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FILED

Date 3/4/15 By *Susan Saylor*

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

12 In the Matter of the Accusation Against:

Case No. 2015-43

13 **TSCHAIKOWSKY BROWN**
14 **13757 Verbena Drive, Unit A**
Desert Hot Springs, CA 92240

ACCUSATION

15 **Operator's License Number OPR 12094**
16 **Field Representative License No. FR 42419**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about October 1, 2010, the Structural Pest Control Board issued Operator's
24 License Number OPR 12094 in Branch 2 to Tschairowsky Brown (Respondent). The Operator's
25 License was placed on inactive status on July 30, 2013. The Operator's License was in full force
26 and effect at all times relevant to the charges brought herein and will expire on June 30, 2016,
27 unless renewed.

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1 9. Section 8624 of the Code states:

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

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

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

15 10. Section 8637 of the Code states: "Misrepresentation of a material fact by the
16 applicant in obtaining a license or company registration is a ground for disciplinary action."

17 11. Section 8641 of the Code provides that failure to comply with the provisions of the
18 Business and Professions Code, or any rule or regulation adopted by the Board, is a ground for
19 disciplinary action.

20 12. Section 8654 of the Code states:

21 Any individual who has been denied a license for any of the reasons specified
22 in Section 8568, or who has had his or her license revoked, or whose license is under
23 suspension, or who has failed to renew his or her license while it was under
24 suspension, or who has been a member, officer, director, associate, qualifying
25 manager, or responsible managing employee of any partnership, corporation, firm, or
26 association whose application for a company registration has been denied for any of
27 the reasons specified in Section 8568, or whose company registration has been
28 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.

 13. Section 8593 of the Code provides, in pertinent part, that the Board shall require as a
condition to the renewal of each operator's and field representative's license that the holder
submit proof satisfactory to the board that he or she has informed himself or herself of
developments in the field of pest control either by completion of courses of continuing education
in pest control approved by the board or equivalent activity approved by the board.

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REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 1950 states:

(a) Except as provided in section 1951¹, every licensee is required, as a condition to renewal of a license, to certify that he or she has completed the continuing education requirements set forth in this article. A licensee who cannot verify completion of continuing education by producing certificates of activity completion, whenever requested to do so by the Board, may be subject to disciplinary action under section 8641 of the code.

(b) Each licensee is required to complete a certain number of continuing education hours during the three year renewal period. The number of hours required depends on the number of branches of pest control in which licenses are held. The subject matter covered by each activity shall be designated as "technical" or "general" by the Board when the activity is approved. Hour values shall be assigned by the Board to each approved educational activity, in accordance with the provisions of section 1950.5.

(c) Operators licensed in one branch of pest control shall complete 16 continuing education hours during each three year renewal period. Operators licensed in two branches of pest control shall complete 20 continuing education hours during each three year renewal period. Operators licensed in three branches of pest control shall complete 24 continuing education hours during each three year renewal period. In each case, a minimum of four continuing education hours in a technical subject directly related to each branch of pest control held by the licensee must be completed for each branch license, a minimum of two hours in Integrated Pest Management as defined in section 1984 must be completed by Branch 2 and/or 3 licensees renewing on or after June 30, 2010, and a minimum of eight hours must be completed from Board approved courses on the Structural Pest Control Act, the Rules and Regulations, or structural pest control related agencies' rules and regulations.

....

COSTS

15. Section 125.3 of the Code 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

¹ 16 C.C.R. § 1951 states: "In lieu of continuing education, a licensee may qualify for renewal by taking and passing an examination designed by the Board to cover developments in the field of pest control. Licensees who choose this method of qualifying for renewal may take this examination only once, and must take the examination no earlier than one year prior to their license expiration date. A score of 70% or higher shall be considered a passing grade on this examination."

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Securing a License by Fraud, Deceit, or Knowing Misrepresentation of a Material Fact)**

3 16. Respondent is subject to disciplinary action under sections 498 and 8637 of the Code
4 in that he secured his Operator's License by fraud, deceit, or knowing misrepresentation of a
5 material fact. The circumstances are as follows:

6 17. On or about June 19, 2013, Respondent signed the "License Renewal Application -
7 Operator" for Operator's License number OPR 12094. Declaring under penalty of perjury under
8 the laws of the State of California that his information was true and correct, Respondent stated
9 that he completed 20 hours of continuing education required for the renewal of his license.
10 Respondent's Operator's License was subsequently renewed for a period of three years.

11 18. In a letter dated January 4, 2014, mailed to Respondent's address of record, the Board
12 informed Respondent that he had been selected for a continuing education audit. Respondent was
13 directed to provide the certificates of course completion for the 20 hours of continuing education
14 claimed on his license renewal application. Respondent was told that the requested information
15 was due 14 days from the date of the letter, and that failure to comply would subject him to
16 disciplinary action. After Respondent failed to respond to the letter, a second letter dated March
17 21, 2014, was mailed to Respondent. The letter was returned to the Board by the U.S. Postal
18 Service marked "Return to Sender - Attempted - Not Known - Unable to Forward." Respondent
19 failed to comply.

20 19. In a third letter dated April 17, 2014, sent to Respondent via Certified Mail to two
21 alternate addresses, Respondent was directed to provide the requested information within 14 days.
22 Both letters were returned to the Board marked "Return to Sender - Undeliverable as Addressed."

23 20. In a fourth letter dated May 14, 2014, sent to Respondent's address of record and two
24 alternate addresses via Certified Mail, Respondent was warned that as a result of his ongoing non-
25 compliance with the continuing education audit, disciplinary action would be taken against his
26 license. All three letters were returned to the Board undelivered.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Comply With the Provisions of the Structural Pest Control Act)**

3 21. Respondent is subject to disciplinary action under section 8641 of the Code, and
4 California Code of Regulations, title 16, section 1950, in that he failed to comply with the
5 provisions of the Structural Pest Control Act, as described in paragraph 20, above. Respondent's
6 conduct violated Business and Professions Code section 8593, which required Respondent, as a
7 condition to the renewal of his Operator's License, to submit proof that he complete a minimum
8 of 16 hours of continuing education in pest control approved by the Board or equivalent activity
9 approved by the Board within the three-year renewal period.

10 **OTHER MATTERS**

11 22. Pursuant to section 8624 of the Code, if discipline is imposed on Operator's License
12 No. OPR 12094 issued to Respondent, Tschaikowsky Brown shall be prohibited from serving as
13 an officer, director, associate, partner, qualifying manager, or responsible managing employee for
14 any registered company during the time the discipline is imposed, and any registered company
15 which employs, elects, or associates Tschaikowsky Brown shall be subject to disciplinary action.

16 23. Pursuant to section 8654 of the Code, if discipline is imposed on Operator's License
17 No. OPR 12094, or Field Representative License Number FR 42419 issued to Respondent,
18 Tschaikowsky Brown shall be prohibited from serving as an officer, director, associate, partner,
19 qualifying manager, or responsible managing employee of a registered company, and the
20 employment, election or association of Tschaikowsky Brown is a ground for disciplinary action.

21 **PRAYER**

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

24 1. Revoking or suspending Operator's License Number OPR 12094, issued to
25 Tschaikowsky Brown;

26 2. Revoking or suspending Field Representative License Number FR 42419, issued to
27 Tschaikowsky Brown;

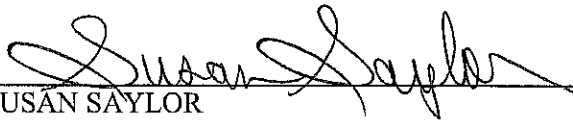
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3. Ordering Tschaikowsky Brown to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 3/4/15


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

SD2015700530