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FILED

Date 2/15/11 By Susan Taylor

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

11 In the Matter of the Accusation Against:  
12

Case No. 2011-34

13 DOUGLAS LEE SMITH  
418 Rotan Avenue  
14 Madera, California 93637

ACCUSATION

15 Operator License No. OPR 9832

16 Respondent.

18 Kelli Okuma ("Complainant") alleges:

19 PARTIES

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

23 2. On or about March 16, 1998, the Board issued Operator's License Number OPR  
24 9832 in Branch 2 to Douglas Lee Smith ("Respondent"). On or about December 28, 2006, the  
25 license was suspended pursuant to Business and Professions Code ("Code") section 8690 (failure  
26 to maintain general liability insurance). On or about January 8, 2007, the license was reinstated.  
27 On or about November 7, 2008, the license was suspended pursuant to Code section 8690 (failure  
28 to maintain general liability insurance). The license was reinstated on February 17, 2009. On or

1 about July 20, 2009, the license was suspended pursuant to Code section 8690 (failure to maintain  
2 general liability insurance). On or about October 22, 2009, the Board levied a fine of \$1,000  
3 against Respondent for violating Code section 8691. On or about November 5, 2009, the license  
4 was reinstated after posting general liability insurance. On or about March 16, 2010, the license  
5 was suspended pursuant to Code section 8690 (failure to maintain general liability insurance).  
6 The license will expire on June 30, 2012, unless renewed.

7 **STATUTORY PROVISIONS**

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

12 4. Code section 8625 states:

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

18 5. Code section 8641 states:

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

20 6. Code section 8593 states, in pertinent part:

21 The board shall require as a condition to the renewal of each operator's and  
field representative's license that the holder submit proof satisfactory to the board that  
he or she has informed himself or herself of developments in the field of pest control  
either by completion of courses of continuing education in pest control approved by  
the board or equivalent activity approved by the board. In lieu of submitting that  
proof, the licenseholder, if he or she so desires, may take and successfully complete  
an examination given by the board, designed to test his or her knowledge of  
developments in the field of pest control since the issuance of his or her license.

22 7. Code section 8624 states:

23 If the board suspends or revokes an operator's license and one or more  
branch offices are registered under the name of the operator, the suspension or  
24 revocation may be applied to each branch office.  
25

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.

### REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1950, states, in pertinent

part:

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

(b) Each licensee is required to gain a certain number of continuing education hours during the three year renewal period. The number of hours required depends on the number of branches of pest control in which licenses are held. The subject matter covered by each activity shall be designated as "technical" or "general" by the Board when the activity is approved. Hour values shall be assigned by the Board to each approved educational activity, in accordance with the provisions of section 1950.5.

(c) Operators licensed in one branch of pest control shall complete 16 continuing education hours during each three year renewal period. Operators licensed in two branches of pest control shall complete 20 continuing education hours during each three year renewal period. Operators licensed in three branches of pest control shall complete 24 continuing education hours during each three year renewal period. In each case, a minimum of four continuing education hours in a technical subject directly related to each branch of pest control held by the licensee must be completed for each branch license, a minimum of two hours in Integrated Pest Management as defined in section 1984 must be completed by Branch 2 and/or 3 licensees renewing on or after June 30, 2010, and a minimum of eight hours must be completed from Board approved courses on the Structural Pest Control Act, the Rules and Regulations, or structural pest control related agencies' rules and regulations.

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## **COST RECOVERY**

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

## **BACKGROUND INFORMATION**

10. In or about September 2009, Respondent submitted a license renewal application to the Board. On or about September 28, 2009, Respondent certified under penalty of perjury on the application form that he successfully completed 16 hours of continuing education during the renewal period of July 1, 2006, through June 30, 2009.

11. On December 8, 2009, January 26, 2010, and September 30, 2010, the Board sent Respondent written requests for copies of his continuing education certificates to verify the 16 hours of continuing education set forth on his renewal application dated September 28, 2009. Respondent was advised on each occasion that if he failed to comply with the Board's request, his operator's license would be subject to disciplinary action.

## **FIRST CAUSE FOR DISCIPLINE**

#### **(Failure to Verify Completion of Continuing Education)**

12. Respondent is subject to discipline under Code section 8641, in that he failed to comply with California Code of Regulation, title 16, section 1950, by failing to verify that he had completed 16 hours of continuing education by submitting copies of continuing education certificates for the renewal period of July 1, 2006, through June 30, 2009, as requested by the Board on December 8, 2009, January 26, 2010, and September 30, 2010.

## OTHER MATTERS

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

14. Pursuant to Code section 8654, if discipline is imposed on Operator's License Number OPR 9832, issued to Douglas Lee Smith, then Douglas Lee Smith shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Douglas Lee Smith shall be subject to disciplinary action.

15. Pursuant to Code section 8624, if Operator License Number OPR 9832, issued to Douglas Lee Smith, is suspended or revoked, the Board may suspend or revoke the registration of any branch office registered under Douglas Lee Smith's name.

## PRAYER

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

1. Revoking or suspending Operator's License Number OPR 9832, issued to Douglas Lee Smith;

2. Prohibiting Douglas Lee Smith from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Operator's License Number OPR 9832, issued to Douglas Lee Smith;

3. Ordering Douglas Lee Smith to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and.

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

DATED: 2/15/11

KELLI OKUMA  
Registrar/Executive Officer  
Structural Pest Control Board  
State of California  
*Complainant*

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