

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

In the Matter of the Accusation Against:

STEVE HIATT TERMITE & PEST
CONTROL INC.; STEVEN JAMES HIATT;
AND ROBERT E. MCDONALD,

and

BOB MCDONALD PEST CONTROL

Respondents.

Case No. 2010-6

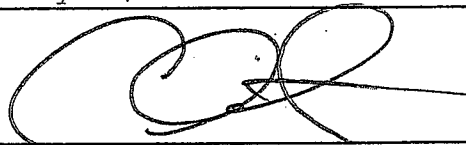
OAH No. 2009110155

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

The Decision shall become effective on August 25, 2010.

IT IS SO ORDERED July 26, 2010



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

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

In the Matter of the Accusation Against:

STEVE HIATT TERMITE & PEST CONTROL, INC.

Steven J. Hiatt, President/Branch 3 Qualifying Manager
Robert Eugene McDonald, Branch 2 Qualifying Manager
Brian Edward Brown, Secretary
Pamela Nash Hiatt, Vice President
12515 Floral Drive
Whittier, California 90601

Mailing Address:

10820 Beverly Boulevard, Suite A5, PMB #287
Whittier, California 90601

Company Registration No. PR 3295,

STEVEN J. HIATT

12515 Floral Drive
Whittier, California 90601

Mailing Address:

10820 Beverly Boulevard, Suite A5, PMB #287
Whittier, California 90601

Operator's License No. OPR 9534

ROBERT EUGENE McDONALD

12515 Floral Drive
Whittier, California 90601

Mailing Address:

10820 Beverly Boulevard, Suite A5, PMB #287
Whittier, California 90601

Operator's License No. OPR 8066,

BOB McDONALD PEST CONTROL

Robert Eugene McDonald, Partner/Qualifying Manager
Steven J. Hiatt, Partner
56341 Marina View Court
Bass Lake, California 93604

Case No. 2010-6

OAH No. 2009110155

Mailing Address:

P.O. Box 171
Bass Lake, California 93604

Company Registration Certificate No. PR 3092,

Respondents.

PROPOSED DECISION

Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 25, 2010, in Los Angeles, California.

Gillian E. Friedman, Deputy Attorney General, represented complainant Kelli Okuma, Registrar/Executive Officer, Structural Pest Control Board, Department of Consumer Affairs, State of California ("Board").

Steven J. Hiatt represented himself, individually (respondent Hiatt) and as president of Steve Hiatt Termite & Pest Control, Inc. (respondent Hiatt Pest Control). Robert Eugene McDonald represented himself, individually (respondent McDonald) and as partner/qualifying manager of respondent Bob McDonald Pest Control (respondent McDonald Pest Control). Respondent Hiatt, respondent Hiatt Pest Control, respondent McDonald, and respondent McDonald Pest Control will collectively be referred to as "respondents."

At the hearing, complainant brought a motion to amend the Accusation, at page 12, paragraph 31, line 9; to correct the paragraph number from "24" to number "23," and at page 12, paragraph 32, line 16, to correct the paragraph number from "23" to number "22." The motion, which was unopposed, was granted.

Oral and documentary evidence was presented at the hearing and the matter was submitted for decision on the day of the hearing, May 25, 2010.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.
2. On June 11, 1998, the Board issued Company Registration Certificate Number PR 3295, Branch 2 and Branch 3, to respondent Hiatt Pest Control, with respondent Hiatt as president and Branch 3 qualifying manager, and respondent McDonald as Branch 2 qualifying manager. The company registration certificate was suspended on October 29, 2001, November 30, 2001, January 2, 2002, September 14, 2007, and May 9, 2008 for failure to maintain general

liability insurance. The Board reinstated the registration on November 5, 2001, December 4, 2001, January 10, 2002, November 5, 2007, and August 13, 2008, after the company posted the general liability insurance. On September 28, 2007, the company registration certificate was suspended for its failure to maintain a \$4,000 surety bond. The Board reinstated the registration on November 5, 2007, after the company posted the \$4,000 surety bond. On December 2, 2009, respondent McDonald disassociated from respondent Hiatt Pest Control as its Branch 2 qualifying manager. The company registration certificate was suspended on February 18, 2010 for not having a branch 2 qualifying manager.

3. On May 14, 1996, the Board issued Operator's License Number OPR 9534, Branch 3, to respondent Hiatt, qualifying manager of respondent Hiatt Pest Control. On June 11, 1998, respondent Hiatt became the Branch 3 qualifying manager for respondent Hiatt Pest Control. The operator's license was suspended on October 29, 2001, November 30, 2001, January 2, 2002, September 14, 2007, and May 9, 2008, for failure to maintain general liability insurance. The Board reinstated respondent Hiatt's license on November 5, 2001, December 4, 2001, January 10, 2002, October 12, 2007, and August 13, 2008, after posting of the general liability insurance. Respondent Hiatt's operator license expires June 30, 2010.

4. On March 18, 1988, the Board issued Operator's License Number OPR 8066, Branch 2 and 3, to respondent McDonald, owner and qualifying manager of McDonald Termite & Pest Control. On November 21, 1988, respondent McDonald's operator's license was downgraded to include Branch 2 only. On January 31, 1990, respondent McDonald disassociated as qualifying manager of McDonald Termite & Pest Control. On May 23, 1997, respondent McDonald became partner and Branch 2 qualifying manager for respondent McDonald Pest Control in Bass Lake, California. On June 11, 1998, respondent McDonald became the Branch 2 qualifying manager for respondent Hiatt Pest Control. The Board suspended respondent McDonald's operator's license on May 22, 2000, October 29, 2001, November 30, 2001, January 2, 2002, September 14, 2007, and May 9, 2008, for failure to maintain general liability insurance. The Board reinstated his license on May 25, 2000, November 5, 2001, December 4, 2001, January 10, 2002, October 12, 2007, and August 13, 2008, after posting of the general liability insurance. On December 2, 2009, as stated in factual finding number 2, respondent McDonald disassociated as Branch 2 qualifying manager of respondent Hiatt Pest Control. Respondent McDonald's operator license expires on June 30, 2011.

5. On May 23, 1997, the Board issued Company Registration Certificate Number PR 3092, Branch 2, to respondent McDonald Pest Control with respondent McDonald as partner and qualifying manager and respondent Hiatt as partner. The Board suspended the company registration certificate on May 22, 2000 for failure to maintain general liability insurance. The registration was reinstated on May 25, 2000, after posting of the general liability insurance. The Board's license history states that the registration was suspended on November 29, 2007 for failure to replace qualifying manager, and reinstated on October 15,

2007. [The dates appear to be inverted.] On June 25, 2008, the Board suspended the registration for failure to replace qualifying manager. On August 13, 2008, the Board reinstated the registration with respondent McDonald as the qualifying manager.

6. On November 15, 2006, pursuant to a notice of decision and order in file number 06072015, the Los Angeles County Agricultural Commissioner's Office levied a \$151 fine against respondent Hiatt Pest Control, for violations of Business and Professions Code¹ section 8505.17, subdivision (c), for its failure to submit monthly pesticide use reports from February through July 2006. As of the date of the May 25, 2010 hearing, the fine had not been paid.

7. On October 9, 2007, the Board conducted a service records check at the office of respondent Hiatt Pest Control. As a result of the inspection, on December 6, 2007, the Board issued citation number CF 08-103 against respondent Hiatt Pest Control and respondent Hiatt for violations of sections 8516 and 8518 for failure to file 858 property inspection reports and 623 notices of completion for properties upon which pest control work was completed by respondent Hiatt Pest Control between the dates of August 27, 2005, and October 5, 2007. The Board ordered respondent Hiatt Pest Control and Hiatt to pay a fine of \$4,943 within 30 days of the receipt of the citation. The citation was not contested by either respondent Hiatt Pest Control or respondent Hiatt. On January 10, 2008, the Board sent a formal demand letter to respondent Hiatt and respondent Hiatt Pest Control for payment of the \$4,943 fine. As of the date of the May 25, 2010 hearing, the fine had not been paid.

8. Respondent Hiatt Pest Control had a lapse in liability insurance coverage for 105 days between April 29, 2008, and August 12, 2008.

9. On October 27, 2008, the Board conducted a records check at the office of respondent Hiatt Pest Control to determine whether respondent Hiatt Pest Control was in compliance, after its December 6, 2007 citation, and whether it had performed any structural pest control work activities between April 29 and August 12, 2008, the period of its insurance lapse. The Board investigation found that respondent Hiatt Pest Control had performed an additional 115 Wood Destroying Pests and Organisms (WDO) activities between October 9, 2007 (the date of the Board's initial inspection) and October 27, 2008, without filing required activity statements and remitting required fees to the Board. In addition, respondent Hiatt Pest Control completed approximately 162 branch 2 general pest control services between April 29 and August 12, 2008, while it was uninsured.

10. The Board issued a Notice of Violation to respondent Hiatt Pest Control on October 27, 2008, for violations of sections 8516 and 8518 (failure to file reports with the

¹ All further statutory references are to the Business and Professions Code, unless otherwise stated.

Board for 924 inspections and 672 notices of work completions between August 27, 2005, and October 27, 2008), and for violations of sections 8690, 8691, and 8695 (engaging in the business of structural pest control while uninsured).

11. Sandra Guinto (Guinto), the office manager for respondent Hiatt Pest Control at the time of the October 2008 inspection, provided the Board with a declaration acknowledging that respondent Hiatt Pest Control was aware that it had not filed the required reports for approximately 1,596 WDO activities between August 27, 2005, and October 27, 2008, and that it had not paid the Board's \$4,943 fine. Guinto explained that respondent Hiatt Pest Control was unable to pay due to "economic difficulty." According to Guinto, respondent Hiatt Pest Control intended to pay the Board in monthly installments, beginning October 31, 2008.

12. On October 28, 2008, the Board issued citation number CF 09-23 to respondent Hiatt and respondent Hiatt Pest Control for violations of sections 8648 (false statement or representation concerning registered company's business) and 8651 (deviation from operations authorized by license or registration) and California Code of Regulations, title 16 (CCR), section 1999.5, subdivisions (a) and (f)(13) (false and misleading advertising). The Board ordered respondent Hiatt Pest Control to pay a fine of \$1,000 within 30 days of the receipt of the citation. Respondent Hiatt Pest Control and respondent Hiatt did not contest the citation. As of the May 25, 2010 hearing date, the fine had not been paid.

Matters Alleged in Aggravation against Respondent Hiatt Pest Control

13. On October 30, 2003, respondent Hiatt Pest Control paid a \$50 fine levied by the Office of the Orange County Agricultural Commissioner for its violations of section 8505.17, subdivision (c), for failure to submit monthly pesticide use reports for the months of June and July 2003. The notice of decision and order notes that respondent Hiatt Pest Control, on January 22, 2003, was given a letter of warning for not submitting a pesticide use report for the month of December 2002, and a notice of violation was issued, on May 21, 2003, for not submitting a pesticide use report for March 2003.

14. On January 6, 2004, respondent Hiatt Pest Control paid a \$100 fine levied by the Orange County Agricultural Commissioner for its violation of section 8505.17, subdivision (c), for failure to submit monthly pesticide use reports for the months of September, October, and November 2003.

15. On November 8, 2006, respondent Hiatt Pest Control paid a \$100 fine levied by the Los Angeles County Agricultural Commissioner for its violations of section 8505.17, subdivision (c), for failure to submit monthly pesticide use reports for June through December 2005, and for violation of Food and Agricultural Code section 15204, subdivision (a), for failure to register with Los Angeles County before performing work in the county.

Matters Alleged in Aggravation against Both Respondents Hiatt and Hiatt Pest Control

16. On November 15, 2006, as set forth in factual finding number 6, above, the Office of the Los Angeles County Agricultural Commissioner fined respondent Hiatt Pest Control \$151 for violation of Code section 8505.17, subdivision (c), for failure to submit monthly pesticide use reports for the months of February through July 2006. The evidence does not support the allegation that respondent Hiatt was also ordered by the Los Angeles County Agricultural Commissioner to pay the fine. As of the date of the hearing, respondent Hiatt Pest Control has not paid the \$151 fine.

17. On December 6, 2007, as set forth in factual finding number 7, above, the Board fined respondent Hiatt Pest Control \$4,943 for violation of Code sections 8516 and 8518. Respondent Hiatt was also named in the citation and ordered to pay the fine. As of the date of the hearing, the \$4,943 fine had not been paid by either respondent Hiatt Pest Control or respondent Hiatt.

18. On October 28, 2008, as set forth in factual finding number 12, above, the Board fined respondent Hiatt Pest Control \$1,000 for its violation of Code section 8648 and 8651 and CCR 1999.5, subdivisions (a) and (f)(13). Respondent Hiatt was also named in the citation and ordered to pay the fine. As of the date of the hearing, the \$1,00 fine had not been paid by either respondent Hiatt Pest Control or respondent Hiatt.

Matters Alleged in Aggravation against Respondent McDonald

19. Effective June 26, 1987, the license of McDonald Termite and Pest Control, a pest control business formerly operated by respondent McDonald, was revoked with the revocation stayed and the license placed on probation for two years following the Board's adoption of a proposed decision by an administrative law judge in case number 86-28. The allegations at issue in the case involved inspections and structural pest control work performed by the McDonald Termite and Pest Control business in 1985 and 1986 at a single residential property in Huntington Beach, California. Probation was successfully completed. Respondent McDonald credibly testified that his inexperience caused the action to be filed, that he learned from the experience, and that it was an isolated incident. Given the length of time that has transpired since the action, it is not considered a factor in aggravation in this case.

20. The Board alleged that respondent McDonald was ordered to pay a \$151 fine, as previously discussed in factual finding number 6, above. The notice of decision and order shows that the citation was issued to only respondent Hiatt Pest Control. The Board does not dispute respondent McDonald's assertion that he did not receive notice of the fine at the address he has on file with the Board. The evidence does not support the allegation that respondent McDonald was issued the citation and ordered to pay the \$151 fine. The nonpayment of the fine by respondent McDonald is therefore not a factor in aggravation against him in this case.

Respondents Hiatt and McDonald

21. Respondent McDonald credibly testified that he was not aware, before his receipt of the Accusation in this case, that respondent Hiatt Pest Control and respondent Hiatt had been cited for violations. The Board investigator corroborated that notices are sent to the address of record for the pest control company in violation, even when the qualifying operator has a different address on file with the Board. In this case, the citations, fines, and notices of violation were sent to the address of record for respondent Hiatt Pest Control. After learning of the violations alleged in this case, respondent McDonald immediately disassociated from respondent Hiatt Pest Control. Respondent McDonald has fully cooperated with complainant and acknowledges that he did not fulfill his responsibility as a Branch 2 qualifying manager of respondent Hiatt Pest Control to supervise the daily general pest control business of the company.

22. Respondent McDonald is 80 years old. He asserts that he retired from the pest control business in November 2009. According to Board records, however, his operator license does not expire until June 2011. Respondent McDonald has resided in Bass Lake, California, since 1991. He has known respondent Hiatt and his family for many years. The Hiatt family purchased the pest control business from McDonald. Respondent McDonald is upset about the violations that occurred in this case. He believes the case can be summarized as the result of economic difficulties experienced by respondent Hiatt while he was going through a divorce.

23. Respondent McDonald did not know that respondent Hiatt Pest Control was engaging in the structural pest control business without filing required inspection reports and notices of work completed between August 27, 2005, and October 27, 2008. He also did not know that respondent Hiatt Pest Control was operating its business during a 105-day period when its liability insurance coverage had lapsed between April 29, 2008, and August 12, 2008. However, as the Branch 2 qualifying manager of respondent Hiatt Pest Control, it was respondent McDonald's responsibility, pursuant to section 8610, subdivision (2)(c), to supervise the daily general pest control business of the company and "be available to supervise and assist all employees of the company" in accordance with the Board's regulations. Respondent McDonald did not fulfill his obligations as a qualifying manager of respondent Hiatt Pest Control. A 30-day suspension is sufficient discipline to impress upon respondent McDonald the importance of fulfilling his role as a qualifying manager. Should respondent McDonald choose to continue working in the structural pest control business after serving a 30-day suspension, there is no doubt that he will fulfill his obligations and that the public will be protected.

24. Respondent Hiatt has been working in the pest control business for approximately 25 years. He has fully cooperated with complainant concerning the allegations in this case. Respondent Hiatt asserts that he intends to pay the fines levied against him but

does not have the financial ability to do so. According to respondent Hiatt, his ex-wife, who was his office manager through the end of 2008, was responsible for filing reports with the Board. She did not make him aware that fines were owed, and that required reports and notices had not been filed with the Board. Respondent Hiatt contends that he was not aware that his insurance had lapsed when he performed pest control work between April and August 2008. Respondent Hiatt's testimony was credible concerning his lack of knowledge of the lapse in insurance coverage during the time respondent Hiatt Pest Control performed structural pest control work between April and August 2008. Respondent Hiatt's claim of lack of knowledge of the \$4,493 fine and the reason for it, however, is not supported by other reliable evidence. The office manager for respondent Hiatt informed the Board that respondent Hiatt, in October 2008, was aware of the violations and the imposition of the fine for the company's failure to file required inspection reports and work completion notices. Also, as the president and Branch 3 qualifying manager for respondent Hiatt Pest Control, respondent Hiatt was required to be aware and responsible for the daily business operations of the company. Respondent Hiatt would like to be able to continue in business. The pest control business is the only work he knows. He asks for an opportunity to "make things right."

25. No evidence was presented concerning any consumer complaints made against either respondent McDonald or respondent Hiatt.

26. There were no factual allegations made concerning the acts or omissions of respondent McDonald Pest Control.

Costs

27. The following are the reasonable costs of investigation and enforcement of this matter: Attorney General's charges in the amount of \$5,170.25 and Board Specialist costs in the amount of \$326.88, or a total of \$5,497.13.

28. Except as set forth in this Decision, all other allegations in the Accusation lack merit or constitute surplusage.

LEGAL CONCLUSIONS

Causes of Action Alleged against Respondent Hiatt Pest Control and Respondent Hiatt

1. Cause exists pursuant to Business and Professions Code sections 8516 and 8518 to discipline respondent Hiatt Pest Control's and respondent Hiatt's licenses because respondent Hiatt Pest Control and respondent Hiatt performed 115 Wood Destroying Pests and Organisms (WDO) activities between October 9, 2007, and October 27, 2008 without filing required activity statements and remitting required fees to the Board, as set forth in factual finding numbers 2 through 11.

2. Cause exists pursuant to Business and Professions Code section 8641 to discipline respondent Hiatt Pest Control's and respondent Hiatt's licenses because respondent Hiatt Pest Control and respondent Hiatt failed to comply with California Code of Regulations, title 16, section 1920, subdivision (d), by failing to comply with citations issued by the Board, as set forth in factual finding numbers 7, 12, 17, 18, and 24.

Causes of Action Alleged against Respondents Hiatt Pest Control, Hiatt, and McDonald

3. Cause exists pursuant to Business and Professions Code section 8695 to discipline respondent Hiatt Pest Control's, respondent Hiatt's, and respondent McDonald's licenses because respondents Hiatt Pest Control, Hiatt, and McDonald engaged in the business of structural pest control while there was a lapse in their liability insurance coverage between April 29, 2008, and August 12, 2008, as set forth in factual finding numbers 2 through 11.

4. Cause exists pursuant to Business and Professions Code section 8641 to discipline respondent Hiatt Pest Control's license because respondent Hiatt Pest Control failed to comply with Code section 8617, subdivision (f), which required the payment of a \$151 fine issued by the Los Angeles County Agricultural Commissioner, as set forth in factual finding number 6 and 16.

5. Cause does not exist pursuant to Code section 8641 to discipline respondents Hiatt's and McDonald's licenses for failure to comply with Code section 8617, subdivision (f), which required the payment of a \$151 fine issued by the Los Angeles County Agricultural Commissioner, because the citation was issued to respondent Hiatt Pest Control but not to respondents Hiatt or McDonald, individually, as set forth in factual finding numbers 6, 16, and 20.

Aggravating Factors Exist Only against Respondent Hiatt Pest Control and Respondent Hiatt

6. In aggravation, respondent Hiatt Pest Control and respondent Hiatt have been subject to multiple citations by the Orange County Agricultural Commissioner's Office, the Office of the Los Angeles County Agricultural Commissioner, and/or the Board, involving repeated failure to properly discharge the duties of a Board licensee, by reason of factual finding numbers 2 through 20.

Discipline under Code Sections 8624 and 8654

7. Cause exists pursuant to section 8654 to prohibit respondent Hiatt from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company, by reason of factual finding numbers 2 through 18, and legal conclusion numbers 1 through 6. Hiatt demonstrated over a significant period of time that

he is either unable or unwilling to comply with the business practices required under the Code. The record, however, did not establish that respondent Hiatt should be barred from working in the structural pest control trade. He did not lack good business practices in connection with his structural pest control activities, as set forth in factual finding number 25. Given the length of time that respondent Hiatt has responsibly served customers in the pest control trade, a 30-day suspension of his operator's license is sufficient discipline to protect the public. Respondent Hiatt should be permitted, after serving a 30-day suspension, to continue to practice his occupation as a pest control operator.

8. Cause exists pursuant to section 8624 to discipline the license of respondent McDonald, regardless of whether respondent McDonald had knowledge of or participated in the acts or omissions which constitute cause for discipline against respondent Hiatt Pest Control, by reason of factual finding numbers 2 through 23, and legal conclusion numbers 1 through 4. Given the length of time respondent McDonald has responsibly performed the duties of a structural pest control operator, and other factors previously stated, a 30-day suspension is sufficient discipline to protect the public and impress upon respondent McDonald his obligations as a Board licensee.

9. Cause exists pursuant to section 8654 to prohibit respondent McDonald from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company, during the time of any suspension imposed against him, by reason of legal conclusion numbers 1 through 4, and 8.

10. Cause exists pursuant to section 8624 to discipline respondent McDonald Pest Control's license during the time of any discipline imposed against respondent McDonald, by reason of legal conclusion number 1 through 4, 8, and 9.

Costs

11. Cause exists, pursuant to Business and Professions Code section 125.3, to order respondents to pay the Board's reasonable costs of investigation and adjudication in this matter, by reason of factual finding number 27 and legal conclusion numbers 1 through 9.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, an agency must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a

colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners, supra* at p. 45).

In this case, respondent Hiatt's license provided him with his sole source of livelihood. He had a subjective good faith belief in the merits of his position, used the hearing process in an effort to obtain a reduction in the severity of the discipline requested, and established that he currently has no financial ability to pay the costs. Complainant did not sustain one of the four causes of action alleged against respondent Hiatt.

Respondent McDonald is currently retired. He too had a subjective good faith belief in the merits of his position, and used the hearing process in an effort to obtain a reduction in the severity of the discipline requested. In addition, complainant did not sustain one of the two causes of action it alleged against respondent McDonald.

Therefore, though complainant's costs were reasonable, in light of the orders below, requiring respondents Hiatt and McDonald to pay complainant's costs would be unduly punitive.

12. Respondent Hiatt argued that by revoking his license and the license of respondent Hiatt Pest Control, the Board would be taking away his livelihood and harming his family, but this argument distorts the reality that it is the acts and omissions of respondents that have led to the circumstances in this matter, not the Board's actions.

13. All evidence presented in mitigation and rehabilitation has been considered. Despite this evidence, the order that follows is necessary for the protection of the public.

ORDER

1. Company Registration Certificate number PR 3295, issued to respondent Steven Hiatt Termite & Pest Control, Inc., is revoked.
2. Operator's License number OPR 9534, Branch 3, issued to respondent Steven J. Hiatt, is suspended for thirty days.
3. Respondent Steven J. Hiatt is prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company, unless and until he files a petition for reinstatement and the Board has approved the petition.

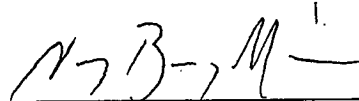
4. In the event respondent Steven J. Hiatt seeks to establish a company license or act as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company, he shall pay the Board the sum of \$5,497.13 in reimbursement for its costs of investigation and enforcement of this matter, or a lesser sum if the Board elects to reduce the amount of costs, at such time and in such manner as the Board, in its discretion, may direct.

5. Operator's License number OPR 8066, Branch 2, issued to respondent Robert Eugene McDonald, is suspended for thirty days, effective thirty days after the Board's adoption of this Decision.

6. Company Registration Certificate number PR 3092, issued to respondent Bob McDonald Pest Control, is suspended for thirty days, to be served concurrently with the thirty day suspension imposed upon respondent McDonald. Respondent Hiatt is to be removed as a partner from respondent Bob McDonald Pest Control.

7. Respondent Robert Eugene McDonald is prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the period of the thirty day suspension of his license.

DATED: June 24, 2010



Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GILLIAN E. FRIEDMAN, State Bar No. 169207
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2564
Facsimile: (213) 897-2804

FILED

Date 8/12/09 By Kelli Okuma

6 Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 2010-6

13 **STEVE HIATT TERMITE & PEST CONTROL, INC.**
Steven J. Hiatt, President/Branch 3 Qualifying Manager
14 Robert Eugene McDonald, Branch 2 Qualifying Manager
Brian Edward Brown, Secretary
15 Pamela Nash Hiatt, Vice President
12515 Floral Drive
Whittier, California 90601
Mailing Address:
16 10820 Beverly Boulevard, Suite A5, PMB #287
Whittier, California 90601

A C C U S A T I O N

17 Company Registration Certificate No. PR 3295,

18 **STEVEN J. HIATT**
12515 Floral Drive
Whittier, California 90601
20 Mailing Address:
10820 Beverly Boulevard, Suite A5, PMB #287
21 Whittier, California 90601

22 Operator's License No. OPR 9534,

23 **ROBERT EUGENE McDONALD**
12515 Floral Drive
24 Whittier, California 90601
Mailing Address:
25 10820 Beverly Boulevard, Suite A5, PMB #287
Whittier, California 90601

26 Operator's License No. OPR 8066,
27
28

1 **BOB McDONALD PEST CONTROL**
2 Robert Eugene McDonald, Partner/Qualifying Manager
3 Steven J. Hiatt, Partner
4 56341 Marina View Court
5 Bass Lake, California 93604
6 Mailing Address:
7 P.O. Box 171
8 Bass Lake, California 93604
9 Company Registration Certificate No. PR 3092,

Respondents.

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 Consumer Affairs.

Company Registration Certificate No. PR 3295

2. On or about June 11, 1998, the Board issued Company Registration Certificate Number PR 3295 in Branches 2 (general pest) and 3 (termite) to Steve Hiatt Termite & Pest Control, Inc. ("Respondent Steve Hiatt Termite & Pest Control, Inc."), with Steven J. Hiatt ("Respondent Hiatt") as president and Branch 3 qualifying manager, Robert Eugene McDonald ("Respondent McDonald") as Branch 2 qualifying manager, Brian Edward Brown as secretary, and Pamela Nash Hiatt as vice president. The company registration certificate was suspended on the dates indicated below and was reinstated on August 13, 2008.

<u>Date</u>	<u>Basis for Suspension</u>	<u>Status</u>
10/29/2001	Failure to maintain general liability insurance as required by Business and Professions Code ("Code") section 8690	Company registration certificate reinstated 11/05/2001 after posting general liability insurance
<u>Date</u>	<u>Basis for Suspension</u>	<u>Status</u>
11/30/2001	See above.	Company registration certificate reinstated 12/04/2001 after posting general liability insurance
01/02/2002	See above.	Company registration certificate reinstated 01/10/2002 after posting

1			general liability insurance
2	09/14/2007	See above.	Company registration certificate reinstated 11/05/2007 after posting general liability insurance
3			
4	09/28/2007	Failure to maintain a surety bond in the amount of \$4,000 as required by Code section 8697	Company registration certificate reinstated 11/05/2007 after posting a \$4,000 surety bond
5			
6	05/09/2008	Failure to maintain general liability insurance as required by Code section 8690	Company registration certificate reinstated 08/13/2008 after posting general liability insurance
7			

Operator's License No. OPR 9534

3. On or about May 14, 1996, the Board issued Operator's License Number OPR 9534 in Branch 3 to Respondent Hiatt, qualifying manager of Steve Hiatt Termite & Pest Control. On June 11, 1998, Respondent Hiatt became the Branch 3 qualifying manager for Respondent Steve Hiatt Termite & Pest Control, Inc. Respondent Hiatt's operator's license was suspended on the dates indicated below and will be expire on June 30, 2010, unless renewed.

<u>Date</u>	<u>Basis for Suspension</u>	<u>Status</u>
10/29/2001	Failure to maintain general liability insurance as required by Code section 8690	Operator's license reinstated 11/05/2001 after posting general liability insurance
11/30/2001	See above.	Operator's license reinstated 12/04/2001 after posting general liability insurance
01/02/2002	See above.	Operator's license reinstated 01/10/2002 after posting general liability insurance
09/14/2007	See above.	Operator's license reinstated 10/12/2007 after posting general liability insurance
05/09/2008	See above.	Operator's license reinstated 08/13/2008 after posting general liability insurance

Operator's License No. OPR 8066

4. On or about March 18, 1988, the Board issued Operator's License Number OPR 8066 in Branches 2 and 3 to Respondent McDonald, owner and qualifying manager of McDonald Termite & Pest Control. On November 21, 1988, Respondent's operator's license

1 was downgraded to include Branch 2 only. On January 31, 1990, Respondent disassociated as
 2 qualifying manager of McDonald Pest Control. On May 23, 1997, Respondent became partner
 3 and Branch 2 qualifying manager for Bob McDonald Pest Control. On June 11, 1998,
 4 Respondent became the Branch 2 qualifying manager for Respondent Steve Hiatt Termite & Pest
 5 Control, Inc. Respondent McDonald's operator's license was suspended on the dates indicated
 6 below and will expire on June 30, 2011, unless renewed.

<u>Date</u>	<u>Basis for Suspension</u>	<u>Status</u>
8 05/22/2000	Failure to maintain general liability insurance as required by Code section 8690	Operator's license reinstated 05/25/2000 after posting general liability insurance
10 10/29/2001	See above.	Operator's license reinstated 11/05/2001 after posting general liability insurance
12 11/30/2001	See above.	Operator's license reinstated 12/04/2001 after posting general liability insurance
14 01/02/2002	See above.	Operator's license reinstated 01/10/2002 after posting general liability insurance
16 09/14/2007	See above.	Operator's license reinstated 10/12/2007 after posting general liability insurance
18 05/09/2008	See above.	Operator's license reinstated 08/13/2008 after posting general liability insurance

20 **Company Registration Certificate No. PR 3092**

21 5. On or about May 23, 1997, the Board issued Company Registration
 22 Certificate Number PR 3092 in Branch 2 to Bob McDonald Pest Control with Respondent
 23 McDonald as partner and qualifying manager and Respondent Hiatt as Partner. The company
 24 registration certificate was suspended on the dates indicated below and was reinstated on August
 25 13, 2008.

<u>Date</u>	<u>Basis for Suspension</u>	<u>Status</u>
27 05/22/2000	Failure to maintain general liability insurance as required by Code section 8690	Company registration certificate reinstated 05/25/2000 after posting general liability insurance

1	11/29/2007	Failure to replace qualifying manager	Company registration certificate reinstated 10/15/2007
2			
3	06/25/2008	See above.	Company registration certificate reinstated 08/13/2008 with Respondent McDonald as qualifying manager
4			
5			

JURISDICTION

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

11 7. Code section 8625 states:

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

18 8. Code section 118, subdivision (b), states:

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

27 9. Code section 8624 states, in pertinent part:

28
 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

1 participated in, the prohibited act or omission.

2 10. Code section 8654 states:

3 Any individual who has been denied a license for any of the reasons
4 specified in Section 8568, or who has had his or her license revoked, or whose
5 license is under suspension, or who has failed to renew his or her license while it
6 was under suspension, or who has been a member, officer, director, associate,
7 qualifying manager, or responsible managing employee of any partnership,
8 corporation, firm, or association whose application for a company registration has
9 been denied for any of the reasons specified in Section 8568, or whose company
10 registration has been revoked as a result of disciplinary action, or whose company
11 registration is under suspension, and while acting as such member, officer,
12 director, associate, qualifying manager, or responsible managing employee had
13 knowledge of or participated in any of the prohibited acts for which the license or
14 registration was denied, suspended or revoked, shall be prohibited from serving as
15 an officer, director, associate, partner, qualifying manager, or responsible
16 managing employee of a registered company, and the employment, election or
17 association of such person by a registered company is a ground for disciplinary
18 action.

12 STATUTORY AND REGULATORY PROVISIONS

13 11. Code section 8505.17, subdivision (c), states:

14 Registered structural pest control companies shall prepare and submit to
15 the county agricultural commissioner a monthly report of all pesticides used
16 in that county. The report shall be on a form approved by the Director of
17 Pesticide Regulation and shall contain the name and registration number of each
18 pesticide, the amount used, and the number of applications made. The report
19 shall be submitted to the commissioner by the 10th day of the month following
20 the month of application. Each pesticide use report or combination of use
21 reports representing a registered structural pest control company's total county
22 pesticide use for the month shall have affixed thereto a pesticide use stamp
23 issued by the board in the denomination fixed by the board in accordance with
24 Section 8674 as the pesticide use report filing fee. The board shall provide for
25 the sale of these stamps and for the refund of moneys paid for stamps which are
26 returned to it unused. When a registered structural pest control company
27 performs no pest control during a month in a county in which it has given notice
28 pursuant to Section 15204 of the Food and Agricultural Code, the registered
company shall submit a use report stating this fact to the commissioner. No
pesticide use stamp is required on negative use reports.

12. Code section 8617 states, in pertinent part:

24 (a) The board or county agricultural commissioners, when acting pursuant
25 to Section 8616.4, may suspend the right of a structural pest control licensee or
26 registered company to work in a county for up to three working days or, for a
27 licensee, registered company, or an unlicensed individual acting as a licensee,
28 may levy an administrative fine up to one thousand dollars (\$1,000) or direct
the licensee to attend and pass a board-approved course of instruction at a cost
not to exceed the administrative fine, or both, for each violation of this
chapter or Chapter 14.5 (commencing with Section 8698), or any regulations
adopted pursuant to these chapters, or Chapter 2 (commencing with Section

1 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing
2 with Section 14101), or Chapter 7 (commencing with Section 15201) of Division
3 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those
4 chapters, relating to pesticides. However, any violation determined by the board
5 or the commissioner to be a serious violation as defined in Section 1922 of
6 Title 16 of the California Code of Regulations shall be subject to a fine of
7 not more than five thousand dollars (\$5,000) for each violation. Fines collected
8 shall be paid to the Education and Enforcement Account in the Structural Pest
9 Control Education and Enforcement Fund. Suspension may include all or part of
10 the registered company's business within the county based on the nature of the
11 violation, but shall, whenever possible, be restricted to that portion of a
12 registered company's business in a county that was in violation.

13

14
15 (c) Before a suspension action is taken, a fine levied, or a licensee is
16 required to attend and pass a board-approved course of instruction, the person
17 charged with the violation shall be provided a written notice of the proposed
18 action, including the nature of the violation, the amount of the proposed fine
19 or suspension, or the requirement to attend and pass a board-approved course of
20 instruction. The notice of proposed action shall inform the person charged with
21 the violation that if he or she desires a hearing before the commissioner
22 issuing the proposed action to contest the finding of a violation, that hearing
23 shall be requested by written notice to the commissioner within 20 days of the
24 date of receipt of the written notice of proposed action.

25

26 . . . If a hearing is not requested within the prescribed time, the
27 commissioner may take the action proposed without a hearing.

28

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

. . . .

(g) Once final action pursuant to this section is taken, no other
administrative or civil action may be taken by any state governmental agency for
the same violation. However, action taken pursuant to this section may be used
by the board as evidence of prior discipline, and multiple local actions may be
the basis for statewide disciplinary action by the board pursuant to Section
8620. A certified copy of the order of suspension or fine issued pursuant to
this section or Section 8662 shall constitute conclusive evidence of the
occurrence of the violation . . .

13. Code section 8516 states, in pertinent part:

. . . .

(b) No registered company or licensee shall commence work on a

1 contract, or sign, issue, or deliver any documents expressing an opinion or
2 statement relating to the absence or presence of wood destroying pests or
3 organisms until an inspection has been made by a licensed Branch 3 field
4 representative or operator. The address of each property inspected or upon which
5 work is completed shall be
6 reported on a form prescribed by the board and shall be filed with the board no later than
7 10 business days after the commencement of an inspection or upon completed work.

8 Every property inspected pursuant to this subdivision or Section 8518
9 shall be assessed a filing fee pursuant to Section 8674.

10 Failure of a registered company to report and file with the board the
11 address of any property inspected or work completed pursuant to Section 8518 or
12 this section is grounds for disciplinary action and shall subject the registered
13 company to a fine of not more than two thousand five hundred dollars
14 (\$2,500) . . .

15 14. Code section 8518 states, in pertinent part:

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

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

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

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

15. 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.

16. Code section 8690 states:

The board shall not issue any company registration under this chapter
unless the applicant shall have filed with the board on a form prescribed by the
board written evidence of an insurance policy approved by the board or a bond as
specified in this article, being in effect at the time of the issuance of the company

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

registration. This written evidence shall include a provision that the board shall be given a 10-day notice by the insurance company or bonding company should the policy or bond be canceled or changed during the policy or bond period in a manner as to affect the written evidence.

17. Code section 8691 states that "[n]o registered company shall engage in any of the practices for which it is required to be registered by this chapter unless it maintains such insurance policy or bond as specified in this article."

18. Code section 8692 states, in pertinent part:

An "insurance policy" as used in this article means a contract of liability insurance issued by an insurance company authorized to transact business in this state or one issued by a nonadmitted carrier whose activities in this state are controlled by the Surplus Line Association, which insures the policyholder against loss from legal liability for damages on property upon which work is being performed or has been completed, including third party losses, as a result of an accident or occurrence due to participation in any control, prevention, or repair activities which require a license under this chapter. The insurance policy shall provide minimum limits of twenty-five thousand dollars (\$25,000) for any one loss due to bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person or persons, and twenty-five thousand dollars (\$25,000) minimum for any one loss due to injury or destruction of property, including the loss of use thereof . . .

19. Code section 8695 states that "[t]he violation of any provision of this article is a misdemeanor and shall be grounds for the suspension or revocation by the board of the operator's license of the owner or qualifying manager or managers of the registered company and of the company registration."

20. California Code of Regulations, title 16, section ("Regulation") 1920 states, in pertinent part:

(a) Authority to Issue Citations and Fines:

(1) The Registrar or Deputy Registrar of the Board is authorized to issue citations which may contain an order of abatement or an administrative fine ("fine") for violations of the statutes contained in the Structural Pest Control Act (commencing with Business and Professions Code Section 8500) or the regulations adopted by the Board.

(2) Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statutes(s) or regulation(s) alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

....

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(d) Compliance with Orders of Abatement:

When a citation is not contested or if the citation is appealed and the person cited does not prevail, failure to comply with the order of abatement or to pay the fine in the citation within the time allowed by a licensee may result in disciplinary action being taken by the Board against the person cited, or where the cited person is unlicensed in appropriate judicial relief being taken against the person cited . . .

COST RECOVERY

21. 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.

STATEMENT OF FACTS

22. On or about November 15, 2006, pursuant to the Notice of Decision and Order in Case/File No. 06072015, the Los Angeles County Agricultural Commissioner ordered Respondents Steve Hiatt Termite & Pest Control, Inc., Hiatt, and McDonald to pay a fine of \$151 for violations of Code section 8505.17, subdivision (c), for failing to submit Monthly Pesticide Use Reports from February 2006, through July 2006. Respondents failed to pay the fine.

23. On or about December 6, 2007, the Board issued Citation No. CF 08-103 against Respondents Hiatt and Steve Hiatt Termite & Pest Control, Inc. for violations of Code sections 8516 and 8518 for failing to report and file with the Board the addresses of approximately 858 properties inspected and approximately 623 properties upon which structural pest control work was completed between the dates of August 27, 2005, and October 5, 2007. The Board ordered Respondents to pay a fine of \$4,943 for the violations within 30 days after receipt of the citation. Respondents failed to contest the citation or pay the \$4,943 fine.

24. On October 27, 2008, the Board conducted a records check at Respondent Steve Hiatt Termite & Pest Control, Inc.'s office located in Whittier, California. The purpose of the inspection was to determine whether Respondent was complying with the requisite reporting and filing requirements under Code sections 8516 and 8518, since the Board's last inspection.

1 The inspection revealed that Respondent continued to be out of compliance. Respondent failed
2 to submit an additional 115 Wood Destroying Pests and Organisms (WDO) activity statements
3 and remit the required fees to the Board between October 9, 2007 and October 27, 2008.

4 26. Between April 29, 2008, and August 12, 2008, Respondent Steve Hiatt
5 Termite & Pest Control, Inc.'s insurance had lapsed (a total of 105 days).

6 27. Between April 2008, and August 12, 2008, while uninsured, Respondent
7 completed approximately 162 branch 2 general pest control applications.

8 28. On or about October 28, 2008, the Board issued Citation No. CF 09-23
9 against Respondents Hiatt and Steve Hiatt Termite & Pest Control, Inc. for violations of Code
10 sections 8648 (false statement or representation concerning registered company's business) and
11 8651 (deviation from operations authorized by license or registration) and Regulation 1999.5,
12 subdivisions (a) and (f)(13) (false and misleading advertising). The Board ordered Respondents
13 to pay a fine of \$1,000 for the violations within 30 days after receipt of the citation.
14 Respondents failed to contest the citation or pay the \$1,000 fine.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Failure to Report Addresses of Properties Inspected**

17 **or Upon Which Structural Pest Control Work is Completed)**

18 29. Respondents Steve Hiatt Termite & Pest Control, Inc. and Hiatt are
19 subject to disciplinary action pursuant to Code section 8641 in that on and between October 9,
20 2007, and October 27, 2008, Respondents failed to comply with Code sections 8516 and 8518, in
21 that
22 Respondents failed to report and file with the Board the addresses of approximately 115
23 properties inspected and/or upon which structural pest control work was completed, as set forth
24 in paragraph 25 above.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Engaging in the Business of Structural Pest Control While Uninsured)**

27 30. Respondents Steve Hiatt Termite & Pest Control, Inc., Hiatt, and
28 McDonald are subject to disciplinary action pursuant to Code section 8695 in that on and

1 between April 29, 2008, and August 12, 2008, Respondents engaged in the business of structural
2 pest control while their liability insurance policy had lapsed, as set forth in paragraphs 26 and 27
3 above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Citations Issued by Board)**

6 31. Respondents Steve Hiatt Termite & Pest Control, Inc. and Hiatt are
7 subject to disciplinary action pursuant to Code section 8641 in that Respondents failed to comply
8 with Regulation 1920, subdivision (d), by failing to comply with citations issued by the Board,
9 as set forth in paragraphs 24 and 28 above.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Failure to Pay Fine Issued by the Los Angeles County Agricultural Commissioner)**

12 32. Respondents Steve Hiatt Termite & Pest Control, Inc., Hiatt, and
13 McDonald are subject to disciplinary action pursuant to Code section 8641 in that Respondents
14 failed to comply with Code section 8617, subdivision (f), as follows: Respondents failed to pay
15 the \$151 fine ordered or issued by the Los Angeles County Agricultural Commissioner, as set
16 forth in paragraph 23 above.

17 **MATTERS IN AGGRAVATION**

18 33. To determine the degree of penalty, if any, to be imposed on Respondents
19 Steve Hiatt Termite & Pest Control, Inc., Hiatt, and McDonald, Complainant alleges as follows:

20 **Respondent Steve Hiatt Termite & Pest Control, Inc.**

21 a. On October 30, 2003, Respondent paid a \$50 fine levied by the Orange
22 County Agricultural Commissioner for Respondent's violation of Code section 8505.17.

23 b. On January 6, 2004, Respondent paid a \$100 fine issued by the Orange
24 County Agricultural Commissioner for Respondent's violation of Code section 8505.17.

25 c. On or about November 15, 2006, pursuant to the Notice of Decision and
26 Order in Case/File No. 06072015, the Los Angeles County Agricultural Commissioner ordered
27 Respondent Steve Hiatt Termite & Pest Control, Inc. to pay a fine of \$151 for violating Code
28 section 8505.17, subdivision (c) (failure to submit Monthly Pesticide Use Reports). Respondent

1 failed to pay the fine, as set forth above.

2 d. On November 8, 2006, Respondent paid a \$100 fine levied by the Los
3 Angeles County Agricultural Commissioner for Respondent's violation of Code section 8505.17
4 and Food and Agriculture Code section 15204.

5 e. On December 5, 2007, Respondent was issued a \$4,943 fine by the Board
6 for Respondent's violation of Code sections 8516 and 8518. Respondent has failed to pay the
7 fine, as set forth above.

8 f. On October 28, 2008, Respondent was issued a \$1,000 fine by the Board
9 for Respondent's violation of Code sections 8648 and 8651 and Regulation 1999.5, subdivisions
10 (a) and (f)(13). Respondent has failed to pay the fine, as set forth above.

11 **Respondent Hiatt**

12 g. On or about November 15, 2006, pursuant to the Notice of Decision and
13 Order in Case/File No. 06072015, the Los Angeles County Agricultural Commissioner ordered
14 Respondent to pay a fine of \$151 for violating Code section 8505.17, subdivision (c).
15 Respondent failed to pay the fine, as set forth above.

16 h. On December 5, 2007, Respondent was issued a \$4,943 fine by the Board
17 for Respondent's violation of Code sections 8516 and 8518. Respondent has failed to pay the
18 fine, as set forth above.

19 i. On October 28, 2008, Respondent was issued a \$1,000 fine by the Board
20 for Respondent's violation of Code sections 8648 and 8651 and Regulation 1999.5, subdivisions
21 (a) and (f)(13). Respondent failed to pay the fine, as set forth above.

22 **Respondent McDonald**

23 j. On or about May 26, 1987, pursuant to the Proposed Decision of the
24 Administrative Law Judge adopted by the Board as its Decision in the disciplinary proceeding
25 titled *In the Matter of the Accusation Against: McDonald Termite and Pest Control*, Case No.
26
27
28

1 86-28, Operator's License No. OC 5246¹, issued to McDonald Termite and Pest Control, a
2 partnership, with Respondent McDonald as qualifying partner and Sally Ann McDonald as
3 partner, was revoked effective June 26, 1987. The revocation was stayed and McDonald Termite
4 and Pest Control was placed on probation for a period of two (2) years subject to certain
5 conditions.

6 k. On or about November 15, 2006, pursuant to the Notice of Decision and
7 Order in Case/File No. 06072015, the Los Angeles County Agricultural Commissioner ordered
8 Respondent to pay a fine of \$151 for violating Code section 8505.17, subdivision (c) (failure to
9 submit Monthly Pesticide Use Reports). Respondent failed to pay the fine, as set forth above.

10 OTHER MATTERS

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

16 35. Pursuant to Code section 8624, if Operator's License Number OPR 9534,
17 issued to Respondent Steven J. Hiatt, is suspended or revoked, the Board may suspend or
18 revoke Company Registration Certificate Number PR 3295, issued to Steve Hiatt Termite & Pest
19 Control, Inc., with Steven J. Hiatt as president and Branch 3 qualifying manager; and Company
20 Registration Certificate Number PR 3092, issued to Bob McDonald Pest Control, with Steven J.
21 Hiatt as partner.

22 36. Pursuant to Code section 8624, the causes for discipline established as to
23 Respondent Steve Hiatt Termite & Pest Control, Inc. likewise constitute causes for discipline
24 against Steven J. Hiatt regardless of whether Steven J. Hiatt had knowledge of or participated in
25 the acts or omissions which constitute causes for discipline against Respondent Steve Hiatt

26
27 1. On or about July 1, 1976, Operator's License No. OC 5246 was issued in Branches 1
28 (fumigation), 2, and 3 to McDonald Termite and Pest Control, with Respondent McDonald as Branch 2
and 3 qualifying partner, Sally Ann McDonald as co-partner, and DeForest McDonald as Branch 1
responsible natural person. The operator's license was canceled on March 18, 1988.

1 Termite & Pest Control, Inc.

2 37. Pursuant to Code section 8654, if discipline is imposed on Operator's
3 License Number OPR 9534, issued to Respondent Steven J. Hiatt, Steven J. Hiatt shall be
4 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
5 responsible managing employee for any registered company during the time the discipline is
6 imposed, and any registered company which employs, elects, or associates Steven J. Hiatt shall
7 be subject to disciplinary action.

8 38. Pursuant to Code section 8624, if Operator's License Number OPR 8066,
9 issued to Respondent Robert Eugene McDonald, is suspended or revoked, the Board may
10 suspend or revoke Company Registration Certificate Number PR 3295, issued to Steve Hiatt
11 Termite & Pest Control, Inc., with Robert Eugene McDonald as Branch 2 qualifying manager;
12 and Company Registration Certificate Number PR 3092, issued to Bob McDonald Pest Control,
13 with Robert Eugene McDonald as partner and qualifying manager.

14 39. Pursuant to Code section 8624, the causes for discipline established as to
15 Respondent Steve Hiatt Termite & Pest Control, Inc. likewise constitute causes for discipline
16 against Robert Eugene McDonald regardless of whether Robert Eugene McDonald had
17 knowledge of or participated in the acts or omissions which constitute causes for discipline
18 against Respondent Steve Hiatt Termite & Pest Control, Inc.

19 40. Pursuant to Code section 8654, if discipline is imposed on Operator's
20 License Number OPR 8066, issued to Respondent Robert Eugene McDonald, Robert Eugene
21 McDonald shall be prohibited from serving as an officer, director, associate, partner, qualifying
22 manager, or responsible managing employee for any registered company during the time the
23 discipline is imposed, and any registered company which employs, elects, or associates Robert
24 Eugene McDonald shall be subject to disciplinary action.

25 41. Code section 8622 provides, in pertinent part, that Respondents shall
26 submit an inspection fee of not more than \$125. If a reinspection is necessary, a commensurate
27 fee.

28

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 3295, issued to Steve Hiatt Termite & Pest Control, Inc.;

2. Revoking or suspending Operator's License Number OPR 9534, issued to Steven J. Hiatt;

3. Prohibiting Steven J. Hiatt 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 9534, issued to Steven J. Hiatt;

4. Revoking or suspending Operator's License Number OPR 8066, issued to Robert Eugene McDonald;

5. Prohibiting Robert Eugene McDonald 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 8066, issued to Robert Eugene McDonald;

6. Revoking or suspending Company Registration Certificate Number PR 3092, issued to Bob McDonald Pest Control;

7. Ordering Respondents Steve Hiatt Termite & Pest Control, Inc., Steven J. Hiatt, Robert Eugene McDonald, and Bob McDonald Pest Control 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

///

///

///


///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: 8-12-09



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

LA2009900742
30690295