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FILED

Date 8/5/11 By William H. Douglas

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

In the Matter of the Accusation Against: **JEFF HIATT, INC.** **JEFFREY SCOTT HIATT, QM** **456 E. Ave K-4, Suite 1** **Lancaster, CA 93535** **Company Registration Certificate No. PR 4100** **JEFFREY SCOTT HIATT** **456 E. Ave K-4, Suite 1** **Lancaster, CA 93535** **Operator License No. OPR 9065, Branch 3** Respondents.	Case No. 2012-4 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about December 15, 1992, the Board issued Operator License No. OPR 9065 in Branch 3 (termite) to Jeffrey Scott Hiatt. The Operator License is currently in effect and renewed through June 30, 2012.

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3. On or about March 5, 2002, the Board issued Company Registration Certificate Number PR 4100 (company registration) in Branch 3 (termite) to Jeff Hiatt, Inc., with Jeffrey Scott Hiatt as President (Respondents) and Joseph G. Williams as Chief Financial Officer.

4. On or about March 5, 2008, the company registration was upgraded to include Branches 2 (general pest) and 3 (termite) with Jason Lester Fiala as Branch 2 Qualifying Manager.

5. On or about March 27, 2008, the company registration was changed to reflect Jeffrey Scott Hiatt as Chief Executive Officer, Jason Lester Fiala as Chief Financial Officer, Scott Arnold Tingle as Vice President, Dean Sager as Shareholder, and James Tilton as Shareholder.

6. On or about October 6, 2010, the company registration reflected the disassociation of Jason Lester Fiala as Branch 2 Qualifying Manager and the company registration was downgraded to only include Branch 3.

7. On or about November 3, 2010, the company registration was cancelled.

JURISDICTION

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

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 8624 states, in pertinent part:

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. 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.

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 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."

12. Code section 118, subdivision (b), provides, in pertinent part, that the expiration 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.

STATUTORY PROVISIONS

13. 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.

Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8518 or this section is grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars ($2,500).

A written inspection report conforming to this section and a form approved by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within 10 business days of the inspection, except that an inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, field notes, and activity forms.

Reports shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours. Original inspection reports or copies thereof shall be submitted to the board upon request within two business days. The following shall be set forth in the report:

...

(6) A foundation diagram or sketch of the structure or structures or portions of the structures inspected, indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions that would ordinarily subject those parts to attack by wood destroying pests or organisms exist.

...

(9) Indication or description of any areas that are inaccessible or not inspected with recommendation for further inspection, if practicable. If, after the report has been made in compliance with this section, authority is given later to open inaccessible areas, a supplemental report on conditions in these areas shall be made.

(10) Recommendations for corrective measures.

14. 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 there under. 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."

15. Code section 8638 states:

"Failure on the part of a registered company to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract is a ground for disciplinary action."

16. 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."

17. Code Section 8650 states:

"Acting in the capacity of a licensee or registered company under any of the licenses or registrations issued hereunder except:

(a) In the name of the licensee or registered company as set forth upon the license or registration, or

(b) At the address and location or place or places of business as licensed or registered or as later changed as provided in this chapter is a ground for disciplinary action."

REGULATORY PROVISIONS

18. California Code of Regulations, title 16, section 1937.14, states:

"All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations."

19. California Code of Regulations, title 16, section 1990, states:

"(a) All reports shall be completed as prescribed by the board. Copies filed with the board shall be clear and legible. All reports must supply the information required by Section 8516 of the Code and the information regarding the pesticide or pesticides used as set forth in Section 8538 of the Code, and shall contain or describe the following:

. . .

(3) Infestations, infections or evidence thereof.

. . .

20. California Code of Regulations, title 16, section 1991 states, in pertinent part:

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 10 of subdivision (b) of Section 8516 of the code and shall also conform with the provisions of Title 24 of the California Code of Regulations and any other applicable local building code, and shall accomplish the following:

. . .

(8) Exterminate all reported wood-destroying pests. Such extermination shall be considered repair under section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendation shall be made to either:

(A) enclose the structure for an all encompassing treatment utilizing materials listed in section 8505.1 of the code, or

(B) use another all encompassing method of treatment which exterminates the infestation of the structure, or

(C) locally treat by any or all of the following:

1. exposing the infested area(s) for local treatment,
2. removing the infested wood,
3. using another method of treatment which exterminates the infestation. (If any recommendation is made for local treatment, the report must contain the following statement: "Local treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.")

When a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests.

When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagramed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited area(s). The limited inspection report shall include a recommendation for further inspection of the entire structure and that all accessible evidence of wood-destroying pests be removed or covered.

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COST RECOVERY/RESTITUTION

21. Code section 125.3 states, 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.

BACKGROUND FACTS

(260 MIRAMAR STREET, UPLAND, CALIFORNIA)

22. On or about August 2, 2010, homeowner Vikki Thompson (Thompson) entered into a contract with Jason Sager (Sager), a field representative employed by Respondents to inspect the premises at 260 Miramar Street, Upland, California (the property). The contract included, but was not limited to, activation treatments for all wood destroying pests marked on the contract, corrective measures for specialty pests marked on the contract, repair all identified structural damage, and to remove old attic insulation and install new TAP insulation to the attic. The total cost to complete the contract was $4997.00. The name-style listed on the title of the contract was "jeff hiatt, inc. all pest professionals" and the first paragraph on the contract referenced "Jeff Hiatt, Inc., All Pest Professionals (JHI). A search of the Board's records indicates that "JHI" nor "jeff hiatt, inc., all pest professionals" have not and have never been registered as principal registration companies by the Board.

23. On or about August 2, 2010, Thompson wrote a check to Respondents in the amount of $1000.00 as a deposit to complete the work on the contract and the inspection report. Subsequently, on this same date, Enrique Hernandez, an employee of Respondents, inspected the premises at 260 Miramar Street, Upland, California (the property). That same day, Respondents issued Report No. 211626, using the company name jeff hiatt, inc. all pest professionals, with a business address of 456 E Avenue K-4 Ste. 1, Lancaster, California. The inspection report indicated that JHI's Company Registration Number was PR 4100. The report had findings of proactive treatment for the control of drywood and subterranean termites; evidence of active

drywood termites; drywood termite damage noted at trim and fungus damage noted at a support beam, and included recommendations to complete those findings.

24. On or about August 5, 2010, Thompson wrote a check in the amount of $500 to Respondents. The check referred to Respondents inspection report number 211626.

25. On or about September 11, 2010, Thompson wrote another check to Respondents in the amount of $878 to "JHI".

26. On or about September 16, 2010, Respondents issued an invoice to Thompson in the name-style "JHI" which indicated that work was completed at the property. The invoice included a "Policy Service Request for Repairs" which stated "Need to buy a new fold out ladder for the attic. We broke hers. Also, we lifted up flashing to screen and never put it back need to fix that as well." Respondents also failed to install TAP insulation.

27. On or about December 2, 2010, Steve Winfrey, a specialist with the Board, inspected the property and found Respondents to be in violation of various provisions of the Structural Pest Control Act as further specified below.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Codes and Regulations - Improper Inspections)

28. Respondents are subject to discipline under Code section 8641 and 8516 subdivisions (b)(6), (b)(9), and (b)(10) in conjunction with California Code of Regulations, sections 1990, subdivision (a)(3) and 1991, subdivision (8)(A), (B) and (C), in that Respondents commenced work on a contract without properly preparing an inspection report by a licensed Branch 3 field representative or operator. Specifically, Respondents failed to indicate and describe areas of drywood termite infestations visible at the wood trim at the front of the house which extends into inaccessible areas and which are physically inaccessible for local chemical treatment. Respondents also failed to include on the inspection report a proper recommendation for corrective measures regarding drywood termite infestations that extend into inaccessible areas. The evidence indicates that the infestations are active and extend into areas that are physically

inaccessible for local chemical treatment. Complainant incorporates by reference, paragraphs 22 – 27 as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Operating in a Name Style Not Registered with the Board)

29. Respondents are subject to discipline under Code sections 8641 and 8650 in that Respondents entered into a contract and operated with the name styles "JHI" and "jhiapp", neither of which are registered with the Board. Complainant incorporates by reference, paragraphs 22 – 27 as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Code - Breach of Contract)

30. Respondents are subject to discipline under Code section 8638, in that Respondents failed to complete operation and construction repairs for the price stated in the contract in the following respects:

a. Respondents failed to install the TAP insulation in the attic.

b. Respondents failed to complete the work as contracted in that drywood termite and decay fungi damage still exists at the property.

Complainant incorporates by reference, paragraphs 22 – 27 as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Code - Noncompliance with Notices Issued by the Board)

31. Respondents are subject to discipline under Code section 8641 and 8622 in that after receiving notice of noncompliance by the Board, Respondents failed to bring the property into compliance within 30 days and submit a new original report or completion notice. Complainant incorporates by reference, paragraphs 22 – 27 as if fully set forth herein.

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FIFTH CAUSE FOR DISCIPLINE

(Workmanship)

32. Respondents are subject to discipline under Code section 8641 in conjunction with California Code of Regulations, title 16, section 1937.14 in that Respondents failed to perform the repairs at the property in a good and workmanlike manner in the following respects:

a. Respondents' employee broke the attic pull down ladder in the garage while working on the property.

b. Respondents failed to include on the inspection report a proper recommendation regarding drywood termite infestations that extend into inaccessible areas. The evidence indicates that the infestations are active and extend into areas that are physically inaccessible for local chemical treatment.

Complainant incorporates by reference, paragraphs 22 – 27 as if fully set forth herein.

MATTERS IN AGGRAVATION

33. To determine the degree of penalty, if any, to be imposed on Respondents' company registration, complainant alleges:

a. On June 15, 2004, Respondents Company Registration Certificate Number PR 4100 paid a $50 fine levied by the Los Angeles County Agricultural Commissioner for a violation of Code section 8505.17.

b. On February 23, 2005, Respondents Company Registration Certificate Number PR 4100 was levied a $300 fine by the Board for a violation of Code section 8638.

c. On April 17, 2006, Respondents Company Registration Certificate Number PR 4100 was levied a $150 fine by the Board for a violation of Code section 8638 and section 1937.14 of the California Code of Regulations.

d. On September 19, 2006, Respondents Company Registration Certificate Number PR 4100 paid a $600 fine levied by the San Bernardino County Agricultural Commissioner for a violation of Code section 8551.5 and section 6738(b)(c) of the California Code of Regulations.

e. On December 18, 2006, Respondents Company Registration Certificate Number PR 4100 was levied a $150 fine by the Board for a violation of Code section 8516 and section 1991(a)(8) of the California Code of Regulations.

f. On March 7, 2007, Respondents Company Registration Certificate Number PR 4100 paid a $300 fine levied by the San Diego County Agricultural Commissioner for a violation of section 15204 of the Food and Agricultural Code.

g. On April 5, 2007, Respondents Company Registration Certificate Number PR 4100 paid a $700 fine levied by the San Bernardino County Agricultural Commissioner for a violation of section 6702 of the California Code of Regulations.

h. On January 29, 2008, Respondents Company Registration Certificate Number PR 4100 was levied a $250 fine by the Board for a violation of sections 1999.5(a),(f)(2) and (f)(4) of the California Code of Regulations.

i. On November 13, 2008, Respondents' Company Registration Certificate Number PR 4100 was levied a $750 fine by the Board for a violation of 1999.5(a),(f) and (6)(13) of the California Code of Regulations.

34. To determine the degree of penalty, if any, to be imposed on Respondents' operator license, complainant alleges:

a. On June 15, 2004, Respondents Operator's License No. OPR 4065 paid a $50 fine levied by the Los Angeles County Agricultural Commissioner for a violation of Code section 8505.17.

b. On February 23, 2005, Respondents Operator's License No. OPR 4065 was levied a $300 fine by the Board for a violation of Code section 8638.

c. On April 17, 2006, Respondents Operator's License No. OPR 4065 was levied a $150 fine by the Board for a violation of Code section 8638 and section 1937.14 of the California Code of Regulations.

d. On September 19, 2006, Respondents Operator's License No. OPR 4065 paid a $600 fine levied by the San Bernardino County Agricultural Commissioner for a violation of Code section 8551.5 and section 6738(b)(c) of the California Code of Regulations.

e. On December 18, 2006, Respondents Operator's License No. OPR 4065 was levied a $150 fine by the Board for a violation of Code section 8516 and section 1991(a)(8) of the California Code of Regulations.

f. On March 7, 2007, Respondents Operator's License No. OPR 4065 paid a $300 fine levied by the San Diego County Agricultural Commissioner for a violation of section 15204 of the Food and Agricultural Code.

g. On April 5, 2007, Respondents Operator's License No. OPR 4065 paid a $700 fine levied by the San Bernardino County Agricultural Commissioner for a violation of section 6702 of the California Code of Regulations.

h. On January 29, 2008, Respondents Operator's License No. OPR 4065 was levied a $250 fine by the Board for a violation of sections 1999.5(a),(f)(2) and (f)(4) of the California Code of Regulations.

i. On November 13, 2008, Respondents Operator's License No. OPR 4065 was levied a $750 fine by the Board for a violation of 1999.5(a),(f) and (6)(13) of the California Code of Regulations.

OTHER MATTERS

35. Code section 8620 provides, in pertinent part, that a Respondent may request that a civil penalty of not more than $5,000 by 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.

36. Pursuant to Code section 8624, if Operator License Number OPR 9065, issued to Respondents is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 4100, issued to Respondents with Jeffrey Scott Hiatt, as the qualifying manager.

37. Pursuant to Code section 8624, the causes for discipline established as to Respondents likewise constitute causes for discipline against Respondents regardless of whether

they had knowledge of or participated in the acts or omissions which constitute causes for discipline against Respondents.

38. Pursuant to Code section 8654, if discipline is imposed on Operator's License Number OPR 9065, issued to Respondents, then Jeffrey Scott Hiatt 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 Jeffrey Scott Hiatt shall be subject to disciplinary action.

39. Code section 8622 provides, in pertinent part, that Respondents shall submit an inspection fee of not more than $125. If a reinspection is necessary, a commensurate reinspection fee shall be charged.

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 4100, issued to Jeff Hiatt, Inc. and OPR 9065 issued to Jeffrey Scott Hiatt;

2. Ordering Jeff Hiatt, Inc. and/or Jeffrey Scott Hiatt 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;

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

DATED: 8/5/11

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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