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FILED

Date 6/26/15 By Susan Saylor

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2015-69

13 **DYNASTY EXTERMINATOR, INC.**
14 **dba DYNASTY TERMITE**
15 **DOUGLAS M. FIERRO, QM/PR**
16 **5900 Eastern Avenue, Suite 141**
17 **Commerce, California 90040**
18 **And**

ACCUSATION

19 **P.O. Box 40898**
20 **Downey, California 90239**
21 **Company Registration Certificate No. PR 6106, Br. 3**
22 **Operator's License No. OPR 11797**

23 Respondents.

24 Susan Saylor ("Complainant") alleges:

25 **PARTIES**

26 1. Complainant brings this Accusation solely in her official capacity as the
27 Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of
28 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

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

11 **Operator's License No. OPR 11797**

12 3. On or about January 15, 2009, the Board issued Operator's License Number OPR
13 11797 in Branch 3 to Douglas M. Fierro ("Respondent Fierro") as the Qualifying Manager of
14 Gallatin Holdings, Inc., doing business as Dynasty Termite. On or about August 11, 2010, Fierro
15 disassociated as the Qualifying Manager of Gallatin Holdings, Inc., doing business as Dynasty
16 Termite, due to the cancelation of the company registration. On that same day, Fierro became the
17 Qualifying Manager, Vice President, and 10% shareholder of Dynasty Exterminators, Inc., doing
18 business as Dynasty Termite. On or about November 18, 2013, Fierro became the President and
19 an 80% shareholder of Dynasty Exterminators, Inc., doing business as Dynasty Termite. On or
20 about December 9, 2013, Fierro became the President and 100% shareholder of Dynasty
21 Exterminators, Inc., doing business as Dynasty Termite. The operator's license will expire on or
22 about June 30, 2017, unless renewed.

23 **JURISDICTION**

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

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1 5. Code section 8625 states:

2 The lapsing or suspension of a license or company registration by operation of law or
3 by order or decision of the board or a court of law, or the voluntary surrender of a license or
4 company registration shall not deprive the board of jurisdiction to proceed with any
5 investigation of or action or disciplinary proceeding against such licensee or company, or to
6 render a decision suspending or revoking such license or registration.

6 6. Code section 8624 states:

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

9 If the operator is the qualifying manager, a partner, responsible officer, or
10 owner of a registered structural pest control company, the suspension or revocation
11 may be applied to the company registration.

11 The performance by any partnership, corporation, firm, association, or
12 registered company of any act or omission constituting a cause for disciplinary action,
13 likewise constitutes a cause for disciplinary action against any licensee who, at the
14 time the act or omission occurred, was the qualifying manager, a partner, responsible
15 officer, or owner of the partnership, corporation, firm, association, or registered
16 company whether or not he or she had knowledge of, or participated in, the prohibited
17 act or omission."

15 7. Code section 8622 states:

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

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

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1 9. Code section 8638 states:

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

5 10. Code section 8641 states:

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

10 11. Code section 8644 states:

11 Fraud or misrepresentation, after inspection, by any licensee or registered
12 company engaged in pest control work of any infestation or infection of wood-
13 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.

14 12. Code section 8650 states:

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

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

19 13. Code section 8636 states:

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

23 **REGULATORY PROVISIONS**

24 14. California Code of Regulations ("Regulations"), title 16, section 1990, states, in
25 pertinent part:

26 (a) All reports shall be completed as prescribed by the board. Copies
27 filed with the board shall be clear and legible. All reports must supply the information
28 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:

- 1 (3) Infestations, infections or evidence thereof.
- 2 (4) Wood members found to be damaged by wood destroying pests or organisms.
- 3 (b) Conditions usually deemed likely to lead to infestation or infection
- 4 include, but are not limited to:
- 5 (4) Earth-wood contacts.
- 6 (5) Commonly controllable moisture conditions which would foster the
- 7 growth of a fungus infection materially damaging to woodwork.
- 8 (g) Information must be reported regarding any wooden deck, wooden
- 9 stairs or wooden landing in exterior exposure attached to or touching the structure
- 10 being inspected. Portions of such structure that are not available for visual inspection
- 11 must be designated as inaccessible.

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

13 For the purpose of maintaining proper standards of safety and the

14 establishment of responsibility in handling the dangerous gases used in fumigation

15 and the pesticides used in other pest control operations, a registered company shall

16 compile and retain for a period of at least three years, a log for each fumigation job

17 and for each pesticide control operation in which a pesticide is used by the registered

18 company or the registered company's employee.

19 (b) The report for each pest control operation, other than fumigation, in

20 which a pesticide is used shall contain the following information:

- 21 Date of treatment.
- 22 Name of owner or his or her agent.
- 23 Address of property.
- 24 Description of area treated.
- 25 Target pest(s).
- 26 Pesticide and amount used.
- 27 Identity of person or persons who applied the pesticide.

28 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 licensee 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

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

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

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

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

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

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

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

27 ¹ During a records inspection, a second inspection report was found bearing the same date
28 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, 2014²:

- 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

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

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

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

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

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

- 26 a. Subterranean termite tubes removed and the area retreated.
- 27 b. Deck board renailed and secured correctly.
- 28 c. Support installed to correct he soft edge at the deck.

1 d. Repaired cracked floor tile, sealed, and water tested.
2 e. Repaired trim gap.
3 f. Repaired, reinforced, or replaced dry-rot damaged wood members at the window sill.
4 39. On or about September 11, 2014, a specialist from the Board inspected the Via De
5 Robles property, and made the following findings:
6 a. Fungus infection and damage to the window frames, sill, and trim of the windows at
7 the front of the structure, at the garage in the courtyard area, and right rear of the structure at the
8 master bathroom/bedroom windows.
9 b. Respondent applied wood putty or bondo over the fungus damaged window
10 sashes/framing. The fungus damage remains present.
11 c. Respondent failed to perform or complete the treatment for subterranean termite
12 infestation at areas around the structure.
13 d. Fungus infection and damage at the exterior siding and trim.
14 e. Fungus damaged treads with earth wood contact present at the deck.
15 f. Fungus damage visible at the posts, base, and top surfaces at the deck.
16 g. Extensive fungus damage to the base of the front door of the guest house.
17 h. Fungus damage to the base of the kitchen cabinet under the sink area was not
18 corrected and extended under the adjacent areas.
19 i. Fungus damage to the subfloor and base of the walls adjacent to the second story
20 balcony doors.
21 j. Fungus damage to some of the trim at the outside wall of the upper balcony. The
22 damage leads into an inaccessible area.
23 k. Extensive fungus damage with heavy water stains to the floor and platform of the
24 heating and air conditioning unit was present in the attic.
25 40. On or about March 30, 2015, a Board specialist received a telephone call from Oddo,
26 who stated that he found evidence of termites in the guest bathroom.
27 41. On or about April 7, 2015, a Board specialist returned to the Via De Robles property
28 to inspect the areas that Oddo suspected were termites. The Board specialist found active termite

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

3 42. On or about April 7, 2015, a Board specialist issued a Report of Findings along with a
4 Notice ordering Respondent Dynasty to bring the property into compliance by correcting the
5 items described in the Report of Findings and to submit a corrected inspection report and Notice
6 of Work Completed and Not Completed to the Board within thirty (30) days with respect to the
7 inspections performed on December 27, 2013, May 3, 2014, May 12, 2014, June 13, 2014, June
8 24, 2014, and August 6, 2014.

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

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

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

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Code - Improper Inspection)**

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

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

26 b. Respondents failed to report the full extent of fungus infection and damage to the
27 base of the kitchen cabinet under and adjacent to the kitchen sink base in Inspection Report No.
28

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

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

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

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

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

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

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

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

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

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

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Failure to Complete Work)**

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

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

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

21 c. Respondents failed to perform work outlined in item 11H and 11I (replacement of
22 decking) at the first story deck, as set forth in Inspection Report No. W13809, dated June 24,
23 2014, which was certified as having been completed in Respondent Dynasty's Standard Notice of
24 Work Completed and Not Completed dated June 25, 2014.

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

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

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

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Fraud or Misrepresentation After Inspection)**

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

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Failure to Meet Trade Standards)**

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

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

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

- 1 c. Respondent failed to properly repair decking at the first story.
- 2 d. Respondent failed to properly repair fungus damaged second story balcony doors and
- 3 jamb (framing).

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Violation of Building Laws)**

6 50. Respondent Dynasty's registration and Respondent Fierro's operator's license are

7 subject to discipline under Code section 8636, in that Respondents failed to comply with building

8 codes by failing to obtain required building permits for work performed.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with Record Requirements)**

11 51. Respondent Dynasty's registration and Respondent Fierro's operator's license are

12 subject to discipline under Code section 8641, in that, concerning the Via De Robles property,

13 Respondents failed to comply with California Code of Regulations, title 16, section 1970(b), by

14 failing to record the name of the individual who applied pesticide, the pesticide used, the amount

15 of pesticide used, and where the pesticide was applied. Furthermore, Respondents failed to

16 compile and retain for a period of at least three years, a log for each job wherein pesticide is used.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Failed to Comply with Report of Findings)**

19 52. Respondent Dynasty's registration and Respondent Fierro's operator's license are

20 subject to discipline under Code section 8641, in that, Respondents failed to comply with Code

21 section 8622, by failing to correct the items described in the Report of Findings within thirty (30)

22 calendar days of receipt of the Notice, bringing the Via De Robles property into compliance with

23 the Board's Notice and Report of Findings, dated April 7, 2015.

24 **EIGHTH CAUSE FOR DISCIPLINE**

25 **(Namestyle Variance)**

26 53. Respondent Dynasty's registration and Respondent Fierro's operator's license are

27 subject to discipline under Code section 8650(a), in that Respondents used the namestyle Dynasty

28 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.

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

5 **Operator's License No. OPR 11797**

6 58. On or about May 6, 2010, Respondent was issued a \$350 fine by the Riverside
7 County Agricultural Commissioner for violating Business and Professions Code section
8 8505.17(c) (pesticide reporting). The fine was paid on August 17, 2010.

9 59. On or about July 13, 2011, Respondent was issued a \$500 fine by the San Bernardino
10 County Agricultural Commissioner for violating California Code of Regulations, title 16, section
11 6702(b)(3) (employer shall supervise employees to assure that safe work practices, including all
12 applicable regulations and pesticide product labeling requirements are complied with). The fine
13 was paid on October 6, 2011.

14 60. On or about June 7, 2012, Respondent was issued a \$5,997.50 fine and order of
15 abatement levied by the Structural Pest Control Board for violating Business and Professions
16 Code sections 8516 and 8518 (reporting requirements). The fine was paid in full on March 22,
17 2013, and the order of abatement was complied with on April 2, 2013.

18 **OTHER MATTERS**

19 61. Notice is hereby given that section 8620 of the Code provides, in pertinent part, that a
20 respondent may request that a civil penalty of not more than \$5,000 be assessed in lieu of an
21 actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45
22 days. Such request must be made at the time of the hearing and must be noted in the proposed
23 decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a
24 suspension.

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

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

4 63. Pursuant to Code section 8654, if discipline is imposed on Company Registration
5 Certificate Number PR 6106, issued to Dynasty Exterminators, Inc., doing business as Dynasty
6 Termite, then Douglas M. Fierro, who serves as the President and Qualifying Manager of Dynasty
7 Exterminators, Inc., doing business as Dynasty Termite, shall be prohibited from serving as an
8 officer, director, associate, partner, qualifying manager, or responsible managing employee for
9 any registered company during the time the discipline is imposed, and any registered company
10 which employs, elects, or associates him, shall be subject to disciplinary action.

11 **PRAYER**

12 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Structural Pest Control Board issue a decision:

14 1. Revoking or suspending Company Registration Certificate Number PR 6106, issued
15 to Dynasty Exterminators, Inc., doing business as Dynasty Termite;

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

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

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

22 5. Prohibiting Douglas M. Fierro from serving as an officer, director, associate, partner,
23 qualifying manager or responsible managing employee of any registered company during the
24 period that discipline is imposed on Company Registration Certificate Number PR 6106, issued to
25 Dynasty Exterminators, Inc., doing business as Dynasty Termite;

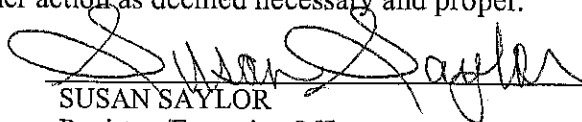
26 6. Ordering Douglas M. Fierro and Dynasty Exterminators, Inc., doing business as
27 Dynasty Termite to pay the Structural Pest Control Board the reasonable costs of the investigation
28 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED:

6/26/15



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

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