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FILED

Date 8/8/11 By William H. Douglas

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

In the Matter of the Accusation Against: **MASTER FUME, INC.** **1868 Del Amo Boulevard, Suite D** **Torrance, CA 90501** **MICHAEL RODRIGUEZ, PR** **EDUARDO SANTILLAN, QM** **Company Registration Certificate No. PR 5604** **EDUARDO SANTILLAN** **1868 Del Amo Boulevard, Suite D** **Torrance, CA 90501** **Operator's License No. OPR 10743** **MICHAEL RODRIGUEZ** **6143 Penswood Avenue** **Lakewood, CA 90712** **Field Representative License No. FR 44131** **Applicator License No. RA 50058** **Respondents.** **BUG STOP SERVICES, INC.** **330 East 220th Street** **Carson, CA 90745** **MICHAEL RODRIGUEZ, PR** **CESAR RAYMUNDO LARA, QM**	Case No. 2012-7 **ACCUSATION**

SOLEDAD LARA, VP
JOHN GRIFFIN, Secretary
Company Registration Certificate No. PR 5687, Br. 2
Operator License No. OPR 11879, Br. 2

Affiliated License.

William H. Douglas ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in his official capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.

Master Fume, Inc. - Company Registration Certificate No. PR 5604

2. On or about May 8, 2008, the Board issued Company Registration Certificate Number PR 5604 in Branch 1 to Master Fume, Inc. with Respondent Rodriguez as the President and Eduardo Santillan as the Qualifying Manager. On or about June 30, 2008, Respondent Rodriguez became a 50% shareholder and Eduardo Santillan became a 50% shareholder.

Eduardo Santillan

Operator's License No. OPR 10743

3. On or about June 6, 2003, the Board issued Operator's License Number OPR 10743 ("license") in Branch 1 to Eduardo Santillan ("Respondent Santillan"), employee of AAA Fume, Inc. On or about June 28, 2003, Respondent Santillan left the employ of AAA Fume, Inc. On or about May 8, 2008, Respondent Santillan became the Qualifying Manager for Master Fume, Inc. On or about June 30, 2008, Respondent Santillan became a 50% shareholder of Master Fume, Inc. The license will expire on June 30, 2014, unless renewed.

Michael Rodriguez

Field Representative License No. 44131

4. On or about March 12, 2009, the Board issued Field Representative's License Number FR 44131 in Branch 1 to Michael Rodriguez ("Respondent Rodriguez") as an employee of Master Fume, Inc. On or about April 28, 2010, the license was upgraded to include Branch 2.

On or about July 11, 2010, Respondent Rodriguez became employed with Bug Stop Services, Inc. The license expired on June 30, 2011, and has not been renewed.

Applicator License No. RA 50058

5. On or about June 29, 2009, the Board issued Applicator License Number RA 50058 to Respondent Rodriguez as an employee of Bug Stop Services, Inc. On or about April 28, 2010, the license was downgraded to Branch 3 due to the issuance of a Branch 2 Field Representative License. The license will expire on June 29, 2012, unless renewed.

Bug Stop Services, Inc.

6. On or about October 2, 2008, the Board issued Company Registration Certificate Number PR 5687 in Branch 2 to Bug Stop Services, Inc., with Michael Rodriguez as the President and Sinclair Jones as the Qualifying Manager. Sinclair Jones passed away. On or about February 9, 2009, the registration was suspended for failing to have a Qualifying Manager. On or about July 8, 2009, Cesar Raymundo Lara ("Respondent Lara") became the Qualifying Manager. On or about August 30, 2010, Respondent Lara became the President, John Griffin became the Secretary, and Soledad Lara became the Vice President.

JURISDICTION

7. Business and Professions Code ("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.

8. 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.
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> 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.

9. 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.

10. 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.

11. Code section 8654 states:

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

the employment, election or association of such person by a registered company is a ground for disciplinary action.

STATUTORY PROVISIONS

12. 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.

13. 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.

14. Code section 8639 states:

Aiding or abetting an unlicensed individual or unregistered company to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed individual or unregistered company, or allowing one's license or company registration to be used by an unlicensed individual or unregistered company, or acting as agent or partner or associate, or otherwise, of an unlicensed individual or unregistered company to evade the provisions of this chapter is a ground for disciplinary action.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 1970(a), states:

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. If the fumigation is to be performed by a fumigation subcontractor, the subcontractor shall complete the fumigation log and forward a copy of the log to the primary contractor within ten business days.

(a) The log (See Form 43M-47 (Rev. 5/07) at the end of this section) for each fumigation job shall contain the following information:

Name, address and company registration certificate number of prime contractor.

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Name, address and company registration certificate number of subcontractor, if any.

Address of property.

Date of fumigation.

Name and address of owner or his or her agent.

Date and hour fire department was notified pursuant to Business and Professions Code section 8505.5.

Date and hour county agricultural commissioner was notified and method of notification, where required.

Property description including type of structure as to details of roofing, walls, and the presence of construction elements, conduits, drains, air ducts, or vacuum systems that could allow the passage of fumigant from the structure to be fumigated to any adjacent or adjoining structure(s), thereby connecting them, and method(s) used to prevent passage of the fumigant.

Cubic feet fumigated.

Target pest(s).

Kind of fumigant(s) used.

United States Environmental Protection Agency registration number(s) of fumigant(s).

Name of warning agent and amount used.

Type of sealing method used.

Weather conditions as to temperature and wind.

Date and hour fumigant introduced.

Cylinder number of each fumigant used.

Weight of each fumigant cylinder before introduction of gas.

Pounds of fumigant used from each cylinder.

Total pounds of fumigant used.

List of any extraordinary safety precautions taken.

Name, signature and license number of operator or field representative releasing fumigant.

First name and surname of crew when fumigant was released, when aeration commenced and when the property was released for occupancy.

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Indication of whether or not safety equipment was available at the fumigation site at the time the fumigant was introduced, when ventilation commenced and when the property was released for occupancy.

Date and hour aeration commenced.

Conditions of tarp and seal.

Name, signature and license number of operator or field representative commencing ventilation.

Type of device(s) used to test for re-entry.

Date and hour ready for occupancy.

Name, signature and license number of operator or field representative releasing property for occupancy.

Method used to calculate amount of fumigant used.

Factors used in calculation of fumigant.

Special notes or comments pertinent to fumigation.

(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.

COST RECOVERY

16. 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.

BACKGROUND INFORMATION

17. On or about August 10, 2010, a Board representative received information from Jim Mitchell ("Mitchell"), a Deputy Agricultural Commissioner/Sealer with the San Bernardino

County Agricultural Department, regarding a fumigation site inspection that he conducted at 634 and 636 North Pico Avenue, San Bernardino, California ("incident address"). Mitchell explained that Master Fume, Inc., a Branch 1 registered company, performed a fumigation for drywood termites at the incident address. However, Respondent Bug Stop, a Branch 2 registered company, was identified on the fumigation log as the prime contractor. Upon further investigation by a Board representative, it was discovered that Respondent Bug Stop was performing Branch 3 work without a valid registration to do so, and commencing work on a contract without having an inspection performed by a Branch 3 field representative or operator. Furthermore, it was discovered that Master Fume, Inc., was aiding or abetting Respondent Bug Stop regarding the performance of Branch 3 work.

FIRST CAUSE FOR DISCIPLINE

(Aiding and Abetting)

18. Respondent Master Fume, Inc.'s registration, Respondent Santillan's operator license, and Respondent Rodriguez's field representative license are subject to discipline under Code section 8639, in that Respondents aided or abetted Bug Stop Services, Inc., an unregistered Branch 3 company, to evade the provisions of the Structural Pest Control Act, as set forth above in paragraph 17.

SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with Record Requirements)

19. Respondent Master Fume, Inc.'s registration, Respondent Santillan's operator license, and Respondent Rodriguez's field representative license are subject to discipline under Code section 8641, in that Respondents failed to comply with California Code of Regulations, title 16, section 1970(a), by failing to compile a proper fume log. The fume logs for the work performed at the incident address failed to contain the name and address of the property owner or his or her agent, a proper property description, and the first and/or surname of the crew when the fumigant was released, when ventilation commenced, and when the property was released for occupancy.

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THIRD CAUSE FOR DISCIPLINE

(Deviation from Operations Authorized by License or Registration)

20. Respondent Master Fume, Inc.'s company registration, Respondent Santillan's operator license, and Respondent Rodriguez's field representative license are subject to discipline under Code section 8641, in that Respondents failed to comply with Code section 8516(b), by commencing work on a contract at the incident address without having an inspection performed by a Branch 3 field representative or operator.

PRIOR DISCIPLINE

Master Fume, Inc. - Company Registration No. PR 5604

21. On or about May 4, 2009, the company registration paid a fine in the amount of $400 for violating California Code of Regulations section 6702, and a $600 fine for violating California Code of Regulations sections 6739(a)(1)(A) and 6739(j)(1)(B)(3), levied by the Los Angeles County Agricultural Commissioner.

22. On or about August 10, 2009, the company registration paid a fine in the amount of $100 levied by the Los Angeles County Agricultural Commissioner for violating Code section 8505.5.

23. On or about August 2, 2010, the company registration paid a fine in the amount of $1,500 levied by the Los Angeles County Agricultural Commissioner for violating California Code of Regulations section 6600(b).

24. On or about December 23, 2010, the company registration paid a fine in the amount of $700 levied by the Los Angeles County Agricultural Commissioner for violating Food and Agricultural Code section 12973.

OTHER MATTERS

25. 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.

26. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 5604, issued to Master Fume, Inc., likewise constitute cause for discipline against Operator's License Number OPR 10743, issued to Eduardo Santillan, who serves as the Qualifying Manager of Master Fume, Inc., regardless of whether he had knowledge of or participated in the acts or omissions which constitute cause for discipline against Master Fume, Inc.

27. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 5604, issued to Master Fume, Inc., then Eduardo Santillan, who serves as the Qualifying Manager of Master Fume, Inc., 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.

28. Pursuant to Code section 8624, if Company Registration Certificate Number PR 5604, issued to Master Fume, Inc., is suspended or revoked, the Board may suspend or revoke Field Representative's License Number FR 44131 and Applicator License Number RA 50058, issued to Michael Rodriguez.

29. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 5604, issued to Master Fume, Inc., then Michael Rodriguez, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of a registered company, and the employment, election or association of him by a registered company is a ground for disciplinary action.

PRAYER

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

1. Revoking or suspending Company Registration Certificate Number PR 5604, issued to Master Fume, Inc.;

2. Revoking or suspending Operator's License Number OPR 10743, issued to Eduardo Santillan;

3. Revoking or suspending any other license for which Eduardo Santillan is furnishing the qualifying experience or appearance;

4. Prohibiting Eduardo Santillan 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 5604, issued to Master Fume, Inc.;

5. Revoking or suspending Field Representative License Number FR 44131, issued to Michael Rodriguez;

6. Revoking or suspending Applicator's License Number RA 50058, issued to Michael Rodriguez;

7. Prohibiting Michael Rodriguez 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 5604, issued to Master Fume, Inc.;

8. Ordering Master Fume, Inc., Eduardo Santillan, and Michael Rodriguez 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,

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

DATED: 8/8/11

William H. Douglas

WILLIAM H. DOUGLAS
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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