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FILED
Date 12/12/15 By Susan Saylor

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

In the Matter of the Accusation Against: **DYNASTY EXTERMINATOR, INC.** **dba DYNASTY TERMITE** **DOUGLAS M. FIERRO, QM/PR** **5900 Eastern Avenue, Suite 141** **Commerce, California 90040** **And** **P.O. Box 40898** **Downey, California 90239** **Company Registration Certificate No. PR 6106, Br. 3** **Operator's License No. OPR 11797** Respondents.	Case No. 2015-69 **ACCUSATION**

Susan Saylor ("Complainant") alleges:

PARTIES

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

Company Registration Certificate No. PR 6106

2. On or about August 11, 2010, the Board issued Company Registration Certificate Number PR 6106 ("registration") in Branch 3 to Dynasty Exterminators, Inc., doing business as

Dynasty Termite ("Respondent Dynasty") with L. Joyce Fierro as the President and 90% shareholder, Douglas M. Fierro as the Qualifying Manager and Vice President and 10% shareholder. On or about August 5, 2013, the registration was suspended for failure to maintain a surety bond in the amount of $4,000, as required by Business and Professions Code ("Code") section 8697. On or about August 15, 2013, the registration was reinstated after posting a surety bond in the amount of $4,000. On or about October 18, 2013, Lupita J. Blazer became the President and 100% shareholder. On or about November 18, 2013, Douglas M. Fierro became the President and an 80% shareholder, and Lupita J. Blazer became the Vice President and 20% shareholder. On or about December 9, 2013, Douglas M. Fierro became the President and 100% shareholder.

Operator's License No. OPR 11797

3. On or about January 15, 2009, the Board issued Operator's License Number OPR 11797 in Branch 3 to Douglas M. Fierro ("Respondent Fierro") as the Qualifying Manager of Gallatin Holdings, Inc., doing business as Dynasty Termite. On or about August 11, 2010, Fierro disassociated as the Qualifying Manager of Gallatin Holdings, Inc., doing business as Dynasty Termite, due to the cancelation of the company registration. On that same day, Fierro became the Qualifying Manager, Vice President, and 10% shareholder of Dynasty Exterminators, Inc., doing business as Dynasty Termite. On or about November 18, 2013, Fierro became the President and an 80% shareholder of Dynasty Exterminators, Inc., doing business as Dynasty Termite. On or about December 9, 2013, Fierro became the President and 100% shareholder of Dynasty Exterminators, Inc., doing business as Dynasty Termite. The operator's license will expire on or about June 30, 2017, 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.

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5. 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.

6. 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."

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.

9. 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."

10. 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.

11. 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.

12. Code section 8650 states:

Acting in the capacity of a licensee or registered company under any of the licenses or registrations issued hereunder except:

(a)In the name of the licensee or registered company as set forth upon the license or registration, or

13. Code section 8636 states:

Disregard and violation of the buildings laws of the state, or of any of its political subdivisions, or of the safety laws, labor laws, health laws, or compensation insurance laws of the state relating to the practice of structural pest control is a ground for disciplinary action.

REGULATORY PROVISIONS

14. California Code of Regulations ("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:

(4) Earth-wood contacts.

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

(g) Information must be reported regarding any wooden deck, wooden stairs or wooden landing in exterior exposure attached to or touching the structure being inspected. Portions of such structure that are not available for visual inspection must be designated as inaccessible.

15. California Code of Regulations, title 16, section 1970, states, in pertinent part:

For the purpose of maintaining proper standards of safety and the establishment of responsibility in handling the dangerous gases used in fumigation and the pesticides used in other pest control operations, a registered company shall compile and retain for a period of at least three years, a log for each fumigation job and for each pesticide control operation in which a pesticide is used by the registered company or the registered company's employee.

(b) The report for each pest control operation, other than fumigation, in which a pesticide is used shall contain the following information:

Date of treatment.
Name of owner or his or her agent.
Address of property.
Description of area treated.
Target pest(s).
Pesticide and amount used.
Identity of person or persons who applied the pesticide.

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:

(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 covered.

(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.

17. California Code of Regulations, title 16, section 1993, states, in pertinent part:

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the board and filed with the board with stamps affixed.

(e) A reinspection report is the report on the inspections of items) completed as recommended on an original report or subsequent reports). The areas reinspected can be limited to the items requested by the person ordering the original inspection report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

18. California Code of Regulations, title 16, section 1999.5, states, in pertinent part:

(a) It is unlawful for any licensee, or any employee thereof, directly or indirectly to make, disseminate, represent, claim, state, or advertise, or cause to be made, disseminated, represented, claimed, stated or advertised by any manner or means whatever, any statement or representation concerning structural pest control, as defined in Business and Professions Code section 8505, which is unfair, deceptive, untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be unfair, deceptive, untrue or misleading.

19. California Code of Regulations, title 16, section 1937.14, states, in pertinent part:

All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations.

COST RECOVERY/RESTITUTION

20. 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.

21. 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.

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VIA DE ROBLES PROJECT

22. In or about December 2013, Jerome Oddo ("Oddo") made an offer through his realtor to purchase a single family resident located at 6621 Via De Robles, in Rancho Murieta, California. The property was listed for sale by a real estate firm called Maxim Properties.

23. On or about December 27, 2013, Respondent Fierro inspected the property located at 6621 Via De Robles, in Rancho Murieta, California, ("Via De Robles project"), for wood destroying pests and organisms (WDO inspection) and thereafter issued a "Complete" WDO Inspection Report No. W13273 ("Inspection Report No. W13273") containing certain findings, including evidence of drywood termite infestations at the attic space; evidence of drywood termite infestations at the garage; dry-rot wood members found at the decking; water stains; dryrot wood members at the trim, siding, shiplap starter, and French door. Respondent Fierro recommended chemically treating the area of drywood termite infestation, repairing, reinforcing or replacing the dry-rot damaged wood members, and to repair or reinforce water damaged wood members to correct the moisture condition. Respondent Fierro submitted an estimate in the amount of $2,175 to perform the recommended work.

24. On or about January 27, 2014, Oscar Fregoso ("Fregoso") of Homeguard Incorporated performed a complete home inspection of the Via De Robles property and issued a "Complete" WDO Inspection Report No. 119450, containing certain findings, including siding and trim damaged by fungus and subterranean termites; subterranean termites noted throughout the structure; wooden window sash damaged by fungus at various areas; French door jamb and trim damaged by fungus and subterranean termites; second story siding and trim damaged by fungus; rear entry doors, jambs, and trim damaged by fungus; French door and jamb damaged by fungus at second story deck; abutments and deck wood members damaged by fungus and subterranean termites; in-law side entry door damaged by fungus; shelf under the kitchen sink is damaged by fungus; exterior caulking at various areas is missing; siding delaminated and/or weathered at various areas; exterior siding is loose and/or warped at various areas; sheetrock damaged by excessive moisture at the kitchen sink; and water stains to the ceiling. Fregoso made recommendations, including but not limited to, chemically treating the entire structure at probable

termite entry points for the control of subterranean termites; remove and replace damaged wood members; remove and omit the entire abutments and decks to eliminate structural deficiencies; install new doors and jambs; apply new exterior grade caulking; secure siding; and a further inspection when the water is turned on to test areas that are normally tested during a termite inspection. Fregoso submitted an estimate in the amount of $22,345 to perform the recommended work.

25. On or about February 7, 2014, Fregoso performed a supplemental inspection of the Via De Robles property for the purpose of further inspecting the property with the water turned on. Fregoso issued "Supplemental" WDO Inspection Report No. 119450, containing certain findings, including a leak at the in-law bathroom stall shower and master bathroom stall shower; a plumbing leak at the breezeway hose bib, main structure water heater; master bathroom sink supply, and hall bathroom sink faucet. Fregoso made recommendations to repair the leaks, and for a supplemental report if additional damage was found during repairs. Fregoso also noted the possibility of additional charges should the local building department require additional changes. Fregoso submitted an estimate in the amount of $14,885 to perform the recommended repairs.

26. On or about May 3, 2014, Respondent Fierro performed a complete inspection of the Via De Robles property and issued a "Complete" WDO Inspection Report No. W13709 ("Inspection Report No. W13709") containing certain findings, including evidence of drywood termite infestations at the attic space and garage; dry-rot wood members found at the decking; water stains; dryrot wood members at the trim, siding, shiplap starter, and French door. Respondent Fierro recommended chemically treating the area of drywood termite infestation, repairing, reinforcing or replacing the dry-rot damaged wood members, and to repair or reinforce water damaged wood members to correct the moisture condition. Respondent Fierro submitted an estimate in the amount of $2,175 to perform the recommended work.

27. On or about May 12, 2014, Respondent Fierro performed a complete/reinspection of the Via De Robles property and issued a "Complete"/"Reinspection" WDO Inspection Report No. W13719 ("Inspection Report No. W13719"). The report noted the substructure was dry with good access, the stall shower had no leaks, the ventilation was adequate above grade, the attic had

good access, no abutments, the decks were wood, the interior and exterior were inspected, and there was evidence of drywood termite infestations at the attic space and garage. Furthermore, it noted that dry-rot wood members were found at the trim, siding, and shiplap starter. Respondent Fierro recommended chemically treating the area of drywood termite infestation, repairing, reinforcing or replacing the dry-rot damaged wood members, and to repair or reinforce water damaged wood members to correct the moisture condition. Respondent Fierro submitted an estimate in the amount of $985 to perform the recommended work.

28. On or about June 4, 2014, Fregoso performed a reinspection of the Via De Robles property and issued "Reinspection" WDO Inspection Report addressing the items listed in the "Complete" Inspection Report No. 119450, dated January 27, 2014. Fregoso noted that the following work was not completed: damaged siding, trim, window sash, French door jamb and trim, second story siding and trim, rear entry doors, jambs, and trim, second story French door and jamb; subterranean termites throughout the structure; and damage to the abutments and deck wood members.

29. On or about June 13, 2014, Respondent Fierro performed a reinspection of the Via De Robles property and issued a "Reinspection" WDO Inspection Report No. W13809 ("Inspection Report No. W13809"). The report noted the stall shower had no leaks, the attic had good access, and no abutments. The report contained some new findings, including fungus damage under the kitchen sink, siding, trim, exterior window sash, second story siding and trim, back door trim and jamb, and at the second story French door and jamb; water stains on the ceiling; evidence of subterranean termite damaged wood members at the siding and trim; evidence of subterranean termite infestation at the exterior; evidence of subterranean termite and fungus damaged wood at the French door jamb and trim; evidence of subterranean termite and fungus damaged wood at the deck areas and abutments; fungus damaged wood members at the door and jamb at the guest house; fungus damaged wood members at the door jamb and second story French door; damage to exterior siding; loose siding; and warped siding at different areas.[1] Respondent Fierro

[1] During a records inspection, a second inspection report was found bearing the same date and report number (W13809). However, the difference in the two reports is that a change was (continued...)

recommended chemically treating the area of subterranean termite infestation and fungus damage; repair, reinforce, or replace the termite and dry-rot damaged wood members; and other tradesman to remove and replace damaged or loose wood members to correct siding issues. Respondent Fierro submitted an estimate in the amount of $3,975 to perform the recommended work.

30. On or about June 24, 2014, Respondent Fierro issued two separate inspection reports. One of the reports is marked as a "Complete" "Reinspection" and the other report is marked as a "Supplemental" "Reinspection" report. Both reports are identical to Respondent Fierro's report dated June 13, 2014, and bear the same Report No. W13809.

31. On or about June 25, 2014, Respondent Fierro issued a Standard Notice of Work Completed and Not Completed ("Completion Notice"), certifying the property was free of evidence of active infestation or infection in the visible and accessible areas, and that the following recommendations had been completed, as set forth in Inspection Report No. W13809 dated June 13, 2014[2]:

a. Fungus damage under the kitchen sink.

b. Evidence of subterranean termite damaged wood members at the siding and trim.

c. Fungus damage at the siding and trim.

d. Evidence of subterranean termite infestations at the exterior.

e. Fungus damage at the exterior window sash.

f. Evidence of subterranean termite damage and fungus damaged wood members at the door jamb and trim at the French door.

g. Fungus damage at the second story trim and siding.

h. Fungus damage at the back door trim and jamb.

(...continued)
made at the top of the "Findings and Recommendations" section to read: "Note: There was (sic) no water to test appropriate testings (sic) for termite purpose. Stall Shower: No water service at time of the inspection."

[2] During a records inspection, a second Standard Notice of Work Completed and Not Completed was found bearing the same date and report number. However, under the "Recommendations not completed by this firm:" section, it was changed to read: "10B was not repaired by this company. The work visibly appears completed in a workmanlike manner. This company was not present at the time of repairs and has no knowledge of materials or quality of work performed ,nor issues any warranty."

i. Fungus damage at the second story deck French door and jamb.

j. Evidence of subterranean termite damage and fungus damaged wood members at the deck areas and abutments.

k. Fungus damaged wood members found at the door and jamb at the guest house.

l. Fungus damaged wood members found at the door jamb and French door at the second story deck.

(The following recommendations were not completed: Water stains at the ceiling; exterior siding damage; and loose and warped siding.)

32. On or about June 27, 2014, the homeowner, Otto, filed a complaint with the Board alleging that Respondent failed to perform a proper inspection, and failed to test or properly report that the shower pans were leaking in the bathrooms.

33. On or about July 4, 2014, Scott Whitten ("Whitten") a Construction Consultant-Forensic Investigator performed a home inspection of the Via De Robles property at the request of Oddo. On or about July 15, 2014, Whitten issued a 23 page home inspection report wherein he addressed the following concerns and made recommendations: extensive deterioration to the exterior siding and trim; deteriorated wood trim at the driveway; damaged HVAC unit in the attic is leaking into the bedroom below damaging the sheetrock ceiling; and many of the French doors need to be replaced.

34. On or about July 12, 2014, Shawn Castle ("Castle") of Elk Grove Termite Control performed a complete inspection of the Via De Robles property and issued a "Complete" WDO Inspection Report No. 8485, at the request of Respondent Fierro. The report contained certain findings, including active subterranean termites along the front and left side of the structure; wood decay fungi (dryrot) damage at the siding and window trim; dryrot at the rear door jamb; wood decay fungi (dryrot) damage at the corner trim; dryrot at the side door jamb and stucco molding; wood decay fungi (dryrot) damage at the lower siding; dryrot at the wood sash windows and trim; dryrot at the front door jambs; wood decay fungi (dryrot) damage at the siding and corner trim; dryrot at the upper areas of the siding along with all trim on chimney; dryrot found at the attached wood planter box; the sunken tub/shower is leaking in the MIL quarters with damage

extending into the furnace closet sheetrocked wall area; dryrot at the upstairs porch column top caps; and soil and/or rock build up along the lower exterior siding. (The rear and side decks were not inspected nor was the fencing). Castle recommended chemically treating the structure, around all the interior and exterior perimeter of the foundation to control the subterranean termites, to remove the fungus damaged wood and replace it with new material, and to make some areas accessible for further inspection.

35. On or about July 16, 2014, escrow closed.

36. On or about August 6, 2014, Respondent Fierro performed an inspection of the Via De Robles property and issued a "Complete" WDO Inspection Report No. W13967 ("Inspection Report No. W13967"). The report noted that there were no leaks at the stall shower at the time of inspection, there was a crooked deck board, a cracked tile at the shower floor, trim gap, and evidence of termite damaged wood members at the window sill. Respondent Fierro made corrective recommendations and indicated that if additional adverse conditions were found during repairs, a further inspection will be recommended and a supplemental report will be issued indicating any infection, or additional repairs.

37. On or about August 6, 2014, Respondent Fierro issued a second inspection report bearing the same date and report number. However, Respondent Fierro changed three of his findings and recommendations, as follows: subterranean termite tubes not fully removed; soft edge at deck; and a possible leak at the stall shower (homeowner to allow Respondent to open up for further inspection). Respondent Fierro recommended removal of the subterranean termite tubes and to retreat the area, and to install a support to correct the soft edge at the deck.

38. On or about August 22, 2014, Respondent Fierro issued a Standard Notice of Work Completed and Not Completed ("Completion Notice"), and reporting that the following recommendations had been completed, as set forth in Inspection Report No. W13967 dated August 6, 2014:

a. Subterranean termite tubes removed and the area retreated.

b. Deck board renailed and secured correctly.

c. Support installed to correct he soft edge at the deck.

d. Repaired cracked floor tile, sealed, and water tested.

e. Repaired trim gap.

f. Repaired, reinforced, or replaced dry-rot damaged wood members at the window sill.

39. On or about September 11, 2014, a specialist from the Board inspected the Via De Robles property, and made the following findings:

a. Fungus infection and damage to the window frames, sill, and trim of the windows at the front of the structure, at the garage in the courtyard area, and right rear of the structure at the master bathroom/bedroom windows.

b. Respondent applied wood putty or bondo over the fungus damaged window sashes/framing. The fungus damage remains present.

c. Respondent failed to perform or complete the treatment for subterranean termite infestation at areas around the structure.

d. Fungus infection and damage at the exterior siding and trim.

e. Fungus damaged treads with earth wood contact present at the deck.

f. Fungus damage visible at the posts, base, and top surfaces at the deck.

g. Extensive fungus damage to the base of the front door of the guest house.

h. Fungus damage to the base of the kitchen cabinet under the sink area was not corrected and extended under the adjacent areas.

i. Fungus damage to the subfloor and base of the walls adjacent to the second story balcony doors.

j. Fungus damage to some of the trim at the outside wall of the upper balcony. The damage leads into an inaccessible area.

k. Extensive fungus damage with heavy water stains to the floor and platform of the heating and air conditioning unit was present in the attic.

40. On or about March 30, 2015, a Board specialist received a telephone call from Oddo, who stated that he found evidence of termites in the guest bathroom.

41. On or about April 7, 2015, a Board specialist returned to the Via De Robles property to inspect the areas that Oddo suspected were termites. The Board specialist found active termite

swarmer tubes coming from the top of the tub shower dam/wall with heavy evidence of a full swarm on the slab floor, indicating a long-term infestation coming from under the slab.

42. On or about April 7, 2015, a Board specialist issued a Report of Findings along with a Notice ordering Respondent Dynasty 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 December 27, 2013, May 3, 2014, May 12, 2014, June 13, 2014, June 24, 2014, and August 6, 2014.

43. On or about April 15, 2015, Respondent Dynasty received the Report of Findings.

44. On or about May 27, 2015, the Board specialist met with Respondent Fierro and Oddo at the Via De Robles property to review the violations outlined in the Report of Findings. The Board specialist went over all of the findings and conditions with Respondent Fierro and pointed out all the damage in the property. Respondent Fierro did not disagree with any of the findings.

45. Respondent failed to bring the Via De Robles property into compliance.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with the Code - Improper Inspection)

46. Respondent Dynasty's registration and Respondent Fierro's operator's license are subject to discipline under Code section 8641, in that, as to the Via De Robles property, Respondents failed to comply with the following statutes and regulations:

a. Respondents failed to report the full extent of fungus infection and damage to the window frames, sills, and trim of the windows at the front of the structure in the courtyard area and right rear of the structure at the master bathroom/bedroom windows in Inspection Report No. W13809, dated June 24, 2014, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(3)(4) and 1991, subdivisions (a)(11).

b. Respondents failed to report the full extent of fungus infection and damage to the base of the kitchen cabinet under and adjacent to the kitchen sink base in Inspection Report No.

W13809, dated June 24, 2014, and before, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(3)(4).

c. Respondents failed to report fungus infection and damage to the trim and siding at the top of the half wall of the second story balcony at the front left corner with fungus damage leading into the inaccessible areas in Inspection Report No. W13809, dated June 24, 2014, and before, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(3)(4) and 1991(a)(11).

d. Respondents failed to report evidence of leaks and fungus infection and damage to the floor and platform of the heating and air-conditioning unit in the attic in Inspection Report No. W13809, dated June 24, 2014, and before, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(3)(4) and (b)(5).

e. Respondents failed to report the leak at the roman tub/shower of the guest house bathroom and master bathroom in Inspection Report No. W13809, dated June 24, 2014, and before, in violation of Code section 8516 and Regulation 1991.

f. Respondents failed to issue a supplemental inspection report and identify the fungi damage to the subfloor and base of the walls adjacent to the second story balcony door and roof areas when made accessible in Inspection Report No. W13809, dated June 24, 2014, in violation of Code section 8516 and Regulations 1990, 1991, and 1993.

g. Respondents failed to include in the inspection reports, a true diagram with the approximate location of the reported conditions of the structure to identify their location, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990.

h. Respondents failed to make a proper recommendation for the replacement of the roman tub/showers in the guest house bath and master bath in Inspection Report No. 13967 dated August 6, 2014, in violation of Code section 8516 and Regulation 1991.

i. Respondents failed to make proper recommendations for the treatment of the subterranean termite infestation; failed to perform a proper treatment; failed to comply with the label for the control of the subterranean termite infestations reported around the structure; and failure to identify the portion of the structure to be treated for guarantee and control purposes in

Inspection Report No. W13809, dated June 24, 2014, in violation of Code section 8516 and Regulations 1991, subdivision (a)(9).

j. Respondents failed to report earth to wood contact at the fence and deck posts at the rear deck, the underside and perimeters of the lower level decks and the inaccessible areas under the decks, with fungus damage visible at the posts, and decking, which leads into inaccessible areas, in violation of Code section 8516, subdivisions (b)(6)(7), and (9), and Regulation 1990, subdivisions (a)(3)(4), (b)(4), and (g).

SECOND CAUSE FOR DISCIPLINE

(Failure to Complete Work)

47. Respondent Dynasty's registration and Respondent Fierro's operator's license are subject to discipline under Code section 8638, in that, as to the Via De Robles property, Respondents failed to complete work they contracted to perform, as follows:

a. Respondents failed to perform work outlined in item 11D (damaged window sashes/framing), as set forth in Inspection Report No. W13809, dated June 24, 2014, which was certified as having been completed in Respondent Dynasty's Standard Notice of Work Completed and Not Completed dated June 25, 2014.

b. Respondents failed to perform work outlined in item 11B (damaged siding and trim), around the perimeter of the structure at various locations, as set forth in Inspection Report No. W13809, dated June 24, 2014, which was certified as having been completed in Respondent Dynasty's Standard Notice of Work Completed and Not Completed dated June 25, 2014.

c. Respondents failed to perform work outlined in item 11H and 11I (replacement of decking) at the first story deck, as set forth in Inspection Report No. W13809, dated June 24, 2014, which was certified as having been completed in Respondent Dynasty's Standard Notice of Work Completed and Not Completed dated June 25, 2014.

d. Respondents failed to perform work outlined in item 11J (fungus damaged door to the guest house), as set forth in Inspection Report No.W13809, dated June 24, 2014, which was certified as having been completed in Respondent Dynasty's Standard Notice of Work Completed and Not Completed dated June 25, 2014.

e. Respondents failed to perform work outlined in item 10A (fungus damaged cabinet base under the kitchen sink), as set forth in Inspection Report No. W13809, dated June 24, 2014, which was certified as having been completed in Respondent Dynasty's Standard Notice of Work Completed and Not Completed dated June 25, 2014.

f. Respondents failed to perform work outlined in item 11K (fungus damaged second story balcony doors and jamb (framing)), as set forth in Inspection Report No. W13809, dated June 24, 2014, which was certified as having been completed in Respondent Dynasty's Standard Notice of Work Completed and Not Completed dated June 25, 2014.

THIRD CAUSE FOR DISCIPLINE

(Fraud or Misrepresentation After Inspection)

48. Respondent Dynasty's registration and Respondent Fierro's operator's license are subject to discipline under Code section 8644, in that, concerning the Via De Robles property, Respondents committed fraud or misrepresentation in the Standard Notice of Work Completed and Not Completed, dated June 25, 2014, by certifying that all recommended items for repair contained in Inspection Report No. W13809 (with the exception of 10B, 11L, and 11M), were completed when, in fact, they were not. In addition, Respondents committed fraud or misrepresentation by certifying that the property was free and clear of all evidence of infestations and infections in the visible and accessible areas, when in fact, it was not.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Meet Trade Standards)

49. Respondent Dynasty's registration and Respondent Fierro's operator's license are subject to discipline under Code section 8641, in conjunction with Regulation section 1937.14, in that Respondents failed to meet accepted trade standards and complete all work in a good and workmanlike manner, as follows:

a. Respondent applied wood putty or bondo over the fungus damaged window sashes/framing.

b. Respondents failed to properly repair damaged siding and trim around the perimeter of the structure.

c. Respondent failed to properly repair decking at the first story.

d. Respondent failed to properly repair fungus damaged second story balcony doors and jamb (framing).

FIFTH CAUSE FOR DISCIPLINE

(Violation of Building Laws)

50. Respondent Dynasty's registration and Respondent Fierro's operator's license are subject to discipline under Code section 8636, in that Respondents failed to comply with building codes by failing to obtain required building permits for work performed.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Record Requirements)

51. Respondent Dynasty's registration and Respondent Fierro's operator's license are subject to discipline under Code section 8641, in that, concerning the Via De Robles property, Respondents failed to comply with California Code of Regulations, title 16, section 1970(b), by failing to record the name of the individual who applied pesticide, the pesticide used, the amount of pesticide used, and where the pesticide was applied. Furthermore, Respondents failed to compile and retain for a period of at leas three years, a log for each job wherein pesticide is used.

SEVENTH CAUSE FOR DISCIPLINE

(Failed to Comply with Report of Findings)

52. Respondent Dynasty's registration and Respondent Fierro's operator's license are subject to discipline under Code section 8641, in that, Respondents failed to comply with Code section 8622, by failing to correct the items described in the Report of Findings within thirty (30) calendar days of receipt of the Notice, bringing the Via De Robles property into compliance with the Board's Notice and Report of Findings, dated April 7, 2015.

EIGHTH CAUSE FOR DISCIPLINE

(Namestyle Variance)

53. Respondent Dynasty's registration and Respondent Fierro's operator's license are subject to discipline under Code section 8650(a), in that Respondents used the namestyle Dynasty Exterminators, Dynasty Exterminators & Construction, and Dynasty Termite and Construction,

names that are different from that recorded with the Board as the name of record. Furthermore, Respondents registered with the Secretary of State's office using the namestyle Mr. Fumigation, Inc.

NINTH CAUSE FOR DISCIPLINE

(False Advertising or Misleading)

54. Respondent Dynasty's registration and Respondent Fierro's operator's license are subject to discipline under Code sections 8648 and 8641, in that Respondents advertised for work that requires a Branch 2 license when, in fact, Respondents do not hold a license in that Branch, a violation of Regulation section 1999.5.

PRIOR DISCIPLINE

55. Effective May 25, 2012, pursuant to a Stipulated Settlement and Disciplinary Order ("Order") in a disciplinary action titled, *In the Matter of the Accusation Against Dynasty Exterminator, Inc., dba Dynasty Termite and Douglas M. Fierro, Case No. 2012-5*, the Structural Pest Control Board revoked Company Registration Certificate Number PR 6106, issued to Dynasty Exterminators, Inc. dba Dynasty Termite and Operator's License Number OPR 11797 in Branch 3, issued to Douglas M. Fierro However, the revocation was stayed and Respondent was placed on probation for a period of three (3) years with certain terms and conditions. The Order was based on the following: 1) improper inspections; 2) failure to complete work; 3) fraud or misrepresentation; 4) failure to meet trade standards; 5) soliciting business in unlicensed areas; 6) failure to comply with the Board's Report of Findings; 7) disregard/violation of building laws; 8) failure to file inspection reports with the Board; 9) failure to prepare inspection reports; and 10) used and invalid license number.

Company Registration No. PR 6106

56. On or about July 13, 2011, the company registration was issued a $500 fine by the San Bernardino County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6702(b)(3) (employer shall supervise employees to assure that safe work practices, including all applicable regulations and pesticide product labeling requirements are complied with). The fine was paid on October 6, 2011.

57. On or about June 7, 2012, the company registration was issued a $5,997.50 fine and order of abatement levied by the Structural Pest Control Board for violating Business and Professions Code sections 8516 and 8518 (reporting requirements). The fine was paid in full on March 22, 2013, and the order of abatement was complied with on April 2, 2013.

Operator's License No. OPR 11797

58. On or about May 6, 2010, Respondent was issued a $350 fine by the Riverside County Agricultural Commissioner for violating Business and Professions Code section 8505.17(c) (pesticide reporting). The fine was paid on August 17, 2010.

59. On or about July 13, 2011, Respondent was issued a $500 fine by the San Bernardino County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6702(b)(3) (employer shall supervise employees to assure that safe work practices, including all applicable regulations and pesticide product labeling requirements are complied with). The fine was paid on October 6, 2011.

60. On or about June 7, 2012, Respondent was issued a $5,997.50 fine and order of abatement levied by the Structural Pest Control Board for violating Business and Professions Code sections 8516 and 8518 (reporting requirements). The fine was paid in full on March 22, 2013, and the order of abatement was complied with on April 2, 2013.

OTHER MATTERS

61. 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.

62. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 6106, issued to Dynasty Exterminators, Inc., doing business as Dynasty Termite, likewise constitute cause for discipline against Operator's License Number OPR 11797, issued to Douglas M. Fierro, who serves as the President and Qualifying Manager of

Dynasty Exterminators, Inc., doing business as Dynasty Termite, regardless of whether Douglas M. Fierro Porter had knowledge of or participated in the acts or omissions which constitute cause for discipline against Dynasty Exterminators, Inc., doing business as Dynasty Termite.

63. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 6106, issued to Dynasty Exterminators, Inc., doing business as Dynasty Termite, then Douglas M. Fierro, who serves as the President and Qualifying Manager of Dynasty Exterminators, Inc., doing business as Dynasty Termite, 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 6106, issued to Dynasty Exterminators, Inc., doing business as Dynasty Termite;

2. Revoking or suspending Operator's License Number OPR 11797, issued to Douglas M. Fierro;

3. Revoking or suspending any other license for which Douglas M. Fierro is furnishing the qualifying experience or appearance;

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

5. Prohibiting Douglas M. Fierro 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 6106, issued to Dynasty Exterminators, Inc., doing business as Dynasty Termite;

6. Ordering Douglas M. Fierro and Dynasty Exterminators, Inc., doing business as Dynasty Termite 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: 10/26/15

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

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