or managers must be licensed in each branch of pest control in which the company engages in business. The designated qualifying manager or managers shall supervise the daily business of the company and shall be available to supervise and assist all employees of the company, in accordance with regulations which the board may establish.

5. Business and Professions Code section 8639 provides:

Aiding or abetting an unlicensed individual or unregistered company to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed individual or unregistered company, or allowing one's license or company registration to be used by an unlicensed individual or unregistered company, or acting as agent or partner or associate, or otherwise, of an unlicensed individual or unregistered

company to evade the provisions of this chapter is a ground for disciplinary action.

6. Business and Profession Code section 8641 provides:

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.

7. Business and Profession Code section 8642 provides:

The commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action.

8. Business and Profession Code section 8551.5 provides:

Except as provided in this chapter, an unlicensed individual in the employ of a registered company shall not apply any pesticides included in Branch 2 or Branch 3. However, an individual may, for 90 days from the date of employment, apply pesticides for the purposes of training under the direct supervision of a licensed field representative or operator employed by the company. This direct supervision means in the presence of the licensed field representative or operator at all times. The 90-day time period may not be extended.

#### *Regulatory Authority*

9. California Code of Regulations, title 16, section 1918, provides:

“Supervise” as used in Business and Professions Code Sections 8506.2, 8610 and 8611 means the oversight, direction, control, and inspection of the daily business of the company and its employees, and the availability to observe, assist, and instruct company employees, as needed to secure full compliance with all laws and regulations governing structural pest control.

*Cause Exists to Impose Discipline*

10. Failing to Supervise Daily Activities. Cause exists to impose discipline upon Problem Solved Pest Control and respondent's operator's license under Business and Professions Code sections 8641 and 8610, subdivision (c), by reason of the matters set forth in Findings 6 through 20. Respondent failed to supervise the daily activities of his company, thereby allowing an unlicensed individual to perform duties requiring a field representative license.

11. Aiding and Abetting. Cause exists to impose discipline upon Problem Solved Pest Control and respondent under Business and Professions Code section 8639, by reason of the matters set forth in Findings 6 through 20. Respondent's failure to supervise Mr. Scobey allowed him to perform inspections and apply pesticides. Respondent's actions therefore aided and abetted an unlicensed individual to evade provisions of the Structural Pest Control Act.

12. Gross Negligence or Fraudulent Act. No cause exists to impose discipline upon Problem Solved Pest Control and respondent under Business and Professions Code section 8642, by reason of the matters set forth in Finding 14.

13. Pesticide Application. Cause exists to impose discipline upon Problem Solved Pest Control and respondent under Business and Professions Code sections 8641 and 8551.5, by reason of the matters set forth in Findings 6 through 20. Respondent allowed an unlicensed individual to apply pesticides for the purposes of controlling or preventing infestation.

*Costs of Investigation and Enforcement*

14. Business and Professions Code section 1235.3 provides in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the entity bringing the proceeding may request the administrative law judge to direct a licensee 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.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of

investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested . . . .

15. The Board is entitled to recover from respondents, and each of them, costs in the amount of \$6,189.70, by reason of the matters set forth in Finding 24.

*Appropriate Discipline*

16. The matters set forth in Findings 21 through 23 were considered in making the following order. Public protection requires that the Board monitor respondent's licensed Branch 2 operations to assure respondent's competence and compliance with the applicable law. Imposing a five-year period of probation will be sufficient to conduct monitoring and obtain assurance. If, during probation, respondent demonstrates an inability to conduct his operation in accordance with the law, the revocations that were stayed may, upon hearing and notice, be vacated and outright revocations of the registrations and licenses issued to respondent and Problem Solved Pest Control may be imposed.

17. Respondent cannot serve as the Qualifying Manager for and registered company, including Problem Solved Pest Control. Should Problem Solved Pest Control remain viable as a business under Company Registration No. PR 4378, it must do so under a different Qualifying Manager who is approved by the Board.

ORDER

Company Registration Certificate No. PR 4378, issued to Problem Solved Pest Control, and Operator's License No. OPR 10762 issued to Stephen Arthur Adams, Qualifying Manager of Problem Solved Pest Control, are hereby revoked pursuant to Legal Conclusions 10, 11 and 13, separately and for all of them. However, the orders of revocation are stayed, and the licenses and registrations referred to herein are placed on probation for a period of five years on the following terms and conditions of probation.

**1. Obey All Laws**

Respondent and Problem Solved Pest Control shall obey all laws and rules relating to the practice of structural pest control.

**2. Quarterly Reports**

Respondent and Problem Solved Pest Control shall file quarterly reports with the Board during the period of probation.

**3. Tolling of Probation**

Should respondent leave California to reside outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduce the probationary period.

**4. Notice to Employers**

Respondent shall notify all present and prospective employers who are licensed by the Structural Pest Control Board of the Decision in Case No. 2014-14 and the terms, conditions and restrictions imposed on respondent and Problem Solved Pest Control by this decision. Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case No. 2014-14.

**5. Notice to Employees**

Respondent and Problem Solved Pest Control shall, upon or before the effective date of this Decision, post or circulate a notice to all employees of Problem Solved Pest Control who are involved in structural pest control operations a notice which accurately recite the terms and conditions of probation. Respondent and Problem Solved Pest Control shall be responsible for said notice being immediately available to said employees. "Employees" as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors who are currently employed or who become employed or hired at any time during probation.

**6. Continuing Education Course**

Respondent shall complete a continuing education course for pest control in Branch 2 (general pest) within eighteen (18) months of the effective date of this decision.

**7. Random Inspections**

Respondent and Problem Solved Pest Control shall be subject to random inspections, and respondent shall reimburse the Board for one random inspection per quarter by Board Specialists during the period of probation, the fee for each individual inspection not to exceed \$125 per inspection.



**8. Prohibition from Serving as Officer, Director, Associate, Partner or Qualifying Manager**

Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any registered company during the period that discipline is imposed. Respondent may not serve as the Qualifying Manager for Problem Solved Pest Control. The name of any new Qualifying Manager for Problem Solved Pest Control must be submitted in advance to the Board for prior approval.

**9. No Interest in Any Registered Company**

Respondent shall not have any legal or beneficial interest in any company currently or hereinafter registered by the Board.

**10. Payment of Costs of Investigation and Enforcement**

Problem Solved Pest Control and respondent, and each of them, shall be jointly and severally liable for paying to the Structural Pest Control Board the total sum of \$6,189.70. Payments may be made on an installment plan within the sole discretion of the Board.

**11. Failure to Make Payment Constitutes a Violation of Probation**

The failure of respondent or Problem Solved Pest Control to make any payment when due constitutes a violation of probation, including the failure to pay an inspection fee, a random inspection fee, or a cost recovery installment.

**12. Violation of Probation**

Should respondent or Problem Solved Pest Control violate probation in any respect, the Board, after giving respondent or Problem Solved Pest Control notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against respondent or Problem Solved Pest Control during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation for each respondent shall be extended until the matter is final.


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13. **Completion of Probation**

Upon successful completion of probation, the license, registration or certificate that is subject to discipline in this Decision will be fully restored.

DATED: March 19, 2015

  
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JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings