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FILED

Date 2/11/10 By Kelli Okuma

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

11 In the Matter of the Accusation Against:

Case No. 2010-55

12 **BOBBY K. KUALII**
13 **c/o Bugmasters of Orange County**
14 **935 North Harbor, Unit #150**
La Habra, CA 90631

A C C U S A T I O N

15 **Operator's License No. OPR 11013**
Field Representative's License No. FR 38252

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as
22 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide
23 Regulation.

24 2. On or about December 31, 2004, the Structural Pest Control Board issued Operator's
25 License Number OPR 11013 to Bobby K. Kualii. The Operator's License was in full force and
26 effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless
27 renewed.

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STATUTORY PROVISIONS

9. Section 123 of the Code states:

It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distribution, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law.

In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars (\$10,000) and the costs of litigation.

10. Section 8641 of the Code states in pertinent part, that failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, . . . is a ground for disciplinary action.

1 been convicted of a crime substantially related to the qualifications, functions, and
2 duties of the licensee in question, the record of conviction of the crime shall be
3 conclusive evidence of the fact that the conviction occurred, but only of that fact,
4 and the board may inquire into the circumstances surrounding the commission of
5 the crime in order to fix the degree of discipline or to determine if the conviction is
6 substantially related to the qualifications, functions, and duties of the licensee in
7 question.

8 As used in this section, "license" includes "certificate," "permit,"
9 "authority," and "registration."

10 REGULATIONS

11 16. California Code of Regulations, title 16, section 1937.1 states:

12 For the purposes of denial, suspension or revocation of a license or company
13 registration pursuant to Division 1.5 (commencing with Section 475) of the code, a
14 crime or act shall be considered to be substantially related to the qualifications,
15 functions or duties of a licensee or registered company under Chapter 14 of
16 Division 3 of the code if to a substantial degree it evidences present or potential
17 unfitness of such licensee or registered company to perform the functions
18 authorized by the license or company registration in a manner consistent with the
19 public health, safety, or welfare. Such crimes or acts shall include, but not be
20 limited to, the following:

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

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

24 (1) Fiscal dishonesty.

25 (2) Fraud.

26 (3) Theft.

27 (4) Violations relating to misuse of pesticides.

28 17. California Code of Regulations, title 16, section 1937.2 states:

.....

(b) When considering the suspension or revocation of a structural pest
control license or company registration on the grounds that the licensee or
registered company has been convicted of a crime, the board, in evaluating the
rehabilitation of such person or company and his or her or its present eligibility for
a license or company registration will consider the following:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

2 (4) Whether the licensee or registered company has complied with any
3 terms of parole, probation, restitution or any other sanctions lawfully
imposed against the licensee or registered company.

4 (5) If applicable, evidence of expungement proceedings pursuant to Section
5 1203.4 of the Penal Code.

6 (6) Evidence, if any, of rehabilitation submitted by the licensee or
registered company.

7 COSTS

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

12 FIRST CAUSE FOR DISCIPLINE

13 (July 27, 2009 Criminal Conviction for Arrest on September 12, 2008)

14 19. Respondent is subject to disciplinary action under Code sections 490 and 8649 in that
15 Respondent was convicted of a crime that is substantially related to the qualifications, functions,
16 and duties of a structural pest control operator and field representative. The circumstances are as
17 follows:

18 20. On or about July 27, 2009, in a criminal proceeding entitled *People of the State of*
19 *California v. Bobby Kanani Kualii*, in Orange County Superior Court, Case No. 09WM05583,
20 Respondent was convicted on his plea of guilty to violating Penal Code section 529.5(c)
21 (possession of a false government document), a misdemeanor; Code section 123(b) (unauthorized
22 communication with another examinee), a misdemeanor; Penal Code section 472 (forgery of
23 official seal), a misdemeanor; Penal Code section 470(b) (forgery), a misdemeanor; and Penal
24 Code section 529(a) (manufacturer and sell false government document), a misdemeanor.

25 21. On or about July 27, 2009, imposition of the sentence was suspended and Respondent
26 was placed on three years informal probation, and ordered to complete 20 days of community
27 service; to pay court costs in the amount of \$280, pay \$100 in restitution fines and pay security
28 fees of \$60.

1 22. The circumstances that led to the conviction were that on or about September 12,
2 2008, Respondent was pulled over by a police officer for a routine traffic stop. A records check
3 showed that Respondent had a suspended driver's license. While searching Respondent's wallet,
4 the police officer found a fictitious California State driver's license with the name of Peter
5 Carson, with a date of birth of April 19, 1968 and an address in Fullerton, California. The
6 information listed on the fictitious driver's license was incorrect, however the picture on the
7 license was of Respondent. The officer found that the fictitious driver's license contained valid
8 information of four separate individuals that Respondent was portraying. Respondent told the
9 officer that he was a licensed contractor and had the fictitious driver's license so he could go
10 around to different state board examinations and take tests. Respondent stated that he purposely
11 failed the examinations so he could take as many examinations as possible. Respondent told the
12 officer that he memorizes as many questions on the examinations as he can and then supplies the
13 questions to his employees so they can pass the tests when they take it. Respondent further
14 admitted to the officer that when he goes to the test sites he tells the proctors that he is Peter
15 Carson and that he is a student.

16 SECOND CAUSE FOR DISCIPLINE

17 (Subversion of Licensing Examinations)

18 23. Respondent is subject to disciplinary action under Code sections 496 and 8641 in that
19 he used multiple names in order to take state licensing examinations for the sole purpose of
20 memorizing the questions to help others pass Board licensing examinations. The circumstances
21 are as follows:

22 24. On January 26, 2005, Respondent posing as Peter Carson took the Applicator
23 examination and failed. Respondent listed Peter Carson's employer as Bugmaster, P.O. Box 545,
24 Buena Park, CA 90621, the same employer who employs Respondent.

25 25. On January 28, 2005, Respondent posing as Peter Carson took the Applicator
26 examination and failed. Respondent listed Peter Carson's employer as Bugmaster, P.O. Box 545,
27 Buena Park, CA 90621, the same employer who employs Respondent.

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1 26. On December 2, 2005, Respondent posing as Peter Carson took the Applicator
2 examination and failed. Respondent listed Peter Carson's employer as Bugmaster, P.O. Box 545,
3 Buena Park, CA 90621, the same employer who employs Respondent.

4 27. On June 15, 2007, Respondent posing as Peter Carson took the Applicator
5 examination and failed. Respondent listed Peter Carson's employer as Bugmaster, P.O. Box 545,
6 Buena Park, CA 90621, the same employer who employs Respondent.

7 28. Respondent submitted an application dated September 22, 2007, to the Board to take
8 the Field Representative examination under the name of Peter Carson. The application listed
9 Peter Carson's employer as Bugmasters of Buena Park, P.O. Box 545, Buena Park, CA 90621,
10 the same employer who employs Respondent. In October 2007, Respondent took the Field
11 Representative examination under the name of Peter Carson and failed.

12 29. Respondent submitted an application dated July 1, 2008, to the Board to take the
13 Field Representative examination under the name of Peter Carson. The application listed Peter
14 Carson's employer as Bugmasters of Buena Park, P.O. Box 545, Buena Park, CA 90621, the
15 same employer who employs Respondent. In June 2008, Respondent was scheduled to take the
16 Field Representative examination under the name of Peter Carson, but he failed to appear for the
17 examination.

18 30. On September 12, 2008, Respondent admitted to a police officer, he was using
19 multiple names in order to take state licensing examinations for the sole purpose of memorizing
20 the questions, as more specifically set forth in paragraph 22 above and incorporated herein as
21 though fully set forth.

22 PRAYER

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

25 1. Revoking or suspending Operator's License Number OPR 11013, issued to Bobby K.
26 Kualii;

27 2. Revoking or suspending Field Representative's License Number FR 38252, issued to
28 Bobby K. Kualii;

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3. Ordering Bobby K. Kualii 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: 2/11/10

Kelli Okuma

KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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