

FILED

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Date 4/30/12 By

William H. Douglas

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

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against,

Case No. 2012-55

13 **DONPEDRO'S TERMITE CONTROL CO.**
14 **2825 Garden Street, Suite A**
Oakland, CA 94601
15 **Company Registration Certificate No. PR**
1450

ACCUSATION AND PETITION TO
REVOKE PROBATION

16 and

17 **GEORGE DON PEDRO**
18 **2825 Garden Street, Suite A**
Oakland, CA 94601
19 **Operator's License No. OPR 8197**

20 Respondents.

21
22 Complainant alleges:

23 PARTIES

24 1. William H. Douglas (Complainant) brings this Accusation and Petition to Revoke
25 Probation solely in his official capacity as the Interim Registrar/Executive Officer of the
26 Structural Pest Control Board, Department of Pesticide Regulation.

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1 applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu
2 of a suspension may assess a civil penalty.

3 7. Section 8625 of the Code states:

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

9 8. Section 118, subdivision (b), of the Code provides that the
10 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
11 jurisdiction to proceed with a disciplinary action during the period within which the license may
12 be renewed, restored, reissued or reinstated.

13 9. California Code of Regulations, title 16, section 1937.12 states, in pertinent part:

14 "(a) Whenever a proposed decision places a licensee or registered company on probation as
15 a condition of staying a revocation or staying all or any portion of a suspension, the order
16 granting such probation shall include at least the following conditions: "(1) That the licensee or
17 registered company shall file quarterly reports with the board during the period of probation;
18 "(2) Such other terms and conditions as may be appropriate in light of the number and
19 nature of the violations proven."

20 STATUTES PROVISIONS

21 10. Section 8554 of the Code states:

22 "No individual engaged in the business or acting in the capacity of an operator may bring or
23 maintain an action in any court of this state for the collection of compensation for the
24 performance of any act or contract without alleging and proving that he or she was a duly licensed
25 operator at all times during the performance of such act or contract.

26 "No firm, partnership, corporation, association or other organization or combination thereof
27 engaged in the practice of structural pest control may bring or maintain an action in any court of
28 this state for the collection of compensation for the performance of any act or contract without

1 alleging and proving that it was a duly registered company at all times during the performance of
2 the act or contract.

3 "Nothing herein shall prohibit the bringing or maintaining an action for the collection of
4 compensation in the event of a suspension or revocation of a license or company registration by
5 the board, if the order of suspension or revocation authorized the performance of the act or work,
6 compensation for which the action is brought or maintained."

7 COST RECOVERY

8 11. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 ACCUSATION

13 FIRST CAUSE FOR DISCIPLINARY ACTION

14 (Action for Compensation; Pleading and Proof of License)
15 (Bus. & Prof. Code § 8554)

16 12. Respondent DonPedro's Termite Control has subjected Company Registration
17 Number PR 1450, Branch 3, and Respondent Don-Pedro has subjected Operator's License No.
18 OPR 8197 to disciplinary action pursuant to Section 8554 of the Code in that they engaged in the
19 following conduct:

20 a. On or about October 26, 2011, Respondent Don-Pedro, doing business as DonPedro's
21 Termite Company (Plaintiff), filed a small claims action in Alameda County Superior Court, Case
22 No. BS11598704, against Linda Lewallen (Defendent) seeking \$7,500.00 in damages for "breach
23 of contract." In the small claims lawsuit, Plaintiff alleged that Defendant breached a contract
24 "causing us to suspending [sic] of State Lic. & subsequently leading to loss of wages and
25 hardship. Lost [sic] City of Oakland bidding, [sic] contract to that effect of (\$80,000.00)."
26 Plaintiff stated that this happened between February 26, 2007 and September 2, 2007. Plaintiff
27 also attached a handwritten letter dated September 27, 2011 to his small claims filing, in which,
28 among other things, he accused the Defendant of willfully blocking, lying, and fraudulently not

1 allowing them to correct the work that the Board requested them to fix. A trial date of February
2 15, 2012 was set in this case.

3 b. At the time Respondents claimed that the breach of contract occurred, Respondent
4 Don-Pedro Termite Company did not have general liability insurance for the policy period of
5 June 20, 2006, through June 20, 2007. Indeed, the general liability insurance for Company
6 Registration Certificate No. PR 1450, policy no. CLS1212411, was canceled on December 14,
7 2006.

8 PETITION TO REVOKE PROBATION

9 FIRST CAUSE TO REVOKE PROBATION

10 (Obey all Laws)

11 13. The allegations of Paragraph 12 are realleged and incorporated by reference as though
12 fully set forth.

13 14. At all times after the effective date of Respondent's probation, Condition 1 stated:

14 "Obey All Laws. Respondents shall obey all laws and rules relating to the practice of
15 structural pest control."

16 15. Respondents' probation is subject to revocation because they failed to comply with
17 Probation Condition No. 1. They violated Section 8554 of the Code by bringing a court action to
18 obtain compensation on a contract executed while the company registration and operator's license
19 were suspended, as set forth in Paragraph 12, above.

20 SECOND CAUSE TO REVOKE PROBATION

21 (Reimbursement to Consumer)

22 16. At all times after the effective date of Respondent's probation, Condition 12 stated:

23 "Reimbursement to Consumer. Respondents agree to pay the sum of \$14,715.00 to Linda
24 R. Lewallen as restitution in this matter within eighteen (18) months of the effective date of the
25 decision. Respondents agree to pay an initial payment of \$817.50 within thirty (30) days of the
26 effective date of the Decision and Order. Respondents agree to make monthly payments of
27 \$817.50 on the 15th of each month thereafter for eighteen (18) months or until \$14,715.00 is paid
28 in full. Respondents shall directly submit this initial payment and all subsequent monthly

1 payments to Linda R. Lewallen. Respondents shall submit proof of each payment to the
2 Registrar. Respondents shall submit proof to the Registrar that the total restitution amount of
3 \$14,715.00 has been made to Linda R. Lewallen within eighteen (18) months of the effective date
4 of the decision."

5 17. Respondents' probation is subject to revocation because they failed to comply with
6 Probation Condition No. 12 by engaging in the following conduct:

7 a. Respondents did not send the required initial restitution payment of \$817.50 directly
8 to the consumer, Linda R. Lewallen (Consumer) by July 2, 2011. On July 6, 2011, a Board's
9 Specialist (Specialist) contacted the Consumer who told the Specialist that she had not received
10 Respondents' initial restitution payment of \$817.50. On July 6, 2011, the Consumer also told the
11 Specialist that she had been harassed by George Don-Pedro and that she was very concerned for
12 her personal safety if Respondent were to deliver a check to her residence. The Consumer also
13 asked that the Board act as an "intermediary" on her behalf and receive any restitution payments
14 directly.

15 b. On July 14, 2011, the Board sent a letter to Respondents advising that them that they
16 failed to make the required initial restitution payment of \$817.50 to the Consumer by July 2,
17 2011. The Board also notified them that they should send the required restitution payment made
18 out to the Consumer directly to the Board, instead of to the Consumer. On July 20, 2011, the
19 Board received a letter dated July 14, 2011, from the Consumer, in which she again expressed her
20 concerns for her personal safety especially if Respondents had any direct contact with her. In her
21 letter, the Consumer again requested that the restitution payments be sent directly to the Board,
22 and mentioned "mail theft and burglaries that have occurred" in her neighborhood. To date,
23 Respondents have failed to send the required restitution payments made out to the Consumer
24 directly to the Board.

25 THIRD CAUSE TO REVOKE PROBATION

26 (Inspection Fee)

27 18. At all times after the effective date of Respondent's probation, Condition 10 stated:

28 **"Inspection Fees.** Respondents shall pay to the registrar, or designee, an inspection fee of

1 \$50 within thirty (30) days from the effective date of this decision."

2 19. Respondents' probation is subject to revocation because they failed to comply with
3 Probation Condition No. 10 by not paying the inspection fee of \$50.00 within thirty (30) days
4 from the effective date of the decision, or by July 2, 2012. On July 14, 2011, the Board sent a
5 letter to Respondents advising that them of their failure to pay the required inspection fee of
6 \$50.00 by July 2, 2012. To date, Respondents have failed to pay the inspection fee of \$50.00.

7 MATTERS IN AGGRAVATION

8 20. To determine the degree of penalty, if any, to be imposed on Respondent
9 DonPedro's Termite Control Co., Complainant alleges as follows:

10 a. On October 28, 1992, Respondent paid a \$150.00 fine levied by the Alameda
11 County Agricultural Commissioner for Respondent's violation of Food and Agriculture Code
12 section 15204.

13 b. On or about November 3, 1992, Respondent paid a \$50.00 fine levied by the Santa
14 Clara County Agricultural Commission for violation of section 15204 of the Food and
15 Agricultural Code.

16 c. On September 14, 1993, Respondent paid a \$100.00 fine levied by the Alameda
17 County Agricultural Commissioner for Respondent's violation of Code section 8505.17.

18 d. On February 8, 1995, Respondent paid a fine of \$100.00 levied by the Alameda
19 County Agricultural Commission for a violation of Code section 8505.17.

20 e. On July 17, 2003, Respondent paid a \$2,100.00 fine levied by the Board for
21 Respondent's violation of Code sections 8516, subdivision (b), 8518 and 8638, and Respondent's
22 violation of California Code of Regulations, title 16, sections 1937.14 and 1991.

23 f. On February 7, 2012, the Board levied a fine of \$2,550.00 for Respondent's
24 violation of Code sections 8516, subdivision (b), and 8612. To date, Respondent has not paid the
25 fine.

26 21. To determine the degree of penalty, if any, to be imposed on Respondent
27 Don-Pedro, Complainant alleges as follows:

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a. On July 17, 2003, Respondent Don-Pedro paid a \$2,100.00 fine levied by the Board for Respondent Don-Pedro's violations of Code sections 8516, subdivision (b), 8518, and 8638, and California Code of Regulations, title 16, sections 1937.14 and 1991.

b. On February 7, 2012, the Board levied a fine of \$2,550.00 for Don-Pedro's violation of Code sections 8516, subdivision (b), and 8612. To date, Respondent Don-Pedro has not paid the fine.

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 the probation that was granted by the Structural Pest Control Board in Case No. 2010-57 and imposing the disciplinary order that was stayed, thereby revoking Company Registration Certificate No. PR 1450, issued to Donpedro's Termite Control;

2. Revoking the probation that was granted by the Structural Pest Control Board in Case No. 2010-57 and imposing the disciplinary order that was stayed, thereby revoking Operator's License No. OPR 8197, issued to George Don Pedro;

3. Revoking or suspending Company Registration Certificate No. PR 1450, issued to George Don Pedro, Donpedro's Termite Control;

4. Revoking or suspending Operator's License No. OPR 8197, issued to George Don Pedro;

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

DATED: 4/30/12

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

SF2012900733
acc & pet revoke prob.rtf

Exhibit A

Decision and Order

Structural Pest Control Board Case No. 2010-57