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FILED
Date 1/30/14 By

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

In the Matter of the Accusation Against: **HYDREX TERMITE AND PEST CONTROL OF SAN GABRIEL VALLEY** 11104 Rush St., Unit #5 South El Monte, CA 91733 **Company Registration Certificate No. PR 4531, Br. 2 and 3** **STANLEY KARL SANDERS, President** **ERIC JOSEPH WERNER, Qualifying Manager** **SERGIO ZAMORANO, Qualifying Manager** -and- **ERIC JOSEPH WERNER** 11072-A Mt. Brow Road Sonora, CA 95370 **Operator License No. OPR 11667, Br. 2** -and- **SERGIO ZAMORANO** 14408 East Whittier Boulevard #B3 Whittier, CA 90605 **Operator License No. OPR 10565, BR. 3** Respondents.	Case No. 2014-37 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about May 7, 2004, the Structural Pest Control Board issued Company Registration Certificate Number PR 4531 ("Registration") to Hydrex Termite and Pest Control of San Gabriel Valley ("Respondent Hydrex"). Stanley Karl Sanders is the current President of Respondent Hydrex.

3. On or about March 17, 2008, the Structural Pest Control Board issued Operator's License No. OPR 11667 to Eric Joseph Werner ("Respondent Werner"). Respondent Werner's Operator's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2016, unless renewed.

4. On or about May 10, 2002, the Structural Pest Control Board issued Operator's License No. OPR 10565 to Sergio Zamorano ("Respondent Zamorano"). Respondent Zamorano's Operator's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2016, unless renewed.

JURISDICTION

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

6. 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.

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7. 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."

8. 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."

STATUTORY PROVISIONS

9. 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 or Section 8518 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 8518 or this section 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).

"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, field notes, and activity forms."

10. Section 8518 states:

"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).

"The registered company shall retain for three years all original notices of work completed, work not completed, and activity forms.

"Notices of work completed and not completed 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 notices of work completed or not completed or copies thereof shall be submitted to the board upon request within two business days."

11. Section 8610 states, in pertinent part:

"(c) 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."

12. Section 8613 states:

"A registered company which changes the location of its principal office or any branch office or which changes its qualifying manager, branch supervisor, officers, or its bond or insurance shall notify the registrar in writing of such change within 30 days thereafter. A fee for filing such changes shall be charged in accordance with Section 8674."

13. Section 8617 states, in pertinent part:

"(f) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board."

14. 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."

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15. Section 8654 states:

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

16. Section 8691 states:

"A registered company shall not engage in the practices for which it is required to be registered by this chapter unless it maintains an insurance policy as specified in this article."

17. Section 8695 states:

"The violation of any provision of this article is a misdemeanor and shall be grounds for the suspension or revocation by the board of the operator's license of the owner or qualifying manager or managers of the registered company and of the company registration."

REGULATORY PROVISIONS

18. California Code of Regulations, title 16, section 1920 states, in pertinent part:

"(a) Authority to Issue Citations and Fines:

"(1) The Registrar or Deputy Registrar of the Board is authorized to issue citations which may contain an order of abatement or an administrative fine ("fine") for violations of the statutes contained in the Structural Pest Control Act (commencing with Business and Professions Code

Section 8500) or the regulations adopted by the Board.

. . . .

"(d) Compliance with Orders of Abatement: When a citation is not contested or if the citation is appealed and the person cited does not prevail, failure to comply with the order of abatement or to pay the fine in the citation within the time allowed by a licensee may result in disciplinary action being taken by the Board against the person cited, or where the cited person is unlicensed in appropriate judicial relief being taken against the person cited."

19. California Code of Regulations, title 16, section 1996.3 states, in pertinent part:

"(a) The address of each property inspected and/or upon which work was completed shall be reported on a form prescribed by the Board and designated as the WDO Inspection and Completion Activity Report Form (see Form No. 43M-52 Rev. 5/09) at the end of this section. This form shall be prepared by each registered company and shall comply with all of the requirements pursuant to Section 8516(b), and 8518.

. . . .

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

COST RECOVERY

20. Section 125.3 states, in pertinent part, that a 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.

FIRST CAUSE FOR DISCIPLINE

(Engaging in the Practice of Structural Pest Control without a Required Insurance Policy)

21. Respondent Hydrex, Respondent Werner and Respondent Zamorano are subject to disciplinary action under sections 8691 and 8695 in that Respondent Hydrex engaged in the practice of structural pest control without an insurance policy that provided the minimum limits as required by law. The circumstances are as follows:

a. On or about May 25, 2012, Respondent Hydrex's insurance policy was cancelled due to a nonpayment of the policy and its endorsements.

b. On or about August 17, 2012, Respondent Hydrex obtained requisite insurance.

c. On or about March 22, 2013, a Specialist for the Board traveled to Respondent Hydrex's office and found wood destroying pest and organism reports, standard notices of work completed and not completed and pest control daily detail reports dated and performed during the period of time in which Respondent Hydrex's insurance policy had lapsed.

d. On or about June 17, 2013, the Board specialist identified 73 wood destroying pest and organism activities that occurred during the insurance lapse from May 25, 2012, to August 17, 2012.

SECOND CAUSE FOR DISCIPLINE

(Failure to Report and File with the Board Addresses of Inspected Properties)

22. Respondent Hydrex and Respondent Zamorano are subject to disciplinary action under section 8516, subdivision (b), section 8518 and California Code of Regulations, title 16, section 1996.3 for failing to report and file with the Board the addresses of the properties inspected or upon which work was completed on a form prescribed by the Board no later than 10 business days after the commencement of an inspection or upon completion of work. The circumstances are as follows:

a. On or about March 25, 2013, a Specialist for the Board traveled to Respondent Hydrex's office. Following that visit sixty-nine (69) wood destroying pest and organism activities were filed with the Board by Respondent Hydrex. These activities were filed 161 to 213 days late and only after the Board Specialist visited Respondent Hydrex's office.

b. On or about June 18, 2013, a Specialist for the Board found an additional one hundred and twenty (120) wood destroying pest and organism activity inspection reports and completion reports for activities occurring between February 1, 2013, and June 18, 2013, that were not properly reported to the Board.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Notify Registrar of Change to Corporate Officers)

23. Respondent Hydrex is subject to disciplinary action under section 8613 for failing to notify the registrar of changes to the corporate officers of Respondent Hydrex within 30 days. The circumstances are that the prior CEO had been deceased for over two years, and the new President and CEO had been operating for over two years without notifying the registrar.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Citation)

24. Respondent Hydrex is subject to disciplinary action under section 8617, subdivision (f), and section 8641 in conjunction with California Code of Regulations, title 16, section 1920, subdivision (d), for failing to pay the fine in citation number CF 2007 22 within the time allowed. The circumstances are that on or about August 16, 2006, Respondent Hydrex was issued citation number CF 2007-22 in the amount of $2,750.00 for violating sections 8550, 8506.2 by doing business without a qualifying manager and section 8653 for failing to pay subcontractors for completed fumigations. As of January 6, 2014, the fine has not been paid.

FIFTH CAUSE FOR DISCIPLINE

(Failure of Qualifying Managers to Properly Supervise)

25. Respondent Werner and Respondent Zamorano are subject to disciplinary action under section 8610, subdivision (c), in conjunction with section 8641, for failing to supervise the daily operations of the company and make themselves available to supervise and assist all employees of the company. The circumstances are as follows:

a. On or about June 12, 2013, in an interview with a Board Specialist, Respondent Zamorano stated that he comes in once a week to view the company's activities.

b. On or about June 12, 2013, a Board Specialist found that Respondent Werner lives approximately 6 hours away from Respondent Hydrex's business location. In a telephone interview Respondent Werner admitted that he has never been to Respondent Hydrex's office.

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DISCIPLINARY CONSIDERATIONS

26. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant alleges the following:

Prior Discipline Against Respondent Zamorano

a. On or about July 8, 2003, the Structural Pest Control Board brought a disciplinary action against Respondent Zamorano entitled In the Matter of the Accusation Against K Force Exterminators in Board case number 2004-1 and OAH number 2003110355. On or about November 14, 2004, Respondent Zamorano's Operator's License No. OPR 10565 was placed on probation for three years for violating section 8610, subdivision (c), by failing to supervise the daily operations of the company where he was serving as the qualifying manager. That decision is now final and is incorporated by reference as if fully set forth.

Prior Citations Against Respondent Hydrex

b. On or about January 25, 2008, in Citation No. CF 08-114, the Board issued a fine in the amount of $2,500.00 against Respondent Hydrex for violating section 8692 by failing to maintain required insurance between September 27, 2007, and December 1, 2007. The fine has been paid.

c. On or about June 10, 2009, in File No. 08092091, the Los Angeles County Agricultural Commissioner issued a fine in the amount of $50.00 to Respondent Hydrex for violating section 8505.17, subdivision (c), by failing to submit monthly summary pesticide use reports. The fine has been paid.

d. On or about December 15, 2010, in File No. 10112030, the Los Angeles County Agricultural Commissioner issued a fine in the amount of $250.00 to Respondent Hydrex for violating section 8505.17, subdivision (c), by failing to submit monthly summary pesticide use reports. The fine has been paid.

Prior Citations Against Respondent Hydrex and Respondent Zamorano

e. On or about May 16, 2011, in File No. 10112118, the Los Angeles County Agricultural Commissioner issued a fine in the amount of $250.00 to Respondent Hydrex and Respondent Zamorano for violating the Flood and Agricultural Code section 15204, subdivision

(a), by failing to register the structural pest control company with the county agricultural commissioner. The fine has been paid.

f. On or about August 15, 2011, in File No. 10112180, the Los Angeles County Agricultural Commissioner issued a fine in the amount of $250.00 to Respondent Hydrex and Respondent Zamorano for violating section 8505.17, subdivision (c), by failing to submit monthly summary pesticide use reports. The fine has been paid.

Prior Citation Against Respondents Hydrex, Zamorano and Werner

g. On or about August 6, 2012, in File No. 12132014, the Los Angeles County Agricultural Commissioner issued a fine in the amount of $250.00 to Respondent Hydrex, Respondent Zamorano and Respondent Werner for violating California Code of Regulations, title 3, section 6739, subdivision (d), by failing to provide employees with a respirator medical evaluation. The fine has been paid.

Prior Citations Against Respondent Zamorano

h. On or about March 14, 2003, in File No. 068-SCP-SD-02/03, the San Diego Department of Agriculture, Weights & Measures issued a fine in the amount of $50.00 to Respondent Zamorano for violating Flood and Agricultural Code section 15204, subdivision (a), by failing to register the structural pest control company with the county agricultural commissioner during the 2002 calendar year. The fine has been paid.

i. On or about May 14, 2003, in File No. 070-SCP-SD-02/03, the San Diego Department of Agriculture, Weights & Measures issued a fine in the amount of $100.00 to Respondent Zamorano for violating Flood and Agricultural Code section 15204, subdivision (a), by failing to register the structural pest control company with the county agricultural commissioner during the 2003 calendar year. The fine has been paid.

j. On or about August 15, 2003, in Case No. CF 04-25, the Board issued a fine in the amount of $10,000.00 to Respondent Zamorano for violating sections 8516, subdivision (b), 8519 and 8520 by failing to file wood destroying pest and organism activity reports with the Board from November 25, 2002, through March 18, 2003. Respondent Zamorano appealed the citation and a hearing was held by the Board's Citation and Fine Appeal Panel on September 23, 2003.

Following the hearing, the citation was upheld but the fine was reduced to $6,000.00. The fine has been paid.

k. On or about April 7, 2004, in Case No. CF 04-204, the Board issued a citation and fine in the amount of $1,050.00 to Respondent Zamorano for violating section 8622 by failing to comply with a report of findings within 30 days and California Code of Regulations section 1937.14 for failing to complete work in a quality and workmanlike manner. Respondent Zamorano requested an informal office conference and a conference was held on June 17, 2004. Respondent Zamorano failed to appear at the informal office conference and the citation and fine were upheld in full. The fine has been paid.

OTHER MATTERS

27. 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.

28. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 4531, issued to Hydrex Termite and Pest Control of San Gabriel Valley, likewise constitute cause for discipline against Operator's License Number OPR 11667, issued to Eric Joseph Werner, who served as the Qualifying Manager of Hydrex Termite and Pest Control of San Gabriel Valley, regardless of whether Eric Joseph Werner had knowledge of or participated in the acts or omissions which constitute cause for discipline against Hydrex Termite and Pest Control of San Gabriel Valley.

29. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 4531, issued to Hydrex Termite and Pest Control of San Gabriel Valley, then Eric Joseph Werner, who served as the Qualifying Manager of Hydrex Termite and Pest Control of San Gabriel Valley, 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.

30. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 4531, issued to Hydrex Termite and Pest Control of San Gabriel Valley, likewise constitute cause for discipline against Operator's License Number OPR 10565, issued to Sergio Zamorano, who served as the Qualifying Manager of Hydrex Termite and Pest Control of San Gabriel Valley, regardless of whether Sergio Zamorano had knowledge of or participated in the acts or omissions which constitute cause for discipline against Hydrex Termite and Pest Control of San Gabriel Valley.

31. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 4531, issued to Hydrex Termite and Pest Control of San Gabriel Valley, then Sergio Zamorano, who served as the Qualifying Manager of Hydrex Termite and Pest Control of San Gabriel Valley, 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.

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 4531, issued to Hydrex Termite and Pest Control of San Gabriel Valley, Stanley Karl Sanders as President;

2. Revoking or suspending Operator's License Number OPR 11667, issued to Eric Joseph Werner;

3. Revoking or suspending Operator's License Number OPR 10565, issued to Sergio Zamorano;

4. Prohibiting Eric Joseph Werner 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 4531, issued to Hydrex Termite and Pest Control of San Gabriel Valley;

5. Prohibiting Sergio Zamorano 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 4531, issued to Hydrex Termite and Pest Control of San Gabriel Valley;

6. Ordering Hydrex Termite and Pest Control of San Gabriel Valley, Stanley Karl Sanders, Eric Joseph Werner, and Sergio Zamorano 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: 1/30/14

SUSAN SAYLOR
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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