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Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

Case No. 2010-35

13 **JAMES KERMIT DEFFENDALL**
14 **2307 East Chennault**
Fresno, CA 93720

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 **Operator's License No. OPR 8736,**

16 Respondent.

17
18 **FINDINGS OF FACT**

19
20 1. On or about December 17, 2009, Complainant Kelli Okuma, in her official capacity
21 as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide
22 Regulation, filed Accusation No. 2010-35 against James Kermit Deffendall (Respondent) before
23 the Structural Pest Control Board.

24 2. On or about April 18, 1991, the Structural Pest Control Board (Board) issued
25 Operator's License No. OPR 8736 to Respondent. The Operator's License was in full force and
26 effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless
27 renewed.

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1 3. On or about December 23, 2009, PRAVEEN K. SINGH, an employee of the
2 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
3 2010-35, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
4 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
5 which was:

6 4974 North Fresno Street, #163
7 Fresno, CA 93726

8 On or about December 30, 2009, the aforementioned documents were returned by the U.S.
9 Postal Service marked "Attempted - Not Known; Unable To Forward."

10 On or about January 20, 2010, CAROL L. SEKARA, an employee of the Department of
11 Justice, re-served by Certified and First Class Mail a copy of the Accusation No. 2010-35,
12 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
13 sections 11507.5, 11507.6, and 11507.7 to Respondent's addresses of record with the Board,
14 which were and are:

15 P.O. Box 2126
16 Clovis, CA 93613-2126

17 and

18 2307 East Chennault
19 Fresno, CA 93720

20 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

21 4. Service of the Accusation was effective as a matter of law under the provisions of
22 Government Code section 11505, subdivision (c).

23 5. Government Code section 11506 states, in pertinent part:

24 (c) The respondent shall be entitled to a hearing on the merits if the respondent
25 files a notice of defense, and the notice shall be deemed a specific denial of all parts
26 of the accusation not expressly admitted. Failure to file a notice of defense shall
27 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
28 may nevertheless grant a hearing.

29 6. Respondent failed to file a Notice of Defense within 15 days after service upon
30 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
31 No. 2010-35.

1 7. California Government Code section 11520 states, in pertinent part:

2 (a) If the respondent either fails to file a notice of defense or to appear at the
3 hearing, the agency may take action based upon the respondent's express admissions
4 or upon other evidence and affidavits may be used as evidence without any notice to
5 respondent.

6 8. Pursuant to its authority under Government Code section 11520, the Board finds
7 Respondent is in default. The Board will take action without further hearing and, based on the
8 evidence on file herein, finds that the allegations in Accusation No. 2010-35 are true.

9 9. The total cost for investigation and enforcement in connection with the Accusation
10 are Seven Hundred Ten Dollars (\$710.00) as of April 13, 2010.

11 **DETERMINATION OF ISSUES**

12 1. Based on the foregoing findings of fact, Respondent James Kermit Deffendall has
13 subjected his Operator's License No. OPR 8736 to discipline.

14 2. A copy of the Accusation is attached.

15 3. The agency has jurisdiction to adjudicate this case by default.

16 4. The Structural Pest Control Board is authorized to revoke Respondent's Operator's
17 License based upon the following violations alleged in the Accusation:

18 **Documentation of Continuing Education Requirements**

19 5. Respondent's license is subject to disciplinary action pursuant to Code sections 8620,
20 8593, and 8641, in that Respondent failed to comply with Regulation section 1950, subdivision
21 (a), by failing to provide the Board with verifiable documentation to demonstrate that he
22 completed 16 hours of continuing education requirements for the renewal period of July 1, 2005,
23 through June 30, 2008, as stated in his License Renewal Application, signed under penalty of
24 perjury and dated June 21, 2008.

25 **Other Matters**

26 13. Pursuant to Code section 8654, if Respondent's license is disciplined, then
27 Respondent shall be prohibited from serving as an officer, director, associate, partner, or
28 qualifying individual of any license, and any licensee which employs, elects or associates

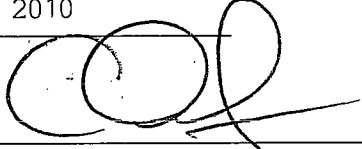
1 Respondent in any capacity other than as a non-supervising bona fide employee shall be subject
2 to disciplinary action.

3 **ORDER**

4 IT IS SO ORDERED that Operator's License No. OPR 8736, heretofore issued to
5 Respondent James Kermit Deffendall, is revoked.

6 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
7 written motion requesting that the Decision be vacated and stating the grounds relied on within
8 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
9 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

10 This Decision shall become effective on June 9, 2010.

11 **IT IS SO ORDERED** May 10, 2010
12 

13 **FOR THE STRUCTURAL PEST CONTROL BOARD**
14 **DEPARTMENT OF PESTICIDE REGULATION**

15 **Attachments:**

- 16 Exhibit A: Accusation No.2010-35
- 17 Exhibit B: Cost-of-Suit Summary

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19 10558893.DOC
20 DOJ docket number: SA2009102417

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EXHIBIT A

Accusation No. 2010-35

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7 *Attorneys for Complainant*

FILED

Date 12/17/09 By *Susan Saylor*

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

13 In the Matter of the Accusation Against:
14 **JAMES KERMIT DEFFENDALL**
4974 North Fresno Street, #163
15 Fresno, CA 93726
16 Operator's License No. OPR 8736
Branch 2
17 Respondent.

Case No. 2010-35

ACCUSATION

18
19 Complainant alleges:

PARTIES

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

24 **License History**

25 2. On or about April 18, 1991, the Structural Pest Control Board issued Operator's
26 License Number OPR 8736, Branch 2, to James Kermit Deffendall ("Respondent"). The license
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 June 30, 2011, unless renewed.

JURISDICTION

1
2 3. This Accusation is brought before the Structural Pest Control Board ("Board"),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code ("Code"), unless otherwise indicated.

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

9 5. Code section 8624 states:

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

13 6. Code section 8625 states:

14 The lapsing or suspension of a license or company registration by
15 operation of law or by order or decision of the board or a court of law, or the
16 voluntary surrender of a license or company registration shall not deprive the
17 board of jurisdiction to proceed with any investigation of or action or
18 disciplinary proceeding against such licensee or company, or to render a
19 decision suspending or revoking such license or registration.

20 7. Code section 8654 states:

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

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1 8. Code section 8593 states:

2 The board shall require as a condition to the renewal of each operator's
3 and field representative's license that the holder thereof submit proof
4 satisfactory to the board that he or she has informed himself or herself of
5 developments in the field of pest control by completion of courses of
6 continuing education in pest control approved by the board or equivalent
7 activity approved by the board.

8 STATUTORY PROVISION

9 9. Code section 8641 states:

10 Failure to comply with the provisions of this chapter, or any rule or
11 regulation adopted by the board, . . . is a ground for disciplinary action.

12 REGULATORY PROVISION

13 10. California Code of Regulations, section 1950, subdivision (a), states:

14 Except as provided in section 1951, every licensee is required, as a
15 condition to a renewal of a license, to certify that he or she has completed the
16 continuing education requirements set forth in this article. A licensee who
17 cannot verify completion of continuing education by producing certificates of
18 activity completion, whenever required to do so by the Board, may be subject to
19 disciplinary action under section 8641 of the code.

20 COST RECOVERY

21 11. Code section 125.3 states, in pertinent part, that a Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 FIRST CAUSE FOR DISCIPLINE

26 (Documentation of Continuing Education Requirements)

27 12. Respondent's license is subject to disciplinary action pursuant to Code sections 8620,
28 8593, and 8641, in that Respondent failed to comply with Regulation section 1950, subdivision
(a), by failing to provide the Board with verifiable documentation to demonstrate that he
completed 16 hours of continuing education requirements for the renewal period of July 1, 2005,
through June 30, 2008, as stated in his License Renewal Application, signed under penalty of
perjury and dated June 21, 2008.

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OTHER MATTERS

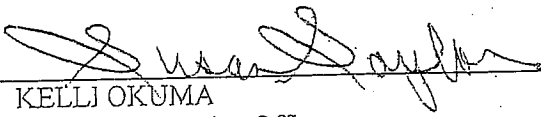
13. Pursuant to Code section 8654, if Respondent's license is disciplined, then Respondent shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of any license, and any licensee which employs, elects or associates Respondent in any capacity other than as a non-supervising bona fide employee shall be subject to 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 Operator's License Number OPR 8736, issued to James Kermit Deffendall;
2. Ordering James Kermit Deffendall to pay the Board the reasonable costs of the investigation and enforcement of this case; pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/17/09


KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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