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FILED

Date 9/2/10 By Kelli Okuma

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

In the Matter of the Accusation Against: **MR. TERMITE** **PETER KENNETH ENKHORN,** **OWNER/QUALIFYING MANAGER** **16823 Lakewood Boulevard** **Bellflower, California 90706** **Company Registration Certificate No. PR 1852** **and** **PETER KENNETH ENKHORN** **16823 Lakewood Boulevard** **Bellflower, California 90706** **Operator's License No. OPR 8551** Respondents.	Case No. 2011-9 **ACCUSATION**

Complainant alleges:

PARTIES

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

Mr. Termite

2. On or about June 12, 1990, the Board issued Company Registration Certificate Number PR 1852 in Branch 3 (termite) to Local Termite Control with Peter Kenneth Enkhorn

("Respondent Enkhorn" or "Enkhorn), as owner and qualifying manager. On April 28, 1995, the business name was changed to Mr. Termite ("Respondent Mr. Termite" or "Mr. Termite").

Peter Kenneth Enkhorn

3. On or about June 12, 1990, the Board issued Operator's License Number OPR 8551 in Branch 3 to Respondent Enkhorn, owner and qualifying manager of Mr. Termite, formerly known as Local Termite Control. Respondent's operator's license is currently in effect and renewed through June 30, 2013.

JURISDICTION

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

5. 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.

6. 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.

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

STATUTORY AND REGULATORY PROVISIONS

(Statutory Provisions)

8. 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.

. . . .

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

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

. . . .

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

(7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing

that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or infection, such as earth-to-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be reported.

. . . .

(10) Recommendations for corrective measures . . .

9. Code section 8518 states, in pertinent part:

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.

. . . .

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

10. Code section 8519 states, in pertinent part:

Certification as used in this section means a written statement by the registered company attesting to the statement contained therein relating to the absence or presence of wood-destroying pests or organisms and, listing such recommendations, if any, which appear on an inspection report prepared pursuant to Section 8516, and which relate to (1) infestation or infection of wood-destroying pests or organisms found, or (2) repair of structurally weakened members caused by such infestation or infection, and which recommendations have not been completed at the time of certification.

Any registered company which makes an inspection report pursuant to Section 8516, shall, if requested by the person ordering the inspection report, prepare and deliver to that person or his or her designated agent, a certification, to provide:

. . . .

(b) When the inspection report prepared pursuant to Section 8516 discloses infestation or infection and the notice of work completed prepared pursuant to Section 8518 indicates that all recommendations to remove that infestation or infection and to repair damage caused by that infestation or infection have been completed: "This is to certify that the property described herein is now free of evidence of active infestation or infection in the visible and accessible areas . . .

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11. Code section 8622 states, in pertinent part:

> 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 . . .

12. Code section 8641 states:

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

13. Code section 8642 states that "[t]he commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action."

14. Code section 8644 states:

> Fraud or misrepresentation, after inspection, by any licensee or registered company engaged in pest control work of any infestation or infection of 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 ("Regulation") 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.

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

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

. . . .

(2) Inaccessible subareas or portions thereof and areas where there is less than 12 inches clear space between the bottom of the floor joists and the unimproved ground area.

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

(4) Earth-to-wood contacts.

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

. . . .

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

16. Regulation 1991 states, in pertinent part:

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

. . . .

(2) Remove from the subarea all excessive cellulose debris in earth contact. This excludes shavings or other cellulose too small to be raked or stored goods not in earth contact. Stumps and wood imbedded in footings in earth contact shall be treated if removal is impractical.

. . . .

(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members 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(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 diagrammed. 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 . . .

17. Regulation 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.

. . . .

(c) A limited report is the report on only part of a structure. Such a report shall have a diagram of the area inspected and shall specifically indicate which portions of the structure were inspected with recommendation for further inspection of the entire structure and the name of the person or agency requesting a limited report.

(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 . . .

18. Regulation 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

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

9722 and 9730 PACIFIC AVENUE, BELLFLOWER, CA

20. On June 24, 2009, Enkhorn, the owner and qualifying manager of Mr. Termite, inspected the properties located at 9722 and 9730 Pacific Avenue, Bellflower, California (hereinafter "units 9722 and 9730" or "the properties"), at the request of Jerry Miller of Cogburn/Olivier Realty. Enkhorn issued a complete Wood Destroying Pests and Organisms Inspection Report consisting of 6 findings and recommendations and one note. Enkhorn reported a partially inaccessible substructure at unit 9722 due to a clothes dryer and ladder blocking the access; cellulose debris in the substructure of unit 9730; evidence of drywood termites in the attic of both units; subterranean termite damage at the hardwood flooring in unit 9730; and evidence of drywood termites in the eave area of both units. Enkhorn recommended further inspection of the inaccessible portion of the substructure at unit 9722 once the area was made accessible; removal of the cellulose debris off of the soil; fumigation of both structures for drywood termites; replacement, reinforcement, or fill of the subterranean termite damage; and covering, masking, or removal of the evidence of drywood termites in the eaves. Enkhorn stated in his note that there were dry water stains at unit 9730 and that "No statement of condition or leaks" in the stained area was given "at date of inspection".

21. On October 23, 2009, Enkhorn issued a Standard Notice of Work Completed and Not Completed (hereinafter "completion notice"), certifying that the corrective work recommended in

the inspection report, including the further inspection of the inaccessible portion of the substructure at unit 9722, had been completed in accordance with the Board's rules and Regulations and that the properties were now free and clear of "evidence, infestation, infection or any adverse structural pest condition at date of completion."

22. On or about November 9, 2009, Enkhorn sent a letter to Renee Fletcher, the agent for John M. Williams III ("Williams"), the prospective buyer of the properties, informing Ms. Fletcher that the clean up of the rafter tail had been completed and the termite holes in the roof sheathing had been patched or repaired.

23. On November 17, 2009, field representative Gary Currier ("Currier"), representing Admiral Pest Control, inspected the properties at Williams' request and issued a "limited" and "separated" inspection report for each unit. Currier reported old termite damage at the exterior framing and rot damage (decay fungi damage) at the exterior door of unit 9722, for which he recommended removal and replacement of the damaged framing and door. As to unit 9730, Currier reported old termite damage at the porch, water heater cabinet, and exterior framing, and decay fungi damage at the water heater cabinet framing, exterior door, and exterior framing. Currier recommended removal, replacement, repair, and/or fill of the old termite damage and removal and replacement of the decay fungi damage.

24. On or about November 30, 2009, Williams filed a complaint with the Board, alleging that Mr. Termite failed to list on its inspection report all of the existing damage at units 9722 and 9730. Williams also stated that Mr. Termite reinspected the properties on November 4, 2009, that Mr. Termite acknowledged that the existing damage was obvious and had been overlooked during their initial inspection of the units, and that Mr. Termite returned to the properties on November 7, 2009, and made repairs which were substandard.

25. On December 8, 2009, a representative of the Board sent a letter to Mr. Termite, notifying them of Williams' complaint and requesting that Mr. Termite furnish the Board with a written response within 10 days from receipt of the letter.

26. On December 23, 2009, Enkhorn inspected the properties and issued a "limited" inspection report, consisting of 8 findings and recommendations and several notes. Enkhorn

reported an inaccessible area at the interior of both units because inspection of these areas was not requested; old evidence of drywood termites at the "poorly repaired eaves by owner" on both units made visible by probing; old evidence of drywood termites at the exposed siding on unit 9730; decay fungi damage at the water heater cabinet at unit 9730 and the roof trim and lattice fence frame at unit 9722; old evidence of drywood termites at the laundry room roof sheathing at unit 9722, earth-to-wood contact at the siding on unit 9722; an excessive moisture condition, causing deteriorating paint on the doors of both units; and subterranean termite damage at the lattice trim board on unit 9722. Enkhorn recommended further inspection of the inaccessible areas of the units; covering or removal of the accessible evidence of drywood termites and replacement, reinforcement, or fill of any damage resulting from the infestation; removal and replacement of the decay fungi damage; lowering or isolating the earth-to-wood contact; determining the source of the excessive moisture condition and repair as necessary; and replacement, reinforcement, or fill of the subterranean termite damage. That same day, Enkhorn sent a letter to the Board, stating that during the first week of November, he received a call from the buyer's agent informing him that some of the work had not been completed. Enkhorn met with the agent at the properties and observed two items in need of correction. Enkhorn and his employee repaired the two items the following day. Enkhorn did not issue an inspection report or completion notice regarding the two items.

27. Field representative Jeremiah Jaramillo ("Jaramillo") of Dewey Pest Control also inspected the properties on December 23, 2009 (at Williams' request). Jaramillo issued a "limited" inspection report, consisting of 5 findings, 9 recommendations, and 3 notes. Jaramillo indicated in his notes that there were subterranean termites and earth-to-wood contacts at the exterior fence at unit 9722 and peeling, cracking paint at the exterior eaves and siding on both units. Jaramillo reported evidence of drywood termites at the exterior eaves and siding, which appeared to extend into inaccessible areas on both units; drywood termite damage at the exterior eaves and siding on both units; decay fungi damage at the exterior eaves and siding on both units; earth-to-wood contact at the exterior siding on unit 9722; and evidence of subterranean termites at the storeroom siding and doorjamb at unit 9722.

28. On January 11, 2010, and January 29, 2010, the Board's specialist, Steven R. Smith ("Smith"), inspected the properties.

29. On February 1, 2010, Smith contacted Enkhorn and requested a copy of Enkhorn's supplemental" inspection report relating to his further inspection of the substructure of unit 9722 that was indicated as having been completed on the October 23, 2009, completion notice. Later, Smith received an e-mail from Enkhorn, stating that after gaining access to the substructure of unit 9722, no reportable conditions were found. Enkhorn also stated that after reviewing the file, he realized that the completion notice was issued and escrow had closed on the units without the issuance of a supplemental inspection report.

30. On February 3, 2010, Smith received a copy of Enkhorn's supplemental inspection report dated October 21, 2009, pertaining to his inspection of the substructure of unit 9722. The inspection report certified that the substructure of unit 9722 was "found to be clear of evidence, infestation, infection, or any adverse structural pest condition" at the date of inspection.

31. On February 4, 2010, Smith issued a Report of Findings ("ROF"), outlining several violations of the Code which he found during his inspections. That same day, the Board sent a notice, via certified mail, to Enkhorn and Mr. Termite along with the ROF, directing them to inspect the properties and submit an inspection report addressing the items described in the ROF, to bring the properties into compliance by correcting the items described in the ROF, and to submit a completion notice to the Board within thirty (30) calendar days from receipt of the notice.

32. On February 11, 2010, copies of the Board's notice and the ROF were received at Enkhorn's and Mr. Termite's address of record.

33. Enkhorn inspected the properties on March 1, 2010, and issued a complete inspection report, consisting of 41 findings and recommendations, but thereafter failed to bring the property into compliance or to correct the items described in the ROF.

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FIRST CAUSE FOR DISCIPLINE

(Improper Inspections)

34. Respondents Mr. Termite and Enkhorn are subject to disciplinary action pursuant to Code section 8641 in that as to the 9722 and 9730 Pacific Avenue properties, they failed to comply with Code section 8516 in the following respects:

a. Respondent Enkhorn failed to make a proper finding and recommendation in the June 24, 2009, and December 23, 2009, inspection reports regarding the water stains at unit 9730, in violation of Code section 8516, subdivisions (b)(7) and (10), and Regulation 1990, subdivision (b)(5).

b. Respondent Enkhorn failed to make a proper recommendation in the June 24, 2009, inspection report regarding the reported cellulose debris in the substructure of unit 9730, in violation of Code section 8516, subdivision (b)(10), and Regulation 1991, subdivision (a)(2). Specifically, Respondent recommended removing the cellulose debris off of the soil rather than remove the cellulose debris completely from the substructure.

c. Respondent Enkhorn failed to include on the December 23, 2009, inspection report the required limited report statement, in violation of Regulation 1993, subdivision (c).

d. Respondent Enkhorn failed to report in the October 21, 2009, inspection report the cellulose debris in the substructure of unit 9722, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(3).

e. Respondent Enkhorn failed to report in the October 21, 2009, inspection report the evidence of subterranean termites, subterranean termite damage, evidence of drywood termites, and drywood termite damage in the substructure of unit 9722, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivisions (a)(3) and (4).

f. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the evidence of subterranean termites and subterranean termite damage in the substructure of unit 9730, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivisions (a)(3) and (4).

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g. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the evidence of drywood termites and drywood termite damage in the substructure of unit 9730, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivisions (a)(3) and (4).

h. Respondent Enkhorn failed to report in the October 21, 2009, inspection report the earth-to-wood contact at the substructure access of unit 9722, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(4).

i. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the faulty grade in the substructure of unit 9730, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(2).

j. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the earth-to-wood contact, evidence of subterranean termites, and subterranean termite damage at the latticework attached to unit 9722, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulations 1990, subdivisions (a)(3) and (4), and 1990, subdivision (b)(4). Further, Respondent failed to report in the December 23, 2009, inspection report the earth-to-wood contact at the latticework attached to unit 9722.

k. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the evidence of subterranean termites in the attic of unit 9722, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(3).

l. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the full extent of the evidence of drywood termites in the attic of units 9722 and 9730, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(3).

m. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the drywood termite damage in the attic of units 9722 and 9730, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(4).

n. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the evidence of an excessive moisture condition (water stains) in the attic of unit 9722, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(5).

o. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the evidence of subterranean termites, subterranean termite damage, evidence of drywood termites, and drywood termite damage at the laundry room attached to unit 9722, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivisions (a)(3) and (4).

p. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the earth-to-wood contact at the laundry room attached to unit 9722, and failed to report in the December 23, 2009, inspection report the full extent of the earth-to-wood contact at the laundry room attached to unit 9722, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(4).

q. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the evidence of an excessive moisture condition (water damage) at the doors of the laundry room attached to unit 9722, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(5).

r. Respondent Enkhorn failed to report in the June 24, 2009, and December 23, 2009, inspection reports the inaccessible area at the door of the laundry room attached to unit 9722 (a metal cover was installed over the base of the door), in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (e).

s. Respondent Enkhorn failed to report in the December 23, 2009, inspection report the full extent of the evidence of drywood termites and the drywood termite damage at the laundry room attached to unit 9722, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivisions (a)(3) and (4).

t. Respondent Enkhorn failed to report in the June 24, 2009, and December 23, 2009, inspection reports the full extent of the evidence of drywood termites at the exterior framing of units 9722 and 9730, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(3).

u. Respondent Enkhorn failed to report in the June 24, 2009, and December 23, 2009, inspection reports the drywood termite damage at the exterior framing of units 9722 and 9730, in

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violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(4).

v. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the decay fungi damage at the water heater cabinet framing and eaves of unit 9730, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(4). Further, Respondent failed to report in the December 23, 2009, inspection report the decay fungi damage at the eaves of unit 9730.

w. Respondent Enkhorn failed to report in the June 24, 2009, inspection report the evidence of an excessive moisture condition (water damage) at the kitchen door of unit 9730, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(5).

x. Respondent Enkhorn failed to issue an inspection report pertaining to the repair work at the eaves and blocking at unit 9722 and the eaves and siding at unit 9730 which was completed in November 2009, in violation of Code section 8516, subdivision (b).

y. Respondent Enkhorn failed to make a proper recommendation in the June 24, 2009, inspection report regarding the reported drywood termites in the attics of units 9722 and 9730. Specifically, Respondent failed to include a recommendation to cover or remove the accessible evidence of infestation, in violation of Code section 8516, subdivision (b)(10), and Regulation 1991, subdivision (a)(8).

z. Respondent Enkhorn failed to make a proper recommendation in the December 23, 2009, inspection report regarding the reported decay fungi damage. Specifically, Respondent failed to include a recommendation to correct the excessive moisture condition responsible for the infection, in violation of Code section 8516, subdivision (b)(10), and Regulation 1991, subdivision (a)(5).

aa. Respondent Enkhorn failed to report in the October 21, 2009, inspection report the damage in the substructure below the stool in unit 9722, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(4).

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SECOND CAUSE FOR DISCIPLINE

(Improper Completion Notice/Failure to Issue Completion Notice)

35. Respondents Mr. Termite and Enkhorn are subject to disciplinary action pursuant to Code section 8641 in that as to the 9722 and 9730 Pacific Avenue properties, Respondent failed to comply with Code section 8518, in the following respects:

a. Respondents failed to issue a proper completion notice by failing to report whether the water stains at unit 9730, reported as a note in the June 24, 2009, inspection report, had been addressed or resolved.

b. Respondents failed to prepare or furnish a completion notice to the owner of the property, or the owner's agent, after performing repairs at the eaves and blocking at unit 9722 and the eaves and siding at unit 9730 in November 2009.

THIRD CAUSE FOR DISCIPLINE

(Improper Certifications)

36. Respondents Mr. Termite and Enkhorn are subject to disciplinary action pursuant to Code section 8641 in that as to the 9722 and 9730 Pacific Avenue properties, they failed to comply with Code section 8519, in the following respects:

a. Respondents certified in the completion notice that the corrective work recommended in the June 24, 2009, inspection report had been completed in accordance with the Board's rules and regulations. In fact, Respondents failed to remove the reported cellulose debris from the soil in the substructure of unit 9730.

b. Respondents certified in the completion notice that Unit 9722 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, evidence of subterranean termites and subterranean termite damage were still present at the latticework attached to the unit and there was earth-to-wood contact at the latticework.

c. Respondents certified in the completion notice that Unit 9722 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, evidence of subterranean termites and drywood termite damage were still present in the attic and there was evidence of an excessive moisture condition (water stains).

d. Respondents certified in the completion notice that Unit 9722 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, evidence of subterranean termites, subterranean termite damage, evidence of drywood termites, and drywood termite damage were still present at the laundry room attached to the unit. Further, various adverse conditions were still present, including earth-to-wood contact at the laundry room and evidence of an excessive moisture condition (water damage) and an inaccessible area at the laundry room doors.

e. Respondents certified in the completion notice that Unit 9722 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, drywood termite damage was still present at the exterior framing.

f. Respondents certified in the completion notice that Unit 9730 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, evidence of subterranean termites, subterranean termite damage, evidence of drywood termites, and drywood termite damage were still present in the substructure and the grade was faulty.

g. Respondents certified in the completion notice that Unit 9730 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, drywood termite damage was still present in the attic.

h. Respondents certified in the completion notice that Unit 9730 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, drywood termite damage was still present at the exterior framing.

i. Respondents certified in the completion notice that Unit 9730 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, decay fungi damage was still present at the water heater cabinet framing and eaves.

j. Respondents certified in the completion notice that Unit 9730 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, there was an excessive moisture condition (water damage) at the kitchen door of the unit.

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FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Board's Notice)

37. Respondents Mr. Termite and Enkhorn are subject to disciplinary action pursuant to Code section 8641 in that they failed to comply with Code section 8622. Respondents failed to bring the 9722 and 9730 Pacific Avenue properties into compliance by failing to correct all of the items described in the Report of Findings within thirty (30) calendar days from receipt of the Board's notice of February 4, 2010.

FIFTH CAUSE FOR DISCIPLINE

(Poor Workmanship)

38. Respondent Mr. Termite is subject to disciplinary action pursuant to Code section 8641 in that Respondent failed to comply with Regulation 1937.14 by failing to perform the repairs at the 9722 and 9730 Pacific Avenue properties in a good and workmanlike manner in the following respects:

a. Respondent failed to replace all of the drywood termite damage at the eaves and blocking at unit 9722 and at the eaves and siding at unit 9730.

b. Respondent failed to properly support or nail the replacement wood members (rafter tails) at the eaves of both units, and failed to repair or replace the existing wood members that had split at the area where the replacement wood members were attached.

c. Respondent damaged the roof shingles above the repaired areas at the eaves.

d. Respondent failed to sand the patchwork at the repaired areas at the siding on unit 9730.

SIXTH CAUSE FOR DISCIPLINE

(Gross Negligence and Fraud)

39. Respondents Mr. Termite and Enkhorn are subject to disciplinary action pursuant to Code section 8642 in that they committed grossly negligent or fraudulent acts as follows:

a. Respondent Enkhorn failed to indicate on the completion notice whether the water stains at unit 9730, reported as a note in the June 24, 2009, inspection report, had been addressed or resolved.

b. Respondent Enkhorn failed to issue the supplemental inspection report of October 21, 2009, pertaining to the substructure of unit 9722 prior to the close of escrow, and did not issue the report until February 3, 2010, when he was requested to do so by the Board's specialist, Smith. Further, Respondent certified in the inspection report that the substructure of unit 9722 was clear of evidence of infestation, infection, or any adverse structural pest condition at the date of inspection. In fact, evidence of subterranean termites, subterranean termite damage, evidence of drywood termites, and drywood termite damage were still present in the substructure.

SEVENTH CAUSE FOR DISCIPLINE

(Fraud or Misrepresentation Irrespective of Report)

40. Respondents Mr. Termite and Enkhorn are subject to disciplinary action pursuant to Code section 8644 in that they misrepresented the condition of the 9722 and 9730 Pacific Avenue properties, as follows:

a. Respondents falsely represented on the notice of completion that the corrective work recommended in the June 24, 2009, inspection report had been completed in accordance with the Board's rules and regulations. In fact, Respondents failed to remove the reported cellulose debris from the soil in the substructure of unit 9730.

b. Respondents falsely represented on the notice of completion that Unit 9722 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, evidence of subterranean termites and subterranean termite damage were still present at the latticework attached to the unit and there was earth-to-wood contact at the latticework.

c. Respondents falsely represented on the notice of completion that Unit 9722 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, evidence of subterranean termites and drywood termite damage were still present in the attic and there was evidence of an excessive moisture condition (water stains).

d. Respondents falsely represented on the notice of completion that Unit 9722 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, evidence of subterranean termites, subterranean termite damage, evidence of drywood termites, and drywood termite damage were still present at the laundry room attached to the unit. Further,

various adverse conditions were still present, including earth-to-wood contact at the laundry room and evidence of an excessive moisture condition (water damage) and an inaccessible area at the laundry room doors.

e. Respondents falsely represented on the notice of completion that Unit 9722 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, drywood termite damage was still present at the exterior framing.

f. Respondents falsely represented on the notice of completion that Unit 9730 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, evidence of subterranean termites, subterranean termite damage, evidence of drywood termites, and drywood termite damage were still present in the substructure and the grade was faulty.

g. Respondents falsely represented on the notice of completion that Unit 9730 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, drywood termite damage was still present in the attic.

h. Respondents falsely represented on the notice of completion that Unit 9730 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, drywood termite damage was still present at the exterior framing.

i. Respondents falsely represented on the notice of completion that Unit 9730 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, decay fungi damage was still present at the water heater cabinet framing and eaves.

j. Respondents falsely represented on the notice of completion that Unit 9730 was free and clear of evidence of infestation, infection, or any adverse structural pest condition. In fact, there was an excessive moisture condition (water damage) at the kitchen door of the unit.

OTHER MATTERS

41. 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.

42. Pursuant to Code section 8624, the causes for discipline established as to Respondent Mr. Termite likewise constitute causes for discipline against Respondent Peter Kenneth Enkhorn regardless of whether he had knowledge of or participated in the acts or omissions which constitute causes for discipline against Respondent Mr. Termite.

43. Pursuant to Code section 8624, if Operator's License Number OPR 8551, issued to Respondent Peter Kenneth Enkhorn, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 1852, issued to Respondent Mr. Termite.

44. Respondent Peter Kenneth Enkhorn, the owner and qualifying manager for Respondent Mr. Termite, had knowledge of and participated in, the acts or omissions which constitute causes for discipline against Respondent Mr. Termite.

45. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 1852, issued to Respondent Mr. Termite, Respondent Peter Kenneth Enkhorn 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 Peter Kenneth Enkhorn shall be subject to disciplinary action.

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

47. Government Code section 11519, subdivision (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.

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PRAYER

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

1. Revoking or suspending Company Registration Certificate Number PR 1852, issued to Mr. Termite;

2. Revoking or suspending Operator's License Number OPR 8551, issued to Peter Kenneth Enkhorn;

3. Prohibiting Peter Kenneth Enkhorn 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 Company Registration Certificate Number PR 1852, issued to Mr. Termite;

4. Ordering restitution of all damages according to proof suffered by John M. Williams III as a condition of probation in the event probation is ordered;

5. Ordering Mr. Termite and Peter Kenneth Enkhorn 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;

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

DATED: 9/2/10

Kelli Okuma

KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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