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FILED
Date 9/3/10 By Kelli Okuma

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

In the Matter of the Accusation Against: **ARTISAN TERMITE SERVICES** **AARON D. DIETRICH, Owner and QM** 8864 North Winding Way Fair Oaks, California 95628 **Company Registration License No. PR 5159, Br. 2** **Operator License No. OPR 11387, Br. 3** Respondent.	Case No. 2011-10 **ACCUSATION**

Kelli Okuma ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of Consumer Affairs.

Company Registration Certificate No. PR 5159

2. On or about October 12, 2006, the Board issued Company Registration Certificate Number PR 5159 ("registration") to Artisan Termite Services in Branch 3, with Aaron David Dietrich ("Respondent") as the owner and Qualifying Manager. On or about February 26, 2009, the registration was suspended pursuant to Business and Professions Code ("Code") section 8690

(failure to maintain general liability insurance). On or about March 10, 2009, the registration was reinstated. On or about November 10, 2009, the registration was suspended pursuant to Code section 8697 (failure to maintain a surety bond). On or about April 6, 2010, the registration was suspended pursuant to Code section 8690 (failure to maintain general liability insurance).

Operator's License No. OPR 11387

3. On or about August 30, 2006, the Board issued Operator's License Number OPR 11387 ("license") in Branch 3 to Respondent. On or about October 12, 2006, Respondent became the owner and Qualifying Manager of Artisan Termite Services. On or about February 26, 2009, the license was suspended pursuant to Code section 8690 (failure to maintain general liability insurance). On or about March 10, 2009, the license was reinstated. On or about April 6, 2010, the license was suspended pursuant to Code section 8690 (failure to maintain general liability insurance). The license will expire on June 30, 2012, unless renewed.

JURISDICTION

4. 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 8624 states:

> If the board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.
>
> 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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6. 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.

7. Code section 8622 states:

When a complaint is accepted for investigation of a registered company, the board, through an authorized representative, may inspect any or all properties on which a report has been issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall have 30 days from the receipt of the notice to bring such property into compliance, and it shall submit a new original report or completion notice or both and an inspection fee of not more than one hundred twenty-five dollars ($125) for each property inspected. If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged. If the board's authorized representative makes no determination or determines the property is in compliance, no inspection fee shall be charged.

The notice sent to the registered company shall inform the registered company that if it desires a hearing to contest the finding of noncompliance, the hearing shall be requested by written notice to the board within 20 days of receipt of the notice of noncompliance from the board. Where a hearing is not requested pursuant to this section, payment of any assessment shall not constitute an admission of any noncompliance charged.

STATUTORY PROVISIONS

8. Code section 8516 states, in pertinent part:

(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

Every property inspected pursuant to subdivision (b) of Section 8516.1, or Section 8518, or subdivision (b) of this section shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8516.1, Section 8518, or this

section are grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars ($2,500).

A written inspection report conforming to this section and on a form approved by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within 10 business days of the inspection, except that an inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, filed notes, and activity forms.

Reports shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours. Original inspection reports or copies thereof shall be submitted to the board upon request within two business days. The following shall be set forth in the report:

(6) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected, indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions that would ordinarily subject those parts to attack by wood destroying pests or organisms exist.

(7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or infection, such as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be reported.

(9) Indication or description of any areas that are inaccessible or not inspected with recommendation for further inspection if practicable. If, after the report has been made in compliance with this section, authority is given later to open inaccessible areas, a supplemental report on conditions in these areas shall be made.

(10) Recommendations for corrective measures.

9. Code section 8514 states, in pertinent part, that no registered company shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the control of household pests, or wood destroying pests or organisms until an inspection has been made.

10. Code section 8518 of the Code states, in pertinent part:

When a registered company completes work under a contract, it shall prepare, on a form prescribed by the board, a notice of work completed and not completed, and shall furnish that notice to the owner of the property or the owner's agent within 10 working days

after completing the work. The notice shall include a statement of the cost of the completed work and estimated cost of work not completed.

The address of each property inspected or upon which work was completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 working days after completed work.

Every property upon which work is completed shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property upon which work was completed pursuant to subdivision (b) of Section 8516 or Section 8518 is grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars ($2,500).

11. Code section 8519 states, in pertinent part:

Certification as used in this section means a written statement by the registered company attesting to the statement contained therein relating to the absence or presence of wood-destroying pests or organisms and, listing such recommendations, if any, which appear on an inspection report prepared pursuant to Section 8516, and which relate to (1) infestation or infection of wood-destroying pests or organisms found, or (2) repair of structurally weakened members caused by such infestation or infection, and which recommendations have not been completed at the time of certification.

Any registered company which makes an inspection report pursuant to Section 8516, shall, if requested by the person ordering the inspection report, prepare and deliver to that person or his or her designated agent, a certification, to provide:

(c) When the inspection report prepared pursuant to Section 8516 discloses infestation or infection and the notice of work completed prepared pursuant to Section 8518 indicates that the registered company has not completed all recommendations to remove that infestation or infection or to repair damage caused by it: "This is to certify that the property described herein is now free of evidence of active infestation or infection in the visible and accessible areas except as follows: (describing infestations, infections, damage or evidence thereof, excepted)."

This certificate shall be accompanied by a copy of the inspection report prepared pursuant to Section 8516, and by a copy of the notice of work completed prepared pursuant to Section 8518, if any notice has been prepared at the time of the certification, or the certification may be endorsed on and made a part of that inspection report or notice of work completed.

12. Code section 8638 states:

Failure on the part of a registered company to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract is a ground for disciplinary action.

13. 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.

14. Code section 8644 states:

Fraud or misrepresentation, after inspection, by any licensee or registered company engaged in pest control work of any infestation or infection of wood-destroying pests or organisms found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by wood-destroying pests or organisms, whether or not a report was made pursuant to Sections 8516 and 8517 of this code, is a ground for disciplinary action.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 1990, states, in pertinent part:

(a) All reports shall be completed as prescribed by the board. Copies filed with the board shall be clear and legible. All reports must supply the information required by Section 8516 of the Code and the information regarding the pesticide or pesticides used as set forth in Section 8538 of the Code, and shall contain or describe the following:

(3) Infestations, infections or evidence thereof.

(4) Wood members found to be damaged by wood destroying pests or organisms.

(b) Conditions usually deemed likely to lead to infestation or infection include, but are not limited to:

(1) Faulty Grade Level. A faulty grade level exists when the top of any foundation is even with or below the adjacent earth. The existing earth level shall be considered grade.

(2) Inaccessible subareas or portions thereof and areas where there is less than 12 inches clear space between the bottom of the floor joists and the unimproved ground area.

(4) Earth-wood contacts.

16. California Code of Regulations, title 16, section 1991, states, in pertinent part:

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 10 of subdivision (b) of Section 8516 of the code and shall also

conform with the provisions of Title 24 of the California Code of Regulations and any other applicable local building code, and shall accomplish the following:

(3) When evidence of moisture, infestations or infections exists as a result of faulty grade levels, earth fill planters or loose stucco, a recommendation shall be made to correct the condition. Any method of controlling infestations arising from these conditions is considered adequate if the infestation is controlled.

(4) Comply with the provisions of section 2516(c)(6.1) of Title 24 of the California Code of Regulations (Effective July 1992).

(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

(6) Comply with the provisions of section 2516(c)(6) of Title 24 of the California Code of Regulations.

(11) Correct any excessive moisture condition that is commonly controllable. When there is reasonable evidence to believe a fungus infection exists in a concealed wall or area, recommendations shall be made to open the wall or area.

COST RECOVERY/RESTITUTION

17. Code section 125.3 provides, in pertinent part, that the 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.

18. Government Code section 11519(d) provides, in pertinent part, that the Board may require restitution of damages suffered as a condition of probation in the event probation is ordered.

LOMMASSON PROPERTY

19. On or about September 23, 2008, Respondent inspected the property located at 3301 Montrose Street, located in Sacramento, California ("Lommasson property"), for wood destroying

pests and organisms for escrow purposes and thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 21101 ("Inspection Report No. 21101").

20. Respondent's findings included evidence of subterranean termites in the substructure, subterranean termite damage to the floor joist and subfloor, fungus damage to the support posts at the patio cover, roof sheathing and fascia boards and barge boards, cellulose debris in the subarea, stucco siding extending beneath the outside grade level, hairline cracks in the grout and damaged caulking at the tub/shower enclosure, and water stains and calcium deposits at the cabinet and plumbing joints.

21. Respondent recommended correcting the conditions and included a Work Agreement contract to perform the work for $3,401. Respondent also recommended that the owner/agent engage the services of a licensed contractor to repair some of the conditions.

22. On or about September 30, 2008, S. Lommasson ("Lommasson") submitted a purchase agreement to buy the property with the requirement that the seller would pay for the termite work recommended by the Respondent. Respondent's Inspection Report No. 21101 was submitted as part of the purchase agreement.

23. On or about October 28, 2008, Respondent issued a Standard Notice of Work Completed and Not Completed ("Completion Notice"), certifying that all of the work recommended in Inspection Report No. 21101 had been completed with the exception of the stucco siding that extended beneath the outside grade level, hairline cracks in the grout and damaged caulking at the tub/shower enclosure, and water stains and calcium deposits at the cabinet and plumbing joints (Items 4(A)(B)(C) and (D)). Respondent certified that the property was free of evidence of active infestations or infections.

24. On or about May 13, 2009, escrow closed.

25. On or about May 14, 2009, Lommasson hired a general contractor ("Rosten") to perform remodeling. During the course of remodeling, Rosten found termite and fungus damage. Rosten recommended that Lommasson obtain a termite inspection by Millennium Termite & Pest.

26. On or about May 22, 2009, Millennium performed a complete termite inspection and found subterranean termite evidence in the cellulose debris scattered throughout the subarea;

fungus damage to five 2x8 floor joists, subfloor, wall plate, and the hardwood floor from the master bathroom to the right rear corner of the structure; fungus damage to one floor joist and to the subfloor below the hall bathroom; portions of the subarea were inaccessible for inspection due to inadequate clearance around the pipes; ventilation was inadequate and contributed to the fungus damage; fungus damage to the 1x6 fascia, 4" on center roof sheathing, and one 2x6 rafter at the left side of the patio cover; fungus damage to the master bathroom vinyl floor covering and subfloor; subterranean termite damage to the sheetrock and two wall studs at the master bathroom; fungus damage to the planter attached to the front of the structure, and fungus damage to the 1x3 roof sheathing. Millennium recommended correcting the conditions and included a Work Agreement contract to perform the work for a total cost of $11,414.

27. On or about June 3, 2009, Lommasson contacted the Respondent. Respondent met with Lommasson and Rosten at the property to inspect the conditions. Respondent agreed to bring the property into compliance and began performing repairs. Shortly thereafter, Respondent abandoned the job.

28. On or about September 10, 2009, the Board received a complaint from Lommasson.

29. On or about November 4, 2009, a Board specialist inspected the property and noted violations.

30. On or about January 7, 2010, a Board specialist prepared and issued a Report of Findings along with a Notice ordering Respondent to bring the property into compliance by correcting the items described in the Report of Findings and to submit a corrected inspection report and Notice of Work Completed and Not Completed to the Board within thirty (30) days with respect to the inspections performed on October 28, 2008, and October 2, 2009.

31. On or about February 4, 2010, the Board received an unopened returned envelope containing the Report of Findings along with the certified mail return receipt card showing that the mail was "return to sender, unclaimed and unable to forward." No contact was made with Respondent.

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FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with the Code - Improper Inspection)

32. Respondent's operator's license and company registration are subject to discipline under Code section 8641, in that on or about September 23, 2008, concerning the Lommasson property, Respondent failed to comply with the following Code sections:

Section 8516(b)(6) and (7):

a. Respondent failed to report evidence of subterranean termite infestation coming from behind the stucco voids of the exterior perimeter foundation, visible in the subarea at the right side of the substructure, as required by California Code of Regulations, title 16, section 1990(a)(3).

b. Respondent failed to report evidence of earth-wood contacts and a possible faulty grade level at the framing behind the front porch where there is no flashing to separate the front porch earth fill from the framing of the structure, as defined by California Code of Regulations, title 16, section 1990(b)(1) and (4).

c. Respondent failed to report subterranean termite damage and fungus damage to the sub floor, floor joist, rim joist, and extending up into the wall framing at the right front, right side and right rear of the substructure, as required by California Code of Regulations, title 16, sections 1990(a)(3) and (4) and 1991(a)(11).

d. Respondent failed to report fungus infection and evidence of excessive moisture to the framing in multiple locations throughout the subarea indicating inadequate ventilation, as required by California Code of Regulations, title 16, sections 1990(a)(3) and (4) and 1991(a)(6).

e. Respondent failed to report fungus infection and damage, and conditions likely to lead to infestations or infection (earth-wood contacts and excessive moisture conditions) at the wood planter box attached to the left side of the structure, as required by California Code of Regulations, title 16, sections 1990(a)(3) and (4) and 1991(a)(4) and (5).

f. Respondent failed to report evidence of fungus damage and excessive moisture to the master bathroom floor from inside the structure with extensive damage below, as required by California Code of Regulations, title 16, sections 1990(a)(3) and (4), and (b)(5).

g. Respondent failed to report evidence of subterranean termite infestation in the cellulose debris in the subarea, as required by California Code of Regulations, title 16, section 1991(a)(3).

Section 8516(b)(7) and (9):

h. Respondent failed to report inaccessible portions of the substructure or areas having less than 12 inches clearance between the floor joist and soil below, as required by California Code of Regulations, title 16, section 1990(b)(2).

Section 8516(b)(10):

i. Respondent failed to make proper corrective recommendations outlining the repairs to be performed as part of the contract for items 1B, 3B, 3C, and 5A, as defined by California Code of Regulations, title 16, sections 1991(a)(5) and (11).

SECOND CAUSE FOR DISCIPLINE

(Fraud or Misrepresentation After Inspection)

33. Respondent's registration and operator's license are subject to discipline under Code section 8644, in that, regarding the Lommasson property, Respondent committed fraud or misrepresentation in the Standard Notice of Work Completed and Not Completed, dated October 8, 2008, by certifying that all recommended items for repair contained in Inspection Report No. 21101 were completed, when in fact, they were not. In addition, Respondent committed fraud or misrepresentation by certifying that the Lommasson property was free of evidence of active infestations or infections, when in fact, it was not.

THIRD CAUSE FOR DISCIPLINE

(Failed to Complete Contract for Price Stated in Contract)

34. Respondent's registration and operator's license are subject to discipline under Code section 8638, in that, regarding the Lommasson property, Respondent failed to complete the contract for the contract price and the homeowner will be required to spend a sum in excess of the contract price to complete the project in accordance with the contract.

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FOURTH CAUSE FOR DISCIPLINE

(Completion Notice Violation - Proper Certification Statement)

35. Respondent's registration and operator's license are subject to discipline under Code section 8641, in that, regarding the Lommasson property, Respondent failed to use the proper certification statement on the Completion Notice, pursuant to Code section 8519(c).

FIFTH CAUSE FOR DISCIPLINE

(Inspection Violation)

36. Respondent's registration and operator's license are subject to discipline under Code section 8641, in that, regarding the Lommasson property, Respondent failed to issue an inspection report prior to performing work between June 3, 2009, and October 2, 2009, as required by Code section 8514.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Prepare and Deliver Completion Notice to Consumer)

37. Respondent's registration and operator's license are subject to discipline under Code section 8518, in that, regarding the Lommasson property, Respondent failed to prepare and deliver the Completion Notice dated October 28, 2008, to the consumer within ten (10) working days of completing the recommended work.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to File Reports with the Board)

38. Respondent's registration and operator's license are subject to discipline under Code section 8518, in that, regarding the Lommasson property, Respondent failed to file Inspection Report No. 21101, dated September 23, 2008, and Completion Notice dated October 28, 2008, with the Board within ten (10) working days following the commencement of the inspection or upon completed work.

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PRIOR DISCIPLINE

Company Registration No. PR 5159 and Operator License No. OPR 11387

39. On or about October 22, 2009, a fine in the amount of $1,746 was levied against the registration and operator's license by the Board for violating Code sections 8516(b), 8518, and 8691, and California Code of Regulations, title 16, section 1996. The fine has not been paid.

OTHER MATTERS

40. Notice is hereby given that section 8620 of the Code 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.

41. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 5159, issued to Artisan Termite Services, likewise constitute cause for discipline against Operator's License Number OPR 11387, issued to Aaron D. Dietrich, who serves as the Qualifying Manager of Artisan Termite Services, regardless of whether Aaron D. Dietrich had knowledge of or participated in the acts or omissions which constitute cause for discipline against Artisan Termite Services.

42. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 5159, issued to Artisan Termite Services, then Aaron D. Dietrich, who serves as the Qualifying Manager of Artisan Termite Services, 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 him, shall be subject to disciplinary action.

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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 5159, issued to Artisan Termite Services;

2. Revoking or suspending Operator's License Number OPR 11387, issued to Aaron D. Dietrich;

3. Revoking or suspending any other license for which Aaron D. Dietrich is furnishing the qualifying experience or appearance;

4. Ordering restitution of all damages according to proof suffered by S. Lommasson as a condition of probation in the event probation is ordered;

5. Prohibiting Aaron D. Dietrich 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 5159, issued to Artisan Termite Services;

6. Ordering Aaron D. Dietrich and Artisan Termite Services 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,

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

DATED: 9/3/10

Kelli Okuma

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

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