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FILED

Date 8/21/13 By *Susan Saylor*

7
8 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2014-12

11 **SWIFT TERMITE CONTROL INC.; JOHNNY**
12 **RAY DURR, QUALIFYING MANAGER**
13 **3685 Edgell Drive**
Los Angeles, CA 90018
14 **Company Registration Certificate No. PR 5913,**

ACCUSATION

15 **and**

16 **JOHNNY RAY DURR**
17 **3685 Edgell Drive**
Los Angeles, CA 90018
Operator's License No. OPR 9500

18 Respondents.

19
20
21
22 Complainant alleges:

23 **PARTIES**

24 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as
25 the Executive Officer of the Structural Pest Control Board (Board).

26 2. On or about August 26, 2009, the Board issued Company Registration Certificate
27 License Number PR 5913 in Branch 3 (termite) to Swift Termite Control Inc.; Johnny Ray Durr,
28 as Qualifying Manager (Respondent Swift).

1 disciplinary action against any licensee who, at the time the act or omission occurred, was the
2 qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm,
3 association, or registered company whether or not he or she had knowledge of, or participated in,
4 the prohibited act or omission.”

5 8. Code section 8654 states, in pertinent part:

6 “Any individual who has . . . had his or her license revoked, or whose license is under
7 suspension, or who has failed to renew his or her license while it was under suspension, or who
8 has been a member, officer, director, associate, qualifying manager, or responsible managing
9 employee of any partnership, corporation, firm, or association . . . whose company registration
10 has been revoked as a result of disciplinary action, or whose company registration is under
11 suspension, and while acting as such member, officer, director, associate, qualifying manager, or
12 responsible managing employee had knowledge of or participated in any of the prohibited acts for
13 which the license or registration was denied, suspended or revoked, shall be prohibited from
14 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
15 employee of a registered company, and the employment, election or association of such person by
16 a registered company is a ground for disciplinary action.”

17
18 **STATUTORY PROVISIONS**

19 9. Code section 125.9 states, in pertinent part:

20 (a) Except with respect to persons regulated under Chapter 11 (commencing with Section
21 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, or
22 commission within the department . . . may establish, by regulation, a system for the issuance to a
23 licensee of a citation which may contain an order of abatement or an order to pay an
24 administrative fine assessed by the board, bureau, or commission where the licensee is in
25 violation of the applicable licensing act or any regulation adopted pursuant thereto.

26 (b) The system shall contain the following provisions:

27 . . .
28

1 (2) Whenever appropriate, the citation shall contain an order of abatement fixing a
2 reasonable time for abatement of the violation.

3 ...

4 (5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the
5 citation is being appealed, may result in disciplinary action being taken by the board, bureau, or
6 commission. Where a citation is not contested and a fine is not paid, the full amount of the
7 assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed
8 without payment of the renewal fee and fine.

9 10. Section 8617 subdivision (f) of the Code states:

10 "Failure of a licensee or registered company to pay a fine within 30 days of the date of
11 assessment or to comply with the order of suspension, unless the citation is being appealed, may
12 result in disciplinary action being taken by the board."

13 11. Section 8516 subdivision (b) of the Code states:

14 "No registered company or licensee shall commence work on a contract, or sign, issue, or
15 deliver any documents expressing an opinion or statement relating to the absence or presence of
16 wood destroying pests or organisms until an inspection has been made by a licensed Branch 3
17 field representative or operator. The address of each property inspected or upon which work is
18 completed shall be reported on a form prescribed by the board and shall be filed with the board no
19 later than 10 business days after the commencement of an inspection or upon completed work.

20 ...

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

25 A written inspection report conforming to this section and a form approved by the board
26 shall be prepared and delivered to the person requesting the inspection or to the person's
27 designated agent within 10 business days of the inspection, except that an inspection report
28 prepared for use by an attorney for litigation purposes is not required to be reported to the board.

1 The report shall be delivered before work is commenced on any property. The registered
2 company shall retain for three years all original inspection reports, field notes, and activity forms.

3 Reports shall be made available for inspection and reproduction to the executive officer of
4 the board or his or her duly authorized representative during business hours. Original inspection
5 reports or copies thereof shall be submitted to the board upon request within two business days.

6 The following shall be set forth in the report:

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

9 (2) The name and address of the person or firm ordering the report.

10 (3) The name and address of any person who is a party in interest.

11 (4) The address or location of the property.

12 (5) A general description of the building or premises inspected.

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

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

23 (8) One of the following statements, as appropriate, printed in bold type:

24 (A) The exterior surface of the roof was not inspected. If you want the water tightness of
25 the roof determined, you should contact a roofing contractor who is licensed by the Contractors'
26 State License Board.

27 (B) The exterior surface of the roof was inspected to determine whether or not wood
28 destroying pests or organisms are present.

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

5 (10) Recommendations for corrective measures.

6 (11) Information regarding the pesticide or pesticides to be used for their control as set forth
7 in subdivision (a) of Section 8538.

8 (12) The inspection report shall clearly disclose that if requested by the person ordering the
9 original report, a reinspection of the structure will be performed if an estimate or bid for making
10 repairs was given with the original inspection report, or thereafter.

11 (13) The inspection report shall contain the following statement, printed in boldface type:

12 "NOTICE: Reports on this structure prepared by various registered companies should list
13 the same findings (i.e. termite infestations, termite damage, fungus damage, etc.). However,
14 recommendations to correct these findings may vary from company to company. You have a right
15 to seek a second opinion from another company."

16 An estimate or bid for repairs shall be given separately allocating the costs to perform each
17 and every recommendation for corrective measures as specified in subdivision (c) with the
18 original inspection report if the person who ordered the original inspection report so requests, and
19 if the registered company is regularly in the business of performing corrective measures.

20 If no estimate or bid was given with the original inspection report, or thereafter, then the
21 registered company shall not be required to perform a reinspection.

22 A reinspection shall be an inspection of those items previously listed on an original report
23 to determine if the recommendations have been completed. Each reinspection shall be reported on
24 an original inspection report form and shall be labeled "Reinspection" in capital letters by rubber
25 stamp or typewritten. Each reinspection shall also identify the original report by date .

26 After four months from an original inspection, all inspections shall be original inspections
27 and not reinspections.

28

1 Any reinspection shall be performed for not more than the price of the registered company's
2 original inspection price and shall be completed within 10 working days after a reinspection has
3 been ordered.

4 12. Section 8518 of the Code states:

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

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

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

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

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

21 Notices of work completed and not completed shall be made available for inspection and
22 reproduction to the executive officer of the board or his or her duly authorized representative
23 during business hours. Original notices of work completed or not completed or copies thereof
24 shall be submitted to the board upon request within two business days."

25 13. Section 8624 of the Code states:

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

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

4 The performance by any partnership, corporation, firm, association, or registered company
5 of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for
6 disciplinary action against any licensee who, at the time the act or omission occurred, was the
7 qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm,
8 association, or registered company whether or not he or she had knowledge of, or participated in,
9 the prohibited act or omission.”

10 REGULATORY PROVISIONS

11
12 14. California Code of Regulations, title 16, section 1920 states, in pertinent part:

13 “(d) Compliance with Orders of Abatement: When a citation is not contested or if the
14 citation is appealed and the person cited does not prevail, failure to comply with the order of
15 abatement or to pay the fine in the citation within the time allowed by a licensee may result in
16 disciplinary action being taken by the Board against the person cited, or where the cited person is
17 unlicensed in appropriate judicial relief being taken against the person cited.”

18 15. California Code of Regulations, title 16, section 1996.3 states:

19 (a) The address of each property inspected and/or upon which work was completed shall be
20 reported on a form prescribed by the Board and designated as the WDO Inspection and
21 Completion Activity Report Form (see Form No. 43M-52 Rev. 5/09) at the end of this section.
22 This form shall be prepared by each registered company and shall comply with all of the
23 requirements pursuant to Section 8516(b), and 8518.

24 (b) The form shall contain the following information for each property inspected and/or
25 upon which work was completed.

26 (1) Company Name

27 (2) Company registration number
28

1 (3) Branch office registration number (when a branch office issues an inspection report or
2 notice of work completed

3 (4) Date of Activity

4 (5) Address of property inspected or upon which work was completed, including zip code

5 (6) Activity Code

6 (7) License number of licensee performing the inspection

7 (c) Failure of a registered company to report and file with the Board the address of any
8 property inspected or upon which work was completed pursuant to Section 8516(b) or 8518 are
9 grounds for disciplinary action and subject to a fine of not more than two thousand five hundred
10 dollars (\$2,500).

11
12 **COST RECOVERY**

13 16. Code section 125.3 states, in pertinent part, that a Board may request the
14 administrative law judge to direct a licensee found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case. In addition, nothing in this section shall preclude a board from including
17 the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

18
19 **FACTUAL BACKGROUND**

20 17. On or around September 15, 2011, the Board issued to Respondent Swift, Citation
21 No. CF 12-32 in the amount of \$3262.50 and an Order of Abatement to Respondent for violation
22 of §§ 8516, subdivision (b) and 8518 of the Code during the time period between August 26,
23 2009 to September 15, 2011.

24 18. Citation No. CF 12-32 specifically cited Respondent Swift's failure to file "305
25 Wood Destroying Organism Activities (WDO) (inspections and/or completions)" with the Board
26 during that time period.

27 19. On or around February 10, 2012, the Board delivered correspondence to Respondent
28 Swift informing it that the Board had not received payment for Citation No. CF 12-32.

1 20. On or around August 22, 2012, a Board Specialist learned that during the time period
2 between August 26, 2009 and August 12, 2012, Respondent Swift failed to file a total of 601
3 WDO Activities with the Board.

4 21. During the time period between September 18 to November 27, 2012, Respondent
5 Durr’s Operator License No. OPR 9500 was disassociated from Respondent Swift, however
6 Respondent Swift continued to function without a Qualified Manager.

7 22. On or around November 12, 2012, the Board placed Respondent Swift’s Company
8 Registration on suspension and ordered it to cease work immediately due to Respondent Durr’s
9 disassociation from the company during that time period.

10 23. On or around December 12, 2012, the Board learned that Respondent Swift was not
11 in “good standing” with the California Secretary of State Franchise Tax Board.

12 24. The Board also learned that Respondent Swift was issued a citation by the County of
13 Los Angeles Department of Agriculture for violation of Food and Agriculture Code §
14 15204[failure to register with the commissioner prior to operating a structural pest control
15 business in the county]. The fine remains unpaid.

16 25. On or around December 17, 2012, a compliance site inspection of Respondent Swift
17 revealed that the company continued to complete, but failed to file WDO Activities reports with
18 the Board. Respondents failed to file approximately 410 WDO after being issued Citation No. CF
19 12-32 on September 15, 2011.

20

21

FIRST CAUSE FOR DISCIPLINE

22

(Failure to Comply with Citation and Order of Abatement)

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26. Respondents Swift and Durr are subject to disciplinary action pursuant to Code
sections 125.9, 8617, subdivision (f) in conjunction with California Code of Regulations section
1920 subdivision (d) in that Respondents have failed to comply with payment for Citation CF 12-
32 within the time allotted and have failed to comply with the Order of Abatement contained
within the Citation as further set forth in paragraphs 17 – 20, 25 which are incorporated herein by
reference.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Working Outside of Scope)**

3 Respondent Swift is subject to disciplinary action pursuant to Code sections 8516,
4 subdivision (b) in conjunction with California Code of Regulations section 1996.3 in that
5 Respondent commenced work on a contract relating to the absence or presence of wood
6 destroying pests or organisms without obtaining an inspection by a licensed Branch 3 field
7 representative or operator. Complainant incorporates by reference paragraphs 21 – 22 as if fully
8 set forth herein.

9
10 **DISCIPLINE CONSIDERATIONS**

11 27. To determine the degree of discipline, if any, to be imposed on Respondents Swift
12 and Durr, Complainant alleges that on or about September 15, 2011, in a prior action, the Los
13 Angeles County Department of Agriculture issued Citation Number SP 2012-312 and ordered
14 Respondent to pay a fine of \$100.00. That Citation has not been paid, is now final and is
15 incorporated by reference in paragraphs 23 – 24, as if fully set forth herein.

16
17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Board issue a decision:

20 1. Revoking or suspending Company Registration Certificate License Number PR 5913,
21 issued to Swift Termite Control Inc.; Johnny Ray Durr Qualifying Manager;

22 2. Revoking or suspending Operator's License Number OPR 9500 Branch 3, issued to
23 Johnny Ray Durr, Swift Termite Control.

24 3. Ordering Respondents Swift and Durr to pay the Board the reasonable costs of the
25 investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3;

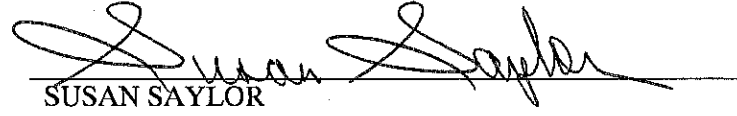
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4. Taking such other and further action as deemed necessary and proper.

DATED: 8/21/13



SUSAN SAYLOR
Executive Officer
Structural Pest Control Board
State of California
Complainant

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