

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

In the Matter of the Accusation Against:

IRC SERVICES, INC.
dba THE TERMITE GUY
106 West Canada
San Clemente, California 92672
Company Registration Certificate No. PR 5121;

and

ALEX DEL TORO
106 West Canada
San Clemente, California 92672
Operator's License No. OPR 9685;

Respondents.

Case No. 2009-2

OAH No. 2008090581

DECISION AND ORDER

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

This Decision shall become effective on May 22, 2009

It is so ORDERED April 22, 2009

Clifford J. Miller
FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 IRC SERVICES, INC. dba THE TERMITE
GUY
13 106 West Canada
San Clemente, California 92672
14 Company Registration Certificate No. PR 5121,
15 ALEX DEL TORO
106 West Canada
16 San Clemente, California 92672
Operator's License No. OPR 9685,
17 and
18 MARK MATTHEW PETRICK
19 106 West Canada
San Clemente, California 92672
20 -and-
21 23422 Via Ronda
Mission Viejo, CA 92691
Operator's License No. OPR 10297,
22 Respondents.

Case No. 2009-2

OAH No. 2008090581

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

23
24
25 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
26 above-entitled proceedings that the following matters are true:

27 PARTIES

- 28 1. Kelli Okuma (Complainant) is the Registrar/Executive Officer of the

1 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
2 the parties, and the Board shall not be disqualified from further action by having considered this
3 matter.

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

7 14. In consideration of the foregoing admissions and stipulations, the parties
8 agree that the Board may, without further notice or formal proceeding, issue and enter the
9 following Disciplinary Order:

10 **DISCIPLINARY ORDER**

11 IT IS HEREBY ORDERED that Operator's License No. OPR 9685 issued to
12 Respondent Alex Del Toro and Company Registration Certificate No. PR 5121, Branch II and
13 Branch III, issued to Respondent The Termite Guy are revoked. However, the revocation is
14 stayed and these two Respondents are placed on probation for three (3) years on the following
15 terms and conditions.

16 Respondent Mark Matthew Petrick, Operator's License No. OPR 10297, is to be
17 removed from Accusation No. 2009-2, and is not a party subject to the Disciplinary Order.

18 **Actual Suspension.** The Termite Guy's Company Registration Certificate No.
19 PR 5121 issued to Respondent The Termite Guy (named in Accusation No. 2009-2 as IRC
20 Services, Inc. dba The Termite Guy) is suspended for ten (10) business days, commencing 30
21 business days from the effective date of this order. The Termite Guy may pay a civil penalty of
22 \$2,000 in lieu of the ten-day suspension.

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

25 2. **Quarterly Reports.** Respondents shall file quarterly reports with the
26 Board during the period of probation, on a form supplied by the Board.

27 3. **Tolling of Probation as to Respondent The Termite Guy.** Should
28 Respondent The Termite Guy (named as Respondent IRC Services, Inc. dba The Termite Guy in

1 Accusation No. 2009-2) become inactive for any period exceeding twenty-nine (29) days during
2 the time of probation, that time shall not count toward the completion of probation, and the
3 probation shall be extended by that inactive time.

4 **4. Tolling of Probation as to Respondent Alex Del Toro.** Should
5 Respondent Alex Del Toro cease to conduct structural pest work in California and should he
6 leave California to reside outside this state for any period exceeding twenty-nine (29) days, he
7 must notify the Board in writing of the dates of structural pest work inactivity, and of the dates of
8 departure and return from California. Periods that Respondent Alex Del Toro does not conduct
9 structural pest work, and periods that Respondent's residency or practice is outside California
10 shall not apply to reduction of the probationary period, and the probationary period shall be
11 extended for the amount of time that Respondent Alex Del Toro is not conducting structural pest
12 work or is residing outside the state.

13 **5. Notice to Employers.** Respondent Alex Del Toro shall notify all present
14 and prospective employers of the decision in Case No. 2009-2 and the terms, conditions and
15 restriction imposed on Respondent by said decision. Within thirty (30) days of the effective
16 date of this decision, and within fifteen (15) days of Respondent Alex Del Toro undertaking new
17 employment, Respondent Alex Del Toro shall cause his employer to report to the Board in
18 writing acknowledging the employer has read the decision in Case No. 2009-2.

19 **6. Notice to Employees.** Respondent The Termite Guy (named in
20 Accusation No. 2009-2 as IRC Services, Inc. dba The Termite Guy) shall, upon or before the
21 effective date of this decision, post or circulate a notice to all current and future employees
22 involved in structural pest control operations which accurately recite the terms and conditions of
23 probation. Respondent shall be responsible for said notice being immediately available to said
24 employees. "Employees" as used in this provision includes all full-time, part-time, temporary
25 and relief employees and independent contractors employed or hired at any time during
26 probation.

27 **7. Posted Notice of Suspension.** Should Respondents elect ten (10)
28 business days' suspension in lieu of a \$2,000 civil penalty, Respondents shall prominently post a

1 suspension notice provided by the Board of the Board's order of suspension at respondents'
2 principal office and each of their branch offices in a place conspicuous and readable to the
3 public. Said notice shall remain so posted during the entire period of actual suspension.

4 **8. Completion of Probation.** Upon successful completion of probation,
5 Respondent Alex Del Toro's operator's license and Respondent The Termite Guy's company
6 registration certificate shall be fully restored.

7 **9. Violation of Probation.** Should Respondents Alex Del Toro and/or The
8 Termite Guy (named as IRC Services, Inc. dba The Termite Guy in Accusation No. 2009-2)
9 violate probation in any respect, the Board, after giving Respondents notice and an opportunity to
10 be heard, may revoke probation and carry out the disciplinary order which was stayed. If a
11 petition to revoke probation is filed against Respondents during probation, the Board shall have
12 continuing jurisdiction until the matter is final, and the period of probation shall be extended
13 until the matter is final.

14 **10. Branch III and General Continuing Education.** Respondent Alex Del
15 Toro shall complete with a final grade of C Minus (C-) or better within eighteen (18) months of
16 the effective date of this decision a total of twelve (12) hours of continuing education, with eight
17 (8) of the twelve (12) hours in Branch III and four (4) of the twelve (12) hours in general rules
18 and regulations. All twelve (12) hours are to be completed within 120 days of the effective date
19 of this order. These hours are in addition to the continuing education hours required for re-
20 licensure.

21 **11. Random Inspections.** Respondent Alex Del Toro shall reimburse the
22 Board for one (1) random inspection per quarter by a Board specialist during the period of
23 probation not to exceed \$125.00 per inspection.

24 **12. Reimbursement to Consumer.** Respondents shall submit proof to the
25 registrar that restitution in the amount of \$6,117.00 has been made to Charles and Diane Deller
26 within ninety (90) days of the effective date of this order.

27 **13. Prohibited from Serving as Officer, Director, Associate, Partner or**
28 **Qualifying Manager.** Respondent Alex Del Toro is prohibited from serving as an officer,

1 I have read and fully discussed with Respondents Alex Del Toro and IRC
2 Services, Inc. dba The Termite Guy the terms and conditions and other matters contained in the
3 above Stipulated Settlement and Disciplinary Order. I approve its form and content.

4 DATED: 3-04-09

5
6 
7 JAMES L. FREDERICK
8 Attorney for Respondents


9 **ENDORSEMENT**

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

13
14 DATED: 3/4/09

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

17 KAREN B. CHAPPELLE
18 Supervising Deputy Attorney General

19
20 
21 RENE JUDKIEWICZ
22 Deputy Attorney General

Attorneys for Complainant

23 DOJ Matter ID: LA2008900247
24 50390700.wpd

Exhibit A

Accusation No. 2009-2

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RENE JUDKIEWICZ
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FILED

Date 7/3/08 By *Kelli Okuma*

6 Attorneys for Complainant

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. 2009-2

11 IRC SERVICES, INC.
12 dba THE TERMITE GUY
ALEX DEL TORO, QM/PRES.
13 MARIA DEL TORO, SECTY
MARK PETRICK, QM
14 106 West Canada
San Clemente, CA 92672
15 Company Registration Certificate No. PR 5121

ACCUSATION

16 ALEX DEL TORO
106 West Canada
17 San Clemente, CA 92672
Operator's License No. OPR 9685

18 and

19 MARK MATTHEW PETRICK
20 106 West Canada
San Clemente, CA 92672
21 -and-
23422 Via Ronda
22 Mission Viejo, CA 92691
Operator's License No. OPR 10297

23 Respondents.

24
25 Complainant alleges:

26 PARTIES

27 1. Kelli Okuma ("Complainant") brings this Accusation solely in her official
28 capacity as the Registrar/Executive Officer of the Structural Pest Control Board ("Board"),

1 Department of Consumer Affairs.

2 **Company Registration Certificate No. PR 5121**

3 2. On or about August 24, 2006, the Board issued Company Registration
4 Certificate Number PR 5121 in Branches 2 (general pest) and 3 (termite) to IRC Services, Inc.
5 ("Respondent IRC Services, Inc."), doing business as The Termite Guy, with Alex Del Toro
6 ("Respondent Del Toro") as Branch 3 qualifying manager and president, Mark Matthew Petrick
7 ("Respondent Petrick") as Branch 2 qualifying manager, and Maria Del Toro as secretary.

8 **Operator's License No. OPR 9685**

9 3. On or about April 14, 1977, the Board issued Operator's License Number
10 OPR 9685 in Branch 3 to Respondent Del Toro, employee of Catalina Termite Control. On
11 August 2, 2001, Respondent Del Toro's license was suspended due to failure to maintain the
12 general liability insurance required by Business and Professions Code ("Code") section 8690.
13 On August 6, 2001, Respondent Del Toro's license was reinstated after he posted general liability
14 insurance. On August 24, 2006, Respondent Del Toro became the president and Branch 3
15 qualifying manager of Respondent IRC Services, Inc. Respondent Del Toro's operator's license
16 will expire on June 30, 2008, unless renewed.

17 **Operator's License No. OPR 10297**

18 4. On or about September 6, 2000, the Board issued Operator's License
19 Number OPR 10297 in Branch 2 to Respondent Petrick, employee of Little Bugger Pest Control.
20 On August 24, 2006, Respondent Petrick became the Branch 2 qualifying manager of
21 Respondent IRC Services, Inc. Respondent's operator's license will expire on June 30, 2009,
22 unless renewed.

23 **JURISDICTION**

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

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6. 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.”

7. Code section 118, subdivision (b), states:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

8. 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.”

9. 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 has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or revoked, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible

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

3 STATUTORY AND REGULATORY PROVISIONS

4 Statutory Provisions

5 10. Code section 8516 states, in pertinent part:

6
7 “(b) No registered company or licensee shall commence work on a
8 contract, or sign, issue, or deliver any documents expressing an opinion or
9 statement relating to the absence or presence of wood destroying pests or
10 organisms until an inspection has been made by a licensed Branch 3 field
11 representative or
12 operator

13
14 “A written inspection report conforming to this section and a form
15 approved by the board shall be prepared and delivered to the person requesting the
16 inspection or to the person's designated agent within 10 business days of the
17 inspection, except that an inspection report prepared for use by an attorney for
18 litigation purposes is not required to be reported to the board. The report shall be
19 delivered before work is commenced on any property. The registered company
20 shall retain for three years all original inspection reports, field notes, and activity
21 forms.

22
23 “Reports shall be made available for inspection and reproduction to the
24 executive officer of the board or his or her duly authorized representative during
25 business hours. Original inspection reports or copies thereof shall be submitted to
26 the board upon request within two business days. The following shall be set forth
27 in the report:

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

37 11. Code section 8622 states:

38
39 “When a complaint is accepted for investigation of a registered company,
40 the board, through an authorized representative, may inspect any or all properties
41 on which a report has been issued pursuant to Section 8516 or a notice of
42 completion has been issued pursuant to Section 8518 by the registered company to
43 determine compliance with the provisions of this chapter and the rules and
44 regulations issued thereunder. If the board determines the property or properties

1 are not in compliance, a notice shall be sent to the registered company so stating.
2 The registered company shall have 30 days from the receipt of the notice to bring
3 such property into compliance, and it shall submit a new original report or
4 completion notice or both and an inspection fee of not more than one hundred
5 twenty-five dollars (\$125) for each property inspected. If a subsequent
6 reinspection is necessary, pursuant to the board's review of the new original report
7 or notice or both, a commensurate reinspection fee shall also be charged. If the
8 board's authorized representative makes no determination or determines the
9 property is in compliance, no inspection fee shall be charged.

6 "The notice sent to the registered company shall inform the registered
7 company that if it desires a hearing to contest the finding of noncompliance, the
8 hearing shall be requested by written notice to the board within 20 days of receipt
9 of the notice of noncompliance from the board. Where a hearing is not requested
10 pursuant to this section, payment of any assessment shall not constitute an
11 admission of any noncompliance charged."

12 12. Code section 8641 states:

11 "Failure to comply with the provisions of this chapter, or any rule or
12 regulation adopted by the board, or the furnishing of a report of inspection without
13 the making of a bona fide inspection of the premises for wood-destroying pests or
14 organisms, or furnishing a notice of work completed prior to the completion of the
15 work specified in the contract, is a ground for disciplinary action."

13 Regulatory Provision

14 13. California Code of Regulations, title 16, section ("Regulation") 1990

15 states, in pertinent part:

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

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

23 "(b) Conditions usually deemed likely to lead to infestation or infection
24 include, but are not limited to:

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

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1 COST RECOVERY

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

6 3809 VIA MANZANA, SAN CLEMENTE, CA

7 15. On or about April 30, 2007, Respondent Del Toro, the qualifying manager/
8 president of Respondent IRC Services, Inc., inspected the property located at 3809 Via Manzana,
9 San Clemente, California (hereinafter "property" or "3809 Via Manzana property"), at the
10 request of Prudential California Realty. Respondent Del Toro issued a complete Wood
11 Destroying Pests and Organisms ("WDO") Inspection Report, which included findings of
12 drywood termite infestations, drywood termite damage, and dryrot damage. Respondent Del
13 Toro recommended fumigation and replacement of damaged areas.

14 16. On or about May 30, 2007, Respondent Del Toro issued a Standard Notice
15 of Work Completed and Not Completed certifying that the property was free of evidence of
16 active infestations, infections, or adverse conditions in visible and accessible areas.

17 17. On June 11, 2007, escrow closed and Charles and Diane Deller ("the
18 Dellers") became the owners of the property based, in part, on the inspection report of April 30,
19 2007.

20 18. On or about August 13, 2007, Michael Reynolds ("Reynolds"), pest
21 control operator for Reynolds Termite Control, inspected the property at the request of the
22 Dellers and issued a limited inspection report which included findings of subterranean termite
23 damage, drywood termite damage, dryrot damage, delamination, and water damage. Reynolds
24 recommended chemical treatment, removal of tubes, replacement and/or repair of damaged areas,
25 cutting off of door damage and repairing with cement filler, possible future installation of a new
26 door, others to correct, further inspection, and a supplemental report.

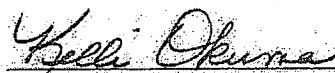
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4. Revoking or suspending Operator's License Number 10297, issued to Mark Matthew Petrick;
5. Ordering restitution of all damages according to proof suffered by Charles and Diana Deller as a condition of probation in the event probation is ordered;
6. Ordering Respondents IRC Services, Inc., doing business as The Termite Guy, Alex Del Toro, and Mark Matthew Petrick to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and
7. Taking such other and further action as deemed necessary and proper.

DATED: 7/3/08



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

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clp: 6/9/08
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