FILED

Date 4/30/12 By William H. Douglas

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

In the Matter of the Accusation and Petition to Revoke Probation Against, **DONPEDRO'S TERMITE CONTROL CO.** **2825 Garden Street, Suite A** **Oakland, CA 94601** **Company Registration Certificate No. PR 1450** **and** **GEORGE DON PEDRO** **2825 Garden Street, Suite A** **Oakland, CA 94601** **Operator's License No. OPR 8197** Respondents.	Case No. 2012-55 ACCUSATION AND PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

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

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2. On or about July 28, 1988, the Structural Pest Control Board issued Company Registration Number PR 1450, Branch 3, to DonPedro's Termite Control Company ("Respondent DonPedro Termite Control Co." or "Respondent"), with George Don-Pedro as Owner and Qualifying Manager. On or about December 16, 2010, Company Registration Number PR 1450 reflected a change of address to 2825 Garden Street, Suite A, Oakland, California 94601.

3. On or about July 28, 1988, the Structural Pest Control Board issued Operator's License Number OPR 8197, Branch 3, to Don-Pedro, Owner and Qualifying Manager of DonPedro's Termite Control Co. ("Respondent Don-Pedro" or "Don-Pedro"). On or about December 16, 2010, Operator's License Number OPR 8197 reflected a change of address to 2825 Garden Street, Suite A, Oakland, California 94601. The Operator's License was in full force and effect at all times relevant to the charges brought in the Accusation and will expire on June 30, 2012, unless renewed.

4. In a disciplinary action entitled "In the Matter of Accusation Against DonPedro's Termite Company and George Don-Pedro," Case No. 2010-57, the Structural Pest Control Board, issued a decision, effective June 2, 2011, in which Company Registration Certificate No. PR 1450, issued to Respondent DonPedro Termite Company, and Operator's License No. OPR 8197, issued to Respondent Don-Pedro, were revoked. However, the revocations were stayed and Company Registration Certificate No. PR 1450 and Operator's License No. OPR 8197 were placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

5. This Accusation and Petition to Revoke Probation are brought before the Structural Pest Control Board (Board), Department of Pesticide Regulation, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 8620 of the Business and Professions Code (Code) 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.

7. Section 8625 of the Code 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."

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

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

"(a) Whenever a proposed decision places a licensee or registered company on probation as a condition of staying a revocation or staying all or any portion of a suspension, the order granting such probation shall include at least the following conditions: "(1) That the licensee or registered company shall file quarterly reports with the board during the period of probation;

"(2) Such other terms and conditions as may be appropriate in light of the number and nature of the violations proven."

STATUTES PROVISIONS

10. Section 8554 of the Code states:

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

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

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

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

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that a 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.

ACCUSATION

FIRST CAUSE FOR DISCIPLINARY ACTION
(Action for Compensation; Pleading and Proof of License)
(Bus. & Prof. Code § 8554)

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

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

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

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

PETITION TO REVOKE PROBATION

FIRST CAUSE TO REVOKE PROBATION

(Obey all Laws)

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

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

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

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

SECOND CAUSE TO REVOKE PROBATION

(Reimbursement to Consumer)

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

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

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

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

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

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

THIRD CAUSE TO REVOKE PROBATION

(Inspection Fee)

18. At all times after the effective date of Respondent's probation, Condition 10 stated: "**Inspection Fees.** Respondents shall pay to the registrar, or designee, an inspection fee of

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

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

MATTERS IN AGGRAVATION

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

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

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

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

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

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

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

21. To determine the degree of penalty, if any, to be imposed on Respondent 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