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

In the Matter of the Accusation Against:

Case No. 2010-52

SERGIO H. HERNANDEZ
2736 Wendy Place
Port Hueneme, Ca 93041
Operator License No. OPR 11791

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

Respondents.

FINDINGS OF FACT

1. On or about February 9, 2010, Complainant Kelli Okuma, in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board (Board), Department of Pesticide Regulation, filed Accusation No. 2010-52 against Sergio H. Hernandez (Respondent) before the Structural Pest Control Board.

2. On or about January 7, 2009, the Board issued Operator License No. OPR 11791 to Respondent. The Operator License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

3. On or about April 9, 2010, Carolina Lopez-Castillo, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2010-52, Statement to Respondent, two copies of a Notice-of-Defense form, Request for Discovery, and a

1 copy of Government Code sections 11507.5, 11507.6 and 11507.7 to Respondent's address of
2 record with the Board, which was and is: 2736 Wendy Place, Port Hueneme, California 93041.

3 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c).

6 5. Respondent did not file or serve a Notice of Defense.

7 6. Government Code section 11506, subdivision (c) states, in pertinent part:

8 "(c) The respondent shall be entitled to a hearing on the merits if the
9 respondent files a notice of defense Failure to file a notice of defense shall
10 constitute a waiver of respondent's right to a hearing"

11 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
12 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
13 2010-52.

14 8. Government Code section 11520, subdivision (a) states, in pertinent part:

15 "If the respondent either fails to file a notice of defense or to appear at the
16 hearing, the agency may take action based upon the respondent's express admissions
17 or upon other evidence and affidavits may be used as evidence without any notice to
18 respondent"

19 9. Pursuant to its authority under Government Code section 11520, the Board finds
20 Respondent is in default. The Board will take action without further hearing and, based on the
21 evidence on file herein, finds that the allegations in Accusation No. 2010-52 are true.

22 10. The total cost for investigation and enforcement in connection with the Accusation
23 are \$2,433.60 as of April 29, 2010.

24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent Sergio H. Hernandez has
26 subjected his Operator's License No. OPR 11791 to discipline.

27 2. A copy of the Accusation is attached.

28 3. The agency has jurisdiction to adjudicate this case by default.

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4. The Structural Pest Control Board is authorized to revoke Respondent's Operator's License based upon the following violations alleged in the Accusation:

- a. First Cause for Discipline for Unlicensed Activity (Bus. & Prof. Code, §§ 8641, 8550, subd. (a));
- b. Second Cause for Discipline for Unlawful Issuance of Completion Notice (Bus. & Prof. Code, §§ 8641, 8552);
- c. Third Cause for Discipline for Failure to Make Bona Fide WDO Inspection (Bus. & Prof. Code, § 8641); and
- d. Fourth Cause for Discipline for Gross Negligence/Fraud (Bus. & Prof. Code, § 8642).

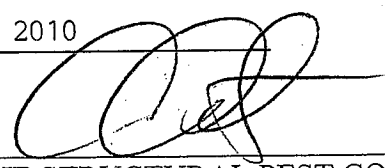
ORDER

IT IS SO ORDERED that Operator's License No. OPR 11791, heretofore issued to Respondent Sergio H. Hernandez is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on June 25, 2010.

It is so ORDERED May 26, 2010



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

60533971.DOC
DOJ docket number: LA2010600070

Attachment: Exhibit A: Accusation No. 2010-52

Exhibit A
Accusation No. 2010-52

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804
Attorneys for Complainant

FILED

Date 2/9/10 By Kelli Okuma

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

11 In the Matter of the Accusation Against:

Case No. 2010-52

12 **SERGIO H. HERNANDEZ**
2736 Wendy Place
13 Port Hueneme, California 93041
Operator's License No. OPR 11791

ACCUSATION

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES/LICENSE INFORMATION**

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

21 **Operator's License No. OPR 11791**

22 2. On or about January 7, 2009, the Board issued Operator's License Number OPR
23 11791 in Branch 3 (termite) to Sergio H. Hernandez ("Respondent") on inactive status.
24 Respondent's operator's license will expire on June 30, 2011, unless renewed.

25 **Company Registration Certificate No. PR 218**

26 3. On or about February 3, 1987, the Board issued Company Registration Certificate
27 Number PR 218 (hereinafter "company registration") in Branches 2 (general pest) and 3 to Taylor
28 Pest Control, Inc. ("Taylor Pest Control"), with Charles Kenny Hillman, Jr. ("Hillman") as

1 president and qualifying manager, Marianna Gowin as secretary, and Douglas D. Hillman, Jr. as
 2 vice president. On January 17, 2006, Taylor Pest Control paid a \$2,742 fine levied by the Board
 3 for violations of Business and Professions Code ("Code") sections 8516, subdivision (b), 8518,
 4 and 8650 (Taylor Pest Control also failed to comply with the order of abatement). On February 6,
 5 2006, Hillman disassociated as qualifying manager. Taylor Pest Control's company registration
 6 was suspended on the dates indicated below and was canceled on December 28, 2007.

<u>Suspension Date</u>	<u>Violation</u>	<u>Status</u>
04/13/1990	Failure to maintain general liability insurance as required by Code section 8690	Registration reinstated 07/19/1990 after general liability insurance posted
12/12/2002	See above.	Registration reinstated 12/19/2002
03/17/2004	" "	Registration reinstated 04/09/2004
12/20/2005	" "	Suspension still in effect
04/25/2006	Failure to replace qualifying manager	Suspension still in effect
07/17/2007	Failure to maintain \$4,000 surety bond as required by Code section 8697	Suspension still in effect

17 **Field Representative's License No. FR 12506**

18 4. On or about October 1, 1984, the Board issued Field Representative's License
 19 Number FR 12506 in Branch 2 to Respondent, employee of Western Exterminator Company. On
 20 August 7, 1985, Respondent's license was upgraded to include Branches 2 and 3. On December
 21 10, 1993, Respondent left the employ of Western Exterminator Company. On July 25, 1997,
 22 Respondent's license was upgraded to include Branches 1 (fumigation), 2, and 3. Respondent's
 23 license was canceled on June 30, 2005.

24 **JURISDICTION**

25 5. Code section 8620 provides, in pertinent part, that the Board may suspend or revoke a
 26 license when it finds that the holder, while a licensee or applicant, has committed any acts or
 27 omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil
 28 penalty.

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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 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.

STATUTORY PROVISIONS

8. Code section 8550, subdivision (a), states that "[i]t is unlawful for any individual to engage or offer to engage in the business or practice of structural pest control, as defined in Section 8505, unless he or she is licensed under this chapter."

9. Code section 8552 states that "[i]t is unlawful for any person to advertise or represent in any manner that any pest control work, in whole or in part, has been done upon any structure, unless the work has been performed by a company registered under this chapter."

10. Code section 8610 states, in pertinent part:

(a) Every company that engages in the practice of structural pest control, as a sole proprietorship, partnership, corporation, or other organization or any combination thereof, shall be registered with the Structural Pest Control Board. Each application for a company registration shall include the name of the company's owner if it is a sole proprietorship, the names of the partners, if it is a partnership, or the names of its officers and shareholders with 10 percent or more ownership interest, if it is a corporation, and the address of the company's principal office in this state.

///

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

8 11. Code section 8641 states:

9 Failure to comply with the provisions of this chapter, or any rule or
10 regulation adopted by the board, or the furnishing of a report of inspection without
11 the making of a bona fide inspection of the premises for wood destroying pests or
12 organisms, or furnishing a notice of work completed prior to the completion of the
13 work specified in the contract, is a ground for disciplinary action.

14 12. Code section 8642 states that "[t]he commission of any grossly negligent or
15 fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a
16 registered company is a ground for disciplinary action."

17 COST RECOVERY

18 13. Code section 125.3 states, in pertinent part, that a Board may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 246 CRESTWOOD AVENUE, VENTURA, CA

23 14. On December 10, 2008, Respondent inspected the property located at 246 Crestwood
24 Avenue, Ventura, California (hereinafter "property"), at the request of Mildred Vanyi ("Vanyi")
25 and issued a complete Wood Destroying Pests and Organisms Inspection Report (hereinafter
26 "WDO inspection report"). The WDO inspection report indicated that the inspection was
27 completed by Respondent on behalf of Taylor Pest Control, PR 218. Respondent reported
28 evidence of drywood termites at the rafter tails, fascia boards, roof ship lap, vertical trim board,
roof joists, plywood roof sheathing, wall framing, fascia corner seam, and attic framing; evidence
of drywood termite damage at the rafter tails, fascia boards, roof ship lap, vertical trim board, roof
joists, plywood roof sheathing, wall framing, and fascia corner seam; and fungus/dry rot damage
at the rough cut vertical trim board, siding panels, fascia corner, plywood patio roof sheathing,
patio beam, and fascia boards. Respondent recommended fumigating the property to exterminate

1 the drywood termites. Respondent made a secondary recommendation to utilize local chemical
2 treatments to exterminate the drywood termites because the homeowner had requested an
3 alternate treatment method for the control of drywood termites. Respondent also recommended
4 repairing the termite and fungus damaged wood. Respondent prepared a work authorization on
5 behalf of Taylor Pest Control for the corrective repairs, which totaled \$6,388.

6 15. On February 20, 2009, Respondent issued a Standard Notice of Work Completed and
7 Not Completed (hereinafter "completion notice") on behalf of Taylor Pest Control, certifying that
8 the corrective work recommended in the inspection report, with the exception of item 3B and the
9 fumigation, had been completed in accordance with the Board's rules and regulations and that the
10 property was free of evidence of active infestation or infection in the visible and accessible areas.
11 The total charge for the completed work was listed as \$5,078.

12 16. On April 8, 2009, the Board's specialist, Steve E. Winfrey ("Winfrey"), met with
13 Vanyi and her daughter, Sylvia Johnson ("Johnson")¹, at the property and found various areas of
14 the property under construction. Vanyi and Johnson told Winfrey that they contracted with
15 Respondent and Brett Schulze ("Schulze")² to complete the work noted on the inspection report
16 as well as other "renovations" at the home, including, but not limited to, removing the concrete
17 around the swimming pool and replacing it with flagstone, demolishing and rebuilding the patio
18 structure at the back of the home, removing and replacing the fences, and re-roofing the home.
19 Vanyi stated that there were no written contracts and that all of the work was either in the process
20 of being completed or had been completed. Vanyi also stated that there did not appear to be any
21 problems until she and Johnson began asking about the building permits. Respondent told Vanyi
22 that he was properly licensed to perform the work through his structural pest control license.
23 When Vanyi asked Respondent to show her his structural pest control license, Respondent told
24 her that it was at his house attached to his refrigerator. Vanyi provided Winfrey with copies of
25

26 ¹ Vanyi was 90 years old at the time of the interview and her daughter, Johnson, was 67.

27 ² Schulze was issued Field Representative's License No. FR 42873 in Branches 2 and 3 on
28 March 4, 2008. Schulze's license is current and active.

1 various documents. The documents indicated that Vanyi had paid \$20,583 for the construction
2 work at the property.

3 17. On or about April 9, 2009, Johnson filed a written complaint with the Board, stating,
4 among other things, that Respondent failed to complete the corrective work recommended in the
5 inspection report and that \$20,500 had been paid to Respondent. That same day, Winfrey met
6 with Respondent. Respondent admitted that he performed the inspection of the property using the
7 name style Taylor Pest Control and that he knowingly operated Taylor Pest Control when the
8 company's registration was canceled.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Unlicensed Activity)**

11 18. Respondent is subject to disciplinary action pursuant to Code section 8641 in that on
12 and between December 10, 2008, and April 2009, he failed to comply with Code section 8550,
13 subdivision (a), by engaging in the business or practice of structural pest control without a
14 license, as follows:

15 a. ~~On and between December 10, 2008, and April 2009, Respondent engaged in the~~
16 practice of structural pest control as a sole proprietorship, partnership, corporation, or other
17 organization without a company registration. Further, Respondent operated the company using
18 the business name Taylor Pest Control when, in fact, Taylor Pest Control's company registration
19 had been canceled on December 28, 2007, as set forth in paragraph 3 above.

20 b. On or about December 10, 2008, Respondent inspected the property and issued a
21 WDO inspection report when his field representative's license was canceled, as set forth in
22 paragraph 4 above.

23 c. On or about February 20, 2009, Respondent issued a completion notice on the
24 property when his field representative's license was canceled and his operator's license was
25 inactive, as set forth in paragraphs 4 and 2, respectively.

26 d. In and between December 2008, and April 2009, Respondent performed the
27 corrective work recommended in the WDO inspection report (with the exception of item 3B and
28 ///

1 the fumigation) when his field representative's license was canceled and his operator's license was
2 inactive, as set forth in paragraphs 4 and 2, respectively.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unlawful Issuance of Completion Notice)**

5 19. Respondent is subject to disciplinary action pursuant to Code section 8641 in that on
6 or about February 20, 2009, Respondent failed to comply with Code section 8552, as follows:
7 Respondent issued a completion notice certifying that the corrective work recommended in the
8 WDO inspection report (with the exception of item 3B and the fumigation) had been completed
9 on the property by or on behalf of Taylor Pest Control when, in fact, Taylor Pest Control's
10 company registration had been canceled on December 28, 2007, as set forth in paragraph 3 above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Failure to Make Bona Fide WDO Inspection)**

13 20. Respondent is subject to disciplinary action pursuant to Code section 8641 in that on
14 or about December 10, 2008, Respondent furnished the WDO inspection report to Vanyi and/or
15 Johnson without making a bona fide inspection of the property for wood-destroying pests or
16 organisms, follows: Respondent performed the inspection while his field representative's license
17 was canceled, as set forth in paragraph 4 above.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Gross Negligence/Fraud)**

20 21. Respondent is subject to disciplinary action pursuant to Code section 8642 in that on
21 and between December 10, 2008, and April 2009, he committed grossly negligent or fraudulent
22 acts, as follows:

23 a. Respondent engaged in the practice of structural pest control using the business name
24 Taylor Pest Control when, in fact, Taylor Pest Control's company registration had been canceled
25 on December 28, 2007, as set forth in paragraph 3 above. Further, Respondent was never an
26 officer, director, associate, or qualifying manager for Taylor Pest Control.

27 b. Respondent falsely represented on the WDO inspection report that he was a licensed
28 field representative and that he inspected the property on behalf of a registered company, Taylor

1 Pest Control. In fact, Respondent's field representative's license had been canceled on June 30,
2 2005, as set forth in paragraph 4 above. Further, Taylor Pest Control's company registration had
3 been canceled on December 28, 2007, and the company was not insured or bonded.

4 c. Respondent falsely represented on the notice of completion that the corrective work
5 recommended in the WDO inspection report (with the exception of item 3B and the fumigation)
6 had been completed by or on behalf of a registered company, Taylor Pest Control, when, in fact,
7 Taylor Pest Control's company registration had been canceled on December 28, 2007, as set forth
8 in paragraph 3 above. Further, Respondent falsely certified that the corrective work was
9 performed in accordance with the Board's rules and regulations when, in fact, Respondent
10 performed the corrective work while his field representative's license was canceled and his
11 operator's license was inactive, as set forth in paragraphs 4 and 2, respectively.

12 d. Respondent obtained payment from Vanyi and/or Johnson for performing the WDO
13 inspection when, in fact, Respondent failed to make a bona fide inspection of the property, as set
14 forth in paragraph 20 above.

15 e. Respondent falsely represented to Vanyi that he was licensed to perform the
16 "renovation" work at the property including, but not limited to, the removal of the concrete
17 around the swimming pool and the replacement of the concrete flagstone, the demolition and
18 rebuilding of the patio structure at the back of the home, the removal and replacement of the
19 fences, and the re-roofing of home, when, in fact, Respondent was not licensed to perform the
20 work under his operator's license. Further, Respondent was not a licensed contractor.

21 f. Respondent made the false representation set forth in subparagraph (e) above in order
22 to induce Vanyi to authorize the construction work on the property. Vanyi, in justifiable reliance
23 on Respondent's misrepresentation, paid Respondent over \$20,000 to perform the work when, in
24 fact, Respondent was not a licensed contractor and was not authorized to perform the work under
25 his operator's license.

26 OTHER MATTERS

27 22. Code section 8620 provides, in pertinent part, that a respondent may request that a
28 civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days,

1 or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made
2 at the time of the hearing and must be noted in the proposed decision. The proposed decision
3 shall not provide that a civil penalty shall be imposed in lieu of a suspension.

4 23. Pursuant to Code section 8654, if discipline is imposed on Operator's License
5 Number OPR 11791, issued to Respondent Sergio H. Hernandez, Sergio H. Hernandez shall be
6 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
7 responsible managing employee for any registered company during the time the discipline is
8 imposed, and any registered company which employs, elects, or associates Sergio H. Hernandez
9 shall be subject to disciplinary action.

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

13 PRAYER

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

16 1. Revoking or suspending Operator's License Number OPR 11791, issued to Sergio H.
17 Hernandez;

18 2. Prohibiting Sergio H. Hernandez from serving as an officer, director, associate,
19 partner, qualifying manager or responsible managing employee of any registered company during
20 the period that discipline is imposed on Operator's License Number OPR 11791, issued to Sergio
21 H. Hernandez;

22 3. Ordering restitution of all damages according to proof suffered by Mildred Vanyi
23 and/or Sylvia Johnson as a condition of probation in the event probation is ordered;

24 4. Ordering Respondent Sergio H. Hernandez to pay the Structural Pest Control Board
25 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
26 Professions Code section 125.3;

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

DATED: 2/9/10

Kelli Okuma

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

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