

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DESERT BUG STORMERS, INC.
1427 South Pacific Avenue
San Pedro, CA 90731
Thomas B. Smith, QM
Operator's License No. 9366, Br. 3

Respondent.

Case No. 2008-13

**STIPULATED REVOCATION OF
LICENSURE OF THOMAS B. SMITH**

DECISION AND ORDER

The attached Stipulated Revocation and Disciplinary Order is hereby adopted by the Structural Pest Control Board, Department of Consumer Affairs, as its Decision in this matter.

The Decision shall become effective on September 3, 2009.

IT IS SO ORDERED August 4, 2009.



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KIMBERLEE D. KING, State Bar No. 141813
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2581
Facsimile: (213) 897-2804
6

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 **DESERT BUG STORMERS, INC.**
1427 South Pacific Avenue
13 San Pedro, California 90731
THOMAS B. SMITH, Qualifying Manager,
14 **Br. 3**
JUAN MANUEL TREVINO, President
15 **JOSEPHINE TREVINO, V/P**
Branch Office No. BR 4964
16 **Branch Office No. BR 4816**
Company Registration Certificate No. PR
17 **3283, Br. 3**
Operator License No. OPR 9366, Br. 3
18
19 Respondents.

Case No. 2008-13
OAH No. L-2008030783
**STIPULATED REVOCATION OF
LICENSURE OF THOMAS B.
SMITH AND DISCIPLINARY
ORDER**

21 THIS STIPULATED AGREEMENT is by and between Complainant, Kelli
22 Okuma , Registrar/Executive Officer of the Structural Pest Control Board and Respondent
23 Thomas B. Smith only, and does not include the remaining parties to the above-entitled
24 proceedings. Complainant Kelli Okuma and Respondent Thomas B. Smith, hereby stipulate and
25 agree that the following matters are true:

26 PARTIES

27 1. Kelli Okuma (Complainant) is the Registrar/Executive Officer of the
28 Structural Pest Control Board. She brought this action solely in her official capacity and is

1 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
2 by Kimberlee D. King, Deputy Attorney General.

3 2. Thomas B. Smith (Respondent) is represented in this proceeding by
4 attorney James L. Frederick, of Goeltz & Frederick, whose address is 504 West Mission Avenue,
5 Suite 103, Escondido, CA 92025.

6 3. On or about May 22, 1998, the Board issued Company Registration
7 Certificate No. PR 3283 ("company registration") in Branch 3 to Desert Bug Stormers, Inc.
8 ("Respondent Desert Bug"), with Thomas Murray as the Qualifying Manager and Juan Manuel
9 Trevino as President. On or about August 9, 1999, Thomas B. Smith became the Qualifying
10 Manager. On or about June 27, 2000, the Board issued Branch Office Registration No. BR 4816
11 to Desert Bug Stormers, with Ernesto Chavez as the Branch Office Supervisor. On or about
12 October 20, 2003, Josephine Trevino became the Vice-President. On or about January 27, 2004,
13 the Board issued Branch Office Registration No. BR 4964 to Desert Bug Stormers, Inc., with
14 Ernesto Chavez, Jr. as the Branch Office Supervisor. On August 4, 2008, Respondent Smith
15 disassociated as the Qualifying Manager of Desert Bug Stormers, Inc., submitted a request to
16 cancel his Operator's License No. OPR 9366, and surrendered his physical license to the Board.

17 4. On or about February 7, 1995, the Board issued Operator's License
18 No. OPR 9366 in Branch 3 to Tom B. Smith ("Respondent Smith") as an employee of
19 Electromite. On or about January 1, 1996, Respondent Smith became the Qualifying Manager of
20 Electromite. On or about August 9, 1999, Respondent Smith became the Qualifying Manager of
21 Desert Bug Stormers, Inc. On or about December 21, 1999, Respondent Smith disassociated as
22 the Qualifying Manager of Electromite, and became the Qualifying Manager of Desert Bug
23 Stormers, Inc. doing business as Electromite (Company Registration Certificate No. PR 3581).
24 On August 4, 2008, Respondent Smith disassociated as the Qualifying Manager of Electromite,
25 submitted a request to cancel his Operator's License No. OPR 9366, and surrendered his physical
26 license to the Board.

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CONTINGENCY

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2 11. This stipulation shall be subject to approval by the Structural Pest Control
3 Board. Respondent understands and agrees that counsel for Complainant and the staff of the
4 Structural Pest Control Board may communicate directly with the Board regarding this
5 stipulation and settlement, without notice to or participation by Respondent or its counsel. By
6 signing the stipulation, Respondent understands and agrees that they may not withdraw its
7 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon
8 it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement
9 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
10 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
11 further action by having considered this matter.

12 12. The parties understand and agree that facsimile copies of this Stipulated
13 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
14 force and effect as the originals.

15 13. In consideration of the foregoing admissions and stipulations, the parties
16 agree that the Board may, without further notice or formal proceeding, issue and enter the
17 following Disciplinary Order:

DISCIPLINARY ORDER

18
19 IT IS HEREBY ORDERED that Operator's License Number OPR 9366, issued to
20 Thomas B. Smith (Respondent) is revoked. Pursuant to Government Code section 11522,
21 Respondent may not petition the agency for reinstatement for a period of not less than one year
22 from the effective date of the Board's decision in this matter.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, James L. Frederick. I understand the stipulation and the effect it will have on my Company Registration Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Structural Pest Control Board.

DATED: Dec 10, 2008


THOMAS H. SMITH
Respondent

I have read and fully discussed with Respondent Thomas H. Smith, the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12-10-08


JAMES L. FREDERICK
Attorney for Respondent

ENDORSEMENT


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The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Structural Pest Control Board of the Department of Consumer Affairs.

DATED: 12-10-08

EDMUND G. BROWN JR., Attorney General
of the State of California

GREGORY J. SALUTE
Supervising Deputy Attorney General


KIMBERLEE D. KING
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: LA2007601150
50357651.wpd

Exhibit A
Accusation No. 2008-13

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JENNIFER S. CADY
Supervising Deputy Attorney General
3 KIMBERLEE D. KING, State Bar No. 141813
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2581
6 Facsimile: (213) 897-1071

FILED

Date *11/10/07*

By *Susan Rayle*

7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 2008-13

13 **DESERT BUG STORMERS, INC.**
14 1427 South Pacific Avenue
San Pedro, California 90731
15 **THOMAS B. SMITH, Qualifying Manager, Br. 3**
JOSEPHINE TREVINO, V/P
16 **ERNESTO CHAVEZ, JR., Branch Office Supervisor**
Branch Office No. BR 4964
Branch Office No. BR 4816
17 Company Registration Certificate No. PR 3283, Br. 3
Operator License No. OPR 9366, Br. 3

ACCUSATION

18
19 **JUAN MANUEL TREVINO**
1427 South Pacific Avenue
San Pedro, California 90731
20 Field Representative's License No. FR 20092, Br. 3

Respondents.

21
22 **DESERT BUG STORMERS, INC.**
23 dba ELECTROMITE
216 South Jackson Street, No. 203
24 Glendale, California 91205
25 **THOMAS B. SMITH, Qualifying Manager**
JUAN MANUEL TREVINO, Owner
26 Company Registration Certificate No. PR 3581, Br. 3
Operator License No. OPR 9366, Br. 3

Affiliated License.

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1 Kelli Okuma ("Complainant") alleges:

2 PARTIES

3 1. Complainant brings this Accusation solely in her official capacity as the
4 Registrar of the Structural Pest Control Board ("Board"), Department of Consumer Affairs.

5 LICENSE HISTORY

6 **Desert Bug Stormers, Inc.**
7 **Branch Office Registration No(s). BR 4816 and 4964**
8 **Company Registration Certificate No. PR 3283, Br. 3**

9 2. On or about May 22, 1998, the Board issued Company Registration
10 Certificate No. PR 3283 ("company registration") in Branch 3 to Desert Bug Stormers, Inc.
11 ("Respondent Desert Bug"), with Thomas Murray as the Qualifying Manager and Juan Manuel
12 Trevino as President. On or about August 9, 1999, Thomas B. Smith became the Qualifying
13 Manager. On or about June 27, 2000, the Board issued Branch Office Registration No. BR 4816
14 to Desert Bug Stormers, with Ernesto Chavez as the Branch Office Supervisor. On or about
15 October 20, 2003, Josephine Trevino became the Vice-President. On or about January 27, 2004,
16 the Board issued Branch Office Registration No. BR 4964 to Desert Bug Stormers, Inc., with
17 Ernesto Chavez, Jr. as the Branch Office Supervisor.

18 **Desert Bug Stormers, Inc. dba Electromite**
19 **Company Registration Certificate No. PR 3581, Br. 3**

20 3. On or about December 21, 1999, the Board issued Company Registration
21 Certificate No. PR 3581 in Branch 3 to Desert Bug Stormers, Inc. doing business as Electromite,
22 with Thomas B. Smith as the Qualifying Manager and Juan Manuel Trevino as the owner.

23 **Desert Bug Stormers, Inc.**
24 **Desert Bug Stormers, Inc. dba Electromite**
25 **Operator's License No. OPR 9366, Br. 3**

26 4. On or about February 7, 1995, the Board issued Operator's License
27 No. OPR 9366 in Branch 3 to Tom B. Smith ("Respondent Smith") as an employee of
28 Electromite. On or about January 1, 1996, Respondent Smith became the Qualifying Manager of
Electromite. On or about August 9, 1999, Respondent Smith became the Qualifying Manager of
Desert Bug Stormers, Inc. On or about December 21, 1999, Respondent Smith disassociated as

1 the Qualifying Manager of Electromite, and became the Qualifying Manager of Desert Bug
2 Stormers, Inc. doing business as Electromite (Company Registration Certificate No. PR 3581).

3 **Juan Manuel Trevino**
4 **Field Representative License No. FR 20092, Br. 3**

5 5. On or about October 31, 1991, the Board issued Field Representative
6 License No. 20092, in Branch 3 to Juan Manuel Trevino ("Respondent Trevino"). The license
7 will expire on June 30, 2009, unless renewed.

8 **JURISDICTION**

9 6. Business and Professions Code ("Code") section 8620 provides, in
10 pertinent part, that the Board may suspend or revoke a license when it finds that the holder,
11 while a licensee or applicant, has committed any acts or omissions constituting cause for
12 disciplinary action or, in lieu of a suspension, may assess a civil penalty.

13 7. Code section 8624 states:

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

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

18 The performance by any partnership, corporation, firm, association, or
19 registered company of any act or omission constituting a cause for disciplinary
20 action, likewise constitutes a cause for disciplinary action against any licensee
21 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.

22 8. Code section 8625 states:

23 The lapsing or suspension of a license or company registration by
24 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
25 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
26 or revoking such license or registration.

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9. 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 thereunder. 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.

STATUTORY PROVISIONS

10. 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.

Every property inspected pursuant to subdivision (b) of Section 8516.1, or Section 8518, or subdivision (b) of this section shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8516.1, Section 8518, or this section are grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars (\$2,500).

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

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

14 (1) The date of the inspection and the name of the licensed field
15 representative or operator making the inspection.

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

21 (7) Information regarding the substructure, foundation walls and footings,
22 porches, patios and steps, air vents, abutments, attic spaces, roof framing that
23 includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling
24 joists, and attic walls, or other parts subject to attack by wood destroying pests or
25 organisms. Conditions usually deemed likely to lead to infestation or infection,
26 such as earth-wood contacts, excessive cellulose debris, faulty grade levels,
27 excessive moisture conditions, evidence of roof leaks, and insufficient ventilation
28 are to be reported.

(10) Recommendations for corrective measures.

11. Code section 8518 states:

When a registered company completes work under a contract, it shall
prepare, on a form prescribed by the board, a notice of work completed and not
completed, and shall furnish that notice to the owner of the property or the
owner's agent within 10 working days after completing the work. The notice shall
include a statement of the cost of the completed work and estimated cost of work
not completed.

The address of each property inspected or upon which work was
completed shall be reported on a form prescribed by the board and shall be filed
with the board no later than 10 working days after completed work.

Every property upon which work is completed shall be assessed a filing
fee pursuant to Section 8674.

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1 Failure of a registered company to report and file with the board the
2 address of any property upon which work was completed pursuant to
3 subdivision(b) of Section 8516, subdivision (b) of Section 8516.1, or Section
4 8518 are grounds for disciplinary action and shall subject the registered company
5 to a fine of not more than two thousand five hundred dollars (\$2,500).

6 The registered company shall retain for three years all original notices of
7 work completed, work not completed, and activity forms.

8 Notices of work completed and not completed shall be made available for
9 inspection and reproduction to the executive officer of the board or his or her duly
10 authorized representative during business hours. Original notices of work
11 completed or not completed or copies thereof shall be submitted to the board upon
12 request within two business days.

13 12. Code section 8638 states:

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

18 13. Code section 8641 states:

19 Failure to comply with the provisions of this chapter, or any rule or
20 regulation adopted by the board, or the furnishing of a report of inspection
21 without the making of a bona fide inspection of the premises for wood-destroying
22 pests or organisms, or furnishing a notice of work completed prior to the
23 completion of the work specified in the contract, is a ground for disciplinary
24 action.

25 14. Code section 8644 states:

26 Fraud or misrepresentation, after inspection, by any licensee or registered
27 company engaged in pest control work of any infestation or infection of
28 wood-destroying pests or organisms found in property or structures, or respecting
any conditions of the structure that would ordinarily subject structures to attack
by wood-destroying pests or organisms, whether or not a report was made
pursuant to Sections 8516 and 8517 of this code, is a ground for disciplinary
action.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 1990, states, in pertinent
part:

(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.

1 (4) Wood members found to be damaged by wood destroying pests or organisms.

2 (b) Conditions usually deemed likely to lead to infestation or infection include,
3 but are not limited to:

4 (3) Excessive Cellulose Debris. This is defined as any cellulose debris of a
5 size that can be raked or larger. Stumps and wood imbedded in footings in earth
6 contact shall be reported.

7 (4) Earth-wood contacts.

8 (5) Commonly controllable moisture conditions which would foster the
9 growth of a fungus infection materially damaging to woodwork.

10 (e) Information regarding all accessible areas of the structure including but
11 not limited to the substructure, foundation walls and footings, porches, patios and
12 steps, stairways, air vents, abutments, stucco walls, columns, attached structures
13 or other parts of a structure normally subject to attack by wood-destroying pests
14 or organisms.

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

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

22 (5) Structural members which appear to be structurally weakened by
23 wood-destroying pests to the point where they no longer serve their intended
24 purpose shall be replaced or reinforced. Structural members which are structurally
25 weakened by fungus to the point where they no longer serve their intended
26 purpose shall be removed or, if feasible, may remain in place if another structural
27 member is installed adjacent to it to perform the same function, if both members
28 are dry (below 20% moisture content), and if the excessive moisture condition
responsible for the fungus damage is corrected. Structural members which appear
to have only surface fungus damage may be chemically treated and/or left as is if,
in the opinion of the inspector, the structural member will continue to perform its
originally intended function and if correcting the excessive moisture condition
will stop the further expansion of the fungus.

(8) Exterminate all reported wood-destroying pests. Such extermination
shall not 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

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(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 areas. 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.

(11) Correct any excessive moisture condition that is commonly controllable. When there is reasonable evidence to believe a fungus infection exists in a concealed wall or area, recommendations shall be made to open the wall or area.

17. California Code of Regulations, title 16, section 1993, states, in pertinent

part:

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the board and filed with the board with stamps affixed.

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

(e) A reinspection report is the report on the inspections of items completed as recommended on an original report or subsequent reports. The areas reinspected can be limited to the items requested by the person ordering the original inspection report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

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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.

COST RECOVERY/RESTITUTION

19. Code section 125.3 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.

20. Government Code section 11519(d) provides, in pertinent part, that the Board may require restitution of damages suffered as a condition of probation in the event probation is ordered.

BARLOW STREET PROJECT

21. On or about July 14, 2006, Respondent Trevino inspected the property located at 2308 Barlow Street, Los Angeles, California ("Barlow Street property"), for wood destroying pests and organisms and thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report Number 317 ("Inspection Report No. 317"). The inspection was at the request of Granada Knoll Realty for escrow purposes.

22. Respondent Trevino's findings involved cellulose debris, dry rot (decay fungi damage), evidence of subterranean and drywood termites in the substructure, and drywood termite damage at the eave. The cost to repair was stated as \$2,695.00.

23. Respondent Trevino recommended removing the cellulose debris that was in contact with the ground, reinforcing the decay fungi damage, trenching and treating the substructure soil for subterranean termites, and removing all accessible termite tubing. The inspection report reported that there was no stall shower or abutments and that all accessible areas of the house and garage were inspected. The report did not make a recommendation to cover or remove the accessible drywood termite evidence.

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1 24. On or about August 6, 2006, Respondent Desert Bug issued a Standard
2 Notice of Work Completed and Not Completed ("completion notice"), certifying that all
3 recommendations made by Respondent Trevino in Inspection Report No. 317, dated
4 July 14, 2006, had been completed.

5 25. On or about August 16, 2006, escrow closed.

6 26. On or about September 20, 2006, at the request of the new homeowner,
7 Yee Lwin ("Lwin"), Respondent Trevino re-inspected the Barlow Street property for wood
8 destroying pests and organisms and thereafter issued a Supplemental Wood Destroying Pests and
9 Organisms Inspection Report Number 413 ("Supplemental Inspection Report No. 413").

10 27. Respondent Trevino's findings involved minor termite damage at the
11 interior wood flooring (hardwood flooring) in two locations.

12 28. Respondent Trevino recommended that Lwin or a licensed contractor
13 make the necessary repairs and corrections.

14 29. On or about September 21, 2006, Josephine Trevino, the vice-president of
15 Respondent Desert Bug, contacted New Century Realty, explaining that Respondent Desert Bug
16 performed an inspection on the Barlow Street property prior to the close of escrow. However,
17 Lwin contacted Respondent Desert Bug to perform warranty work for termites found under the
18 carpeting during a supplemental inspection by Respondent Desert Bug on September 20, 2006.
19 Josephine Trevino further stated that while Respondent Desert Bug was not responsible for
20 termite damage found in inaccessible areas, as a courtesy, Respondent Desert Bug would remove
21 all the carpeting to allow further inspection of the flooring, reassess the existing damage only,
22 and allow Lwin to review and approve the estimate for work which would be performed by
23 Respondent at a negotiated price provided that Lwin replace the carpeting at her expense, and
24 agree to not hold Respondent Desert Bug and Granada Knoll Realty responsible for any liability
25 that may arise.

26 30. On or about September 25, 2006, the Board received a complaint from
27 Lwin.

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1 31. On or about October 7, 2006, at the request of Lwin, Tri-Pacific Termite
2 Company inspected the Barlow Street property for wood destroying pests and organisms and
3 thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report Number
4 4813A. Tri-Pacific Termite Company's findings involved drywood termite damages at the sub-
5 floor in the substructure; evidence of subterranean termites coming from the soil under the sub-
6 floor (basement); subterranean termite damage at the sill plate in the basement; subterranean
7 termite damage and decay fungi damage at the front porch framing; drywood termite damage at
8 the interior hardwood flooring above the damage at the sub-floor in the substructure; and decay
9 fungi damage and buckled hardwood flooring at the interior.

10 32. Tri-Pacific Termite Company recommended repairing, replacing or
11 reinforcing the drywood termite damage in the substructure and at the hardwood flooring;
12 drilling and pressure injecting the soil below the basement slab; removing, replacing and/or re-
13 supporting the subterranean termite damage at the sill plate; removing, replacing and/or re-
14 supporting the subterranean termite damage and decay fungi damage at the front porch framing;
15 and removing and replacing the decay fungi damage and buckled hardwood flooring.

16 33. On or about November 1, 2006, a Board specialist inspected the Barlow
17 Street property and noted numerous violations.

18 34. On or about November 9, 2006, the Board specialist prepared and issued a
19 Report of Findings along with a Notice ordering Respondent Desert Bug to bring the property
20 into compliance by correcting the items described in the Report of Findings and to submit a
21 corrected inspection report and Notice of Work Completed and Not Completed to the Board
22 within thirty (30) days with respect to the inspections performed on July 14, 2006, and
23 September 20, 2006.

24 35. On or about November 28, 2006, Respondent Trevino re-inspected the
25 Barlow Street property and thereafter issued Wood Destroying Pests and Organisms Inspection
26 Report Number 479 ("Inspection Report No. 479") consisting of certain findings and
27 recommendations.

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1 36. On or about December 6, 2006, the Board specialist reviewed Inspection
2 Report Number 479, dated November 28, 2006, and found that it was not in compliance with the
3 Board's rules and regulations. The Board specialist notified Respondent Desert Bug of the items
4 that were not in compliance.

5 37. On or about December 12, 2006, the Board specialist received a revised
6 version of Inspection Report Number 479 prepared by Respondent Trevino, which consisted of
7 certain findings and recommendations. The Board specialist reviewed the revised version of
8 Inspection Report Number 479 and found that, again, it was not in compliance with the Board's
9 rules and regulations.

10 38. On or about December 15, 2006, the Board specialist notified Respondent
11 Desert Bug of items of concern regarding the revised Inspection Report Number 479.

12 39. On or about December 26, 2006, the Board specialist received a third
13 revised version of Inspection Report Number 479. The Board specialist reviewed Inspection
14 Report Number 479 and found that it was not in compliance with the Board's rules and
15 regulations.

16 40. On or about December 29, 2006, the Board specialist notified Respondent
17 Desert Bug of items of concern regarding the third version of Inspection Report Number 479.

18 41. On or about January 8, 2007, the Board specialist met with Josephine
19 Trevino, at the Barlow Street property to discuss the Board specialist's list of concerns.

20 42. On or about January 12, 2007, the Board specialist received a fourth
21 revised Inspection Report Number 479.

22 43. On or about January 16, 2007, the Board specialist reviewed the fourth
23 revised Inspection Report Number 479 and found that it was not in compliance with the Board's
24 rules and regulations. The Board specialist notified Respondent Desert Bug of items of concern
25 regarding the fourth version of Inspection Report Number 479.

26 44. On or about January 19, 2007, the Board specialist received a
27 Supplemental Wood Destroying Pests and Organisms Inspection Report Number 19 ("Inspection
28 Report No. 19") regarding the Barlow Street property. Inspection Report No. 19 was prepared

1 by Respondent Desert Bug in response to the Board specialist list of concerns dated
2 January 16, 2007. After reviewing Inspection Report No. 19, the specialist found that the report
3 was not in compliance with the Board's rules and regulations. Thereafter, Respondent Desert
4 Bug turned the Barlow Street property issues of concern over to their insurance company for
5 handling.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with the Code - Improper Inspection)**

8 45. Respondent Desert Bug's registration, Respondent Smith's operator's
9 license, and Respondent Trevino's field representative's license are subject to discipline under
10 Code section 8641, in that, concerning the Barlow Street property, Respondents failed to comply
11 with the following Code sections:

12 **JULY 14, 2006. INSPECTION**

13 **Section 8516(b)(6)(7):**

- 14 a. Failed to report the full extent of the evidence of subterranean termites in
15 the substructure/basement, as defined by California Code of Regulations, title 16, section
16 1990(a)(3).
- 17 b. Failed to report the subterranean termite damage in the
18 substructure/basement, as defined by California Code of Regulations, title 16, section 1990(a)(4).
- 19 c. Failed to report evidence of drywood termite damage in the substructure,
20 as defined by California Code of Regulations, title 16, section 1990(a)(4).
- 21 d. Failed to report the full extent of the decay fungi damage in the
22 substructure, as defined by California Code of Regulations, title 16, section 1990(a)(4).
- 23 e. Failed to report earth-to-wood contact at the basement access door to the,
24 substructure, as defined by California Code of Regulations, title 16, section 1990(b)(4).
- 25 f. Failed to report evidence of an excessive moisture condition (water stains)
26 under the kitchen in the substructure, and under the hallway bathtub in the substructure, as
27 defined by California Code of Regulations, title 16, section 1990(b)(5).

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1 g. Failed to report evidence of excessive moisture conditions
2 (deteriorated/damaged foundation and wall, and water stains) in the substructure, as defined by
3 California Code of Regulations, title 16, section 1990(b)(5).

4 h. Failed to report the presence of a stall shower, as defined by California
5 Code of Regulations, title 16, section 1990(e).

6 i. Failed to report the presence of an abutment, as defined by California
7 Code of Regulations, title 16, section 1990(e).

8 j. Failed to report the faulty grade condition and loose or deteriorated stucco
9 at the garage, as defined by California Code of Regulations, title 16, section 1990(b)(1) and
10 1990(e).

11 **Section 8516(b)(10):**

12 k. Failed to recommend removing or covering the accessible termite
13 evidence in the substructure, as defined by California Code of Regulations, title 16, section
14 1991(a)(8).

15 l. Failed to recommend correction of the excessive moisture condition
16 responsible for the decay fungi damage in the substructure, as defined by California Code of
17 Regulations, title 16, section 1991(a)(5) and (11).

18 m. Failed to recommend further inspection of the hardwood flooring in the
19 bedroom and living room adjacent to the decay fungi damage in the substructure, as defined by
20 California Code of Regulations, title 16, section 1991(a)(5) and (11).

21 **Section 8516(b)(1):**

22 n. Failed to state the correct date on the inspection report.

23 **SEPTEMBER 20, 2006, INSPECTION**

24 **Section 8516(b)(6)(7):**

25 o. Failed to report cellulose debris in the substructure, as defined by
26 California Code of Regulations, title 16, section 1990(b)(3).

27 p. Failed to report evidence of subterranean termites in the
28 substructure/basement, as defined by California Code of Regulations, title 16, section 1990(a)(3).

- 1 q. Failed to report subterranean termite damage in the substructure/basement,
2 as defined by California Code of Regulations, title 16, section 1990(a)(4).
- 3 r. Failed to report evidence of drywood termites in the substructure, as
4 defined by California Code of Regulations, title 16, section 1990(a)(3).
- 5 s. Failed to report evidence of drywood termite damage in the substructure,
6 as defined by California Code of Regulations, title 16, section 1990(a)(4).
- 7 t. Failed to report decay fungi damage in the substructure, as defined by
8 California Code of Regulations, title 16, section 1990(a)(4).
- 9 u. Failed to report earth-to-wood contact at the basement access door to the
10 substructure, as defined by California Code of Regulations, title 16, section 1990(b)(4).
- 11 v. Failed to report evidence of an excessive moisture condition (water stains)
12 under the kitchen in the substructure, and under the hallway bathtub, as defined by California
13 Code of Regulations, title 16, section 1990(b)(5).
- 14 w. Failed to report evidence of excessive moisture conditions
15 (deteriorated/damaged foundation and wall, and water stains) in the substructure, as defined by
16 California Code of Regulations, title 16, section 1990(b)(5).
- 17 x. Failed to report the presence of a stall shower, as defined by California
18 Code of Regulations, title 16, section 1990(e).
- 19 y. Failed to report the presence of an abutment, as defined by California
20 Code of Regulations, title 16, section 1990(e).
- 21 z. Failed to report the faulty grade condition and loose or deteriorated stucco
22 at the garage, as defined by California Code of Regulations, title 16, section 1990(b)(1) and
23 1990(e).
- 24 aa. Failed to report evidence of drywood termites and drywood termite
25 damage at the eaves, as defined by California Code of Regulations, title 16, section 1990(a)(3)
26 and (4).
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1 bb. Failed to report evidence of drywood termites and drywood termite
2 damage at the basement window, as defined by California Code of Regulations, title 16, section
3 1990(a)(3) and (4).

4 Section 8516(b)(1):

5 cc. Failed to state the correct date on the inspection report.

6 NOVEMBER 22, 2006, INSPECTION

7 Section 8516(b)(1):

8 dd. Failed to state the correct date on the inspection report.

9 Section 8516(b)(6):

10 ee. Failed to include a diagram or sketch of the structure or structures
11 inspected.

12 NOVEMBER 28, 2006, INSPECTION

13 Section 8516(b)(6)(7):

14 ff. Failed to report evidence of excessive moisture conditions (water stains)
15 and decay fungi in the substructure and under the front porch, as defined by California Code of
16 Regulations, title 16, section 1990(a)(3) and 1990(b)(5).

17 SECOND CAUSE FOR DISCIPLINE

18 (Violation of Contract)

19 46. Respondent Desert Bug's registration, Respondent Smith's operator's
20 license, and Respondent Trevino's field representative's license, are subject to discipline under
21 Code section 8638, in that, concerning the Barlow Street property, Respondents failed to
22 complete the following repairs, which had been reported as having been completed on the
23 Standard Notice of Work Completed and Not Completed, dated August 7, 2006:

24 a. Failed to complete the work regarding the removal of cellulose debris from the
25 substructure.

26 b. Failed to complete the work regarding trenching, treating, and removing
27 evidence of subterranean termites in the substructure.

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1 c. Failed to complete the work regarding patching drywood termite damage at
2 the eaves.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Fraud or Misrepresentation After Inspection)**

5 47. Respondent Desert Bug's registration, Respondent Smith's operator's
6 license, and Respondent Trevino's field representative's license, are subject to discipline under
7 Code section 8644, in that, concerning the Barlow Street property, Respondents represented in
8 the Standard Notice of Work Completed and Not Completed, dated August 7, 2006, that items
9 contained in Wood Destroying Pests and Organisms Inspection No. 317 were completed when in
10 fact, they were not, and certified that the property was free of active infestation and/or infection,
11 when in fact, it was not, as more particularly set forth above in paragraph 46.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Workmanship)**

14 48. Respondent Desert Bug's registration, Respondent Smith's operator's
15 license, and Respondent Trevino's field representative's license, are subject to discipline under
16 Code section 8641, in that, concerning the Barlow Street property, Respondents failed to comply
17 with provisions of California Code of Regulations, title 16, section 1937.14, by failing to
18 perform repairs to meet the accepted trade standards for good and workmanlike construction in
19 that the Respondents failed to properly install or support the reinforcements at the decay fungi
20 damage in the substructure.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Failed to Comply with Report of Findings)**

23 49. Respondent Desert Bug's registration, Respondent Smith's operator's
24 license, and Respondent Trevino's field representative's license, are subject to discipline under
25 Code section 8641, in that they failed to comply with Code section 8622 by failing to correct the
26 items described in the Report of Findings within thirty (30) calendar days of receipt of the
27 Notice, and failing to bring the Barlow Street property into compliance with the Board's Notice
28 and Report of Findings, dated November 17, 2006.

1 SIXTH CAUSE FOR DISCIPLINE

2 (Failure to File Work Activity Reports with the Board)

3 50. Respondent Desert Bug's registration, Respondent Smith's operator's
4 license, and Respondent Trevino's field representative's license, are subject to discipline under
5 Code section 8518, in that, concerning the Barlow Street property, Respondents failed to prepare
6 and deliver inspection reports dated July 14, 2006, September 20, 2006, and November 22, 2006,
7 to the Board within ten (10) business days following the commencement of an inspection or upon
8 completed work.

9 SEVENTH CAUSE FOR DISCIPLINE

10 (Inspection Report Violation)

11 51. Respondent Desert Bug's registration, Respondent Smith's operator's
12 license, and Respondent Trevino's field representative's license, are subject to discipline under
13 Code section 8641, in that, concerning the Barlow Street property, Respondents failed to
14 reference the original inspection report dated July 14, 2006, when completing the supplemental
15 inspection report dated September 20, 2006, as required by California Code of Regulations, title
16 16, section 1993(d).

17 PRIOR DISCIPLINE

18 **DESERT BUG STORMERS, INC.**
19 **Company Registration Certificate No. PR 3283, Br. 3**

20 52. On or about September 6, 2001, the company registration paid a fine in the
21 amount of \$1,000 levied by the Board for violating Code section 8640.

22 53. On or about September 22, 2004, the company registration paid a fine in
23 the amount of \$100 levied by San Bernardino County Agricultural Commissioner for violating
24 Code section 8505.17.

25 54. On or about November 29, 2004, the company registration paid a fine in
26 the amount of \$1,253 levied by the Board for violating Code sections 8518 and 8638 and
27 California Code of Regulations section 1937.14.

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1 OTHER MATTERS

2 55. Notice is hereby given that section 8620 of the Code provides, in pertinent
3 part, that a respondent may request that a civil penalty of not more than \$5,000 be assessed in
4 lieu of an actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of
5 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the
6 proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed
7 in lieu of a suspension.

8 56. Pursuant to Code section 8624, the causes for discipline established as to
9 Company Registration Certificate Number PR 3283, issued to Desert Bug Stormers, Inc.,
10 likewise constitute cause for discipline against Operator's License Number OPR 9366, issued to
11 Thomas B. Smith, who serves as the Qualifying Manager of Desert Bug Stormers, Inc.,
12 regardless of whether Thomas B. Smith had knowledge of or participated in the acts or omissions
13 which constitute cause for discipline against Desert Bug Stormers, Inc.

14 57. Pursuant to Code section 8654, if discipline is imposed on Company
15 Registration Certificate Number PR 3283, issued to Desert Bug Stormers, Inc., then Thomas B.
16 Smith, who serves as the Qualifying Manager of Desert Bug Stormers, Inc. shall be prohibited
17 from serving as an officer, director, associate, partner, qualifying manager, or responsible
18 managing employee for any registered company during the time the discipline is imposed, and
19 any registered company which employs, elects, or associates him, shall be subject to disciplinary
20 action.

21 58. Juan Manuel Trevino, a field representative employed by Desert Bug
22 Stormers, Inc. had knowledge of and participated in the acts or omissions which constitute cause
23 for discipline against Desert Bug Stormers, Inc.

24 59. Pursuant to Code section 8654, if discipline is imposed on Company
25 Registration Certificate Number PR 3283, issued to Desert Bug Stormers, Inc. then Juan Manuel
26 Trevino, a field representative employed by Desert Bug Stormers, Inc., shall be prohibited from
27 serving as an officer, director, associate, partner, qualifying manager, or responsible managing

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1 employee of a registered company, and the employment, election or association of him by a
2 registered company is a ground for disciplinary action.

3 PRAYER

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

6 1. Revoking or suspending Company Registration Certificate Number
7 PR 3283, issued to Desert Bug Stormers, Inc.;

8 2. Revoking or suspending Operator's License Number OPR 9366, issued to
9 Thomas B. Smith;

10 3. Revoking or suspending any other license for which Thomas B. Smith is
11 furnishing the qualifying experience or appearance;

12 4. Revoking or suspending Field Representative License Number FR 20092,
13 issued to Juan Manuel Trevino;

14 5. Prohibiting Thomas B. Smith from serving as an officer, director,
15 associate, partner, qualifying manager or responsible managing employee of any registered
16 company during the period that discipline is imposed on Company Registration Certificate
17 Number PR 3283, issued to Desert Bug Stormers, Inc.;

18 6. Prohibiting Juan Manuel Trevino from serving as an officer, director,
19 associate, partner, qualifying manager or responsible managing employee of any registered
20 company during the period that discipline is imposed on Company Registration Certificate
21 Number PR 3283, issued to Desert Bug Stormers, Inc.;

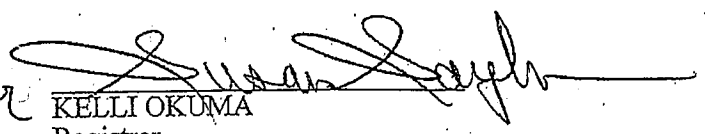
22 7. Ordering Desert Bug Stormers, Inc., Thomas B. Smith, and Juan Manuel
23 Trevino to pay the Structural Pest Control Board the reasonable costs of the investigation and
24 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 9/18/07

for 
KELLI OKUMA
Registrar
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

LA2007601150
Accusation (kdg) 8/23/07