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FILED
Date 5/13/15 By

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

In the Matter of the First Amended Petition to Revoke Probation Against, **L.A. EXTERMINATOR CORP.; KI BUM NAM aka KEVIN NAM** **211 E. Pomona Blvd.** **Monterey Park, CA 91755** **Company Registration Certificate No. PR 5773, Operator's License No. OPR 11789, Branch 2, Field Representative License No. FR 44519, Branch 3** Respondents.	Case No. 2012-32 OAH No. 2015010600 FIRST AMENDED PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

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

License History

2. On or about February 23, 2009, the Structural Pest Control Board issued Company Registration Certificate Number PR 5773 to L.A. Exterminator Corp.; Ki Bum Nam aka Kevin Nam (Respondent). The Company Registration Certificate was in effect at all times relevant to the charges brought herein.

3. On or about July 8, 2009, the Board issued Field Representative License No. FR 44519 to Ki Bum Nam aka Kevin Nam. The license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2015, unless renewed.

4. On or about December 23, 2008, the Board issued Operator's License No. OPR 11789, branch 2, to Ki Bum Nam aka Kevin Nam. The license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2017, unless renewed.

5. In a disciplinary action entitled "In the Matter of Accusation Against LA Exterminator Corp., dba Gold Star Pest Control, Branches 2 and 3; Ki Bum Nam, Branch 2 Qualifying Manager; Zane Szob Kim, Branch 3 Qualifying Manager; Ki Bum Nam aka Kevin Nam, Case No. 2012-32," the Structural Pest Control Board, issued a decision in which Respondent's Company Registration Certificate, Operator's License and Field Representative Licenses were revoked. However, the revocation was stayed and Respondent's Company Registration Certificate, Operator's License and Field Representative Licenses were placed on probation for a period of three (3) years with terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

6. This Petition to Revoke Probation 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.

7. Section 8620 of the Code 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.

8. Section 8625 of the Code 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 8572 subdivision (a)(4) states:

" Notwithstanding any other provision of law, the board may, in its sole discretion, issue probationary license to an applicant subject to terms and conditions deemed appropriate by the board, including, but not limited to, the following:

...

(4) Compliance with all provisions of this chapter."

10. Section 8639 of the Code states:

"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."

11. Section 8642 of the Code provides in pertinent part:

" 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."

12. Section 8538 of the Code provides in pertinent part:

"(a) A registered structural pest control company shall provide the owner, or owner's agent, and tenant of the premises for which the work is to be done with clear written notice which contains the following statements and information using words with common and everyday meaning:

(1) The pest to be controlled.

(2) The pesticide or pesticides proposed to be used, and the active ingredient or ingredients.

(3) "State law requires that you be given the following information: CAUTION—PESTICIDES ARE TOXIC CHEMICALS. Structural Pest Control Companies are registered and regulated by the Structural Pest Control Board, and apply pesticides which are registered and approved for use by the California Department of Pesticide Regulation and the United States Environmental Protection Agency. Registration is granted when the state finds that, based on existing scientific evidence, there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized.

"If within 24 hours following application you experience symptoms similar to common seasonal illness comparable to the flu, contact your physician or poison control center (telephone number) and your pest control company immediately." (This statement shall be modified to include any other symptoms of overexposure which are not typical of influenza.)
"For further information, contact any of the following: Your Pest Control Company (telephone number); for Health Questions—the County Health Department (telephone number); for Application Information—the County Agricultural Commissioner (telephone number), and for Regulatory Information—the Structural Pest Control Board (telephone number and address)."

13. Section 8505.17, subdivision c of the Code provides in pertinent part:

"(c) Registered structural pest control companies shall prepare and submit to the county agricultural commissioner a monthly report of all pesticides used in that county. The report shall be on a form approved by the Director of Pesticide Regulation and shall contain the name and registration number of each pesticide and the amount used. The report shall be submitted to the commissioner by the 10th day of the month following the month of application and a copy shall be maintained by the licensee for a period of three years after the report submission date … When a registered structural pest control company performs no pest control during a month in a county in which it has given notice pursuant to Section 15204 of the Food and Agricultural Code, the registered company shall submit a use report stating this fact to the commissioner."

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14. Section 8516 subdivision b of the Code provides 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.

A written inspection report conforming to this section and 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. 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:

...

(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."

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REGULATORY PROVISIONS

15. Cal. Code of Regs., Title 16 section 1990 provides 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.

...

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

...

(5) Commonly controllable moisture conditions which would foster the growth of a fungus infection materially damaging to woodwork."

16. Cal. Code of Regs. Title 16, section 1991 provides 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:

...

(8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendation shall be made to either:

...

(C) locally treat by any or all of the following:

1. exposing the infested area(s) for local treatment,

2. removing the infested wood,

3. using another method of treatment which exterminates the infestation. (If any recommendation is made for local treatment, the report must contain the following statement: "Local treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.")

When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagrammed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas. The limited inspection report shall include a recommendation for further inspection of the entire structure and that all accessible evidence of wood-destroying pests be removed or covered.

(9) For the extermination of subterranean termite infestations, treat an infested area under the structure when subterranean termite tubes are found connected to the ground or when active infestations are found in the ground. Subterranean termite tubes shall be removed where accessible, except where a licensee is using an above ground termite bait station that requires the use of the termite tubes to be effective. Where a licensee is using an above ground termite bait station that requires the use of termite tubes to be effective, subterranean termite tubes can remain in place for the duration of the licensee's use of the termite bait stations. At the conclusion of the treatment, the subterranean termite tubes shall be removed."

FACTUAL ALLEGATIONS

17. On or about February 24, 2014, a Board representative was to meet with Respondent at a site to discuss quarterly reports as a condition of Respondent's probation. On or about February 25, 2014, the Board representative identified one of Respondent's service vehicles in a nearby location. The Board representative performed a compliance check of the vehicle and determined it was not in compliance. While waiting for the driver of Respondent's service vehicle, the Board representative contacted an unlicensed employee (Jongkyu Hong aka Bryan

Hong)[1] who admitted that his license was cancelled. The Board representative traveled to Respondent's business location and discovered that the unlicensed employee was performing pest control services without a valid field representative or applicator license. Upon further investigation, the Board representative identified another unlicensed employee (Hoon Ki Chang aka David Chang)[2] performing pest control services for Respondent's business.

18. On or about February 25, 2015, a Board representative travelled to Respondent business location to collect probation compliance records, perform an inspection of the site and conduct an interview with Respondent Ki Bum Nam aka Kevin Nam.

19. The Board representative collected an invoice/service ticket for work that Respondent performed for Izo Catering (Izo), located at 3915 ½ West 6th Street, Los Angeles, CA 90020.

20. The invoice/service ticket indicates that on or about November 21, 2014, "roaches" were treated at Izo "under (sink, shelves table), pipeline, creack, hole, kyallway and cabinet" however, Respondent failed to describe the pesticide or pesticides to be used and the active ingredients contained therein.

21. The Board representative also obtained copies of Wood Destroying Pests and Organism Inspection Reports (WDO Reports) prepared and produced by Respondent regarding several properties, including 9939 Arkansas St., Bellflower, CA (Bellflower property), inspected on or around October 15, 2014 and 6941 Lime Ave., Long Beach, CA (Long Beach property), inspected on or around February 18, 2015.

22. A review of the WDO Reports for the above premises revealed the following:

Bellflower

23. With respect to the Bellflower property, Respondent indicated on the Standard Inspection Report that it used "Demon MAX", a pesticide containing Cypermethrin 25.3% as the active ingredient, however, Demon MAX was not disclosed in its October 2014 or November 2014 Monthly Summary Pesticide Use Reports filed with the county agricultural commissioner.

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[1] Jongkyu Hong aka Bryan Hong/ Unlicensed with cancelled Field Representative License No. FR 46176 BR 3, Cancelled RA 50717 BR 2

[2] Hoon Ki Chang aka David Chang/ Unlicensed with cancelled Registered Applicator No. 50615 Branches (BR) 2 and 3

24. Respondent identified in its Findings and Recommendations a "[f]ungus condition visible at time of inspection at sub floor as indicated on diagram", however Respondent failed to describe moisture source(s) or condition(s) which would foster the growth of fungus.

25. Respondent identified in its Findings and Recommendations, "Evidence of subterranean termite infestation at hardwood floor as indicated on the diagram; Recommendation: Pressure 'ROD' treat, trench application or low pressure spot spray as necessary. Break accessible sub tubes." Subterranean termite tubes are required to be removed, when accessible.

Long Beach

26. With respect to the Long Beach property, Respondent identified in its Findings and Recommendations "[d]ry-rot wood members found at time of inspection at fascia boards as indicated on the diagram," however Respondent failed to describe moisture source(s) or condition(s) which would foster the growth of fungus.

PETITION TO REVOKE PROBATION

27. Grounds exit to revoke the probation and reimpose the order of revocation of Respondent's Company Registration Number PR 5773; Respondent Nam's Operator License No. OPR 11789 and Respondent Nam's Field Representative License No FR 44519, in that Respondent failed to comply with his probation terms and conditions as follows:

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey all Laws and Rules Relating to the Practice of Structural Pest Control)

28. Condition 2 of the terms and conditions of probation provides that Respondent shall obey all laws and rules relating to the practice of structural pest control.

29. Respondent's probation is subject to revocation in that Respondent failed to comply with Bus. & Prof. Code §§ 8639 and 8642 of the Code in that Respondent employed unlicensed individuals to perform services for Respondent's business. Complainant refers to and incorporates by reference, the allegations set forth in paragraph 17 above as if fully set forth herein.

30. Respondent's probation is subject to revocation in that Respondent failed to comply with Bus. & Prof. Code § 8538 of the Code in conjunction with Cal. Code of Regs. Title 16 section 1990 (b)(5) in that Respondent failed to provide consumers with clear written notice describing the pest to be controlled and the pesticides to be used. Complainant refers to and incorporates by reference, the allegations in paragraphs 18 – 20 above as if fully set forth herein.

31. Respondent's probation is subject to revocation in that Respondent failed to comply with Bus. & Prof. Code § 8505.17 in that Respondent failed to prepare and submit to the county agricultural commissioner an accurate monthly report of all pesticides used in that county. Complainant refers to and incorporates by reference, the allegations in paragraphs 21 – 23 above as if fully set forth herein.

32. Respondent's probation is subject to revocation in that Respondent failed to comply with Bus. & Prof. Code § 8516 (b)(7) of the Code in conjunction with Cal. Code of Regs. Title 16 section 1990 (b)(5) in that Respondent failed to describe moisture source(s) or condition(s) which would foster the growth of fungus. Complainant and incorporates by reference, the allegations in paragraphs 21, 22, 24 and 26 above as if fully set forth herein.

33. Respondent's probation is subject to revocation in that Respondent failed to comply with Cal. Code of Regs. Title 16 section 1991 (a)(9) in that Respondent failed to comply with rules and regulations relating to extermination of subterranean termite infestations. Complainant and incorporates by reference, the allegations in paragraph 25 above as if fully set forth herein.

OTHER MATTERS

34. Section 8620 of the Code provides, in pertinent part, that 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.

35. Section 8654 of the Codes 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."

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 PR 5773, issued to L.A. Exterminator Corp.; Ki Bum Nam aka Kevin Nam;

2. Revoking or suspending Field Representative License No. FR 44519, issued to Ki Bum Nam aka Kevin Nam;

3. Revoking or suspending Operator License No. OPR 11789, issued to Ki Bum Nam aka Kevin Nam;

4. Prohibiting Ki Bum Nam aka Kevin Nam from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of a registered company during the time that discipline is imposed on Operator License No. OPR 11789 and Field Representative License No. FR 44519 issued to Ki Bum Nam aka Kevin Nam;

5. Ordering Respondent to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

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

DATED: 5/13/15

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

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