

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

In the Matter of the Accusation Against:

ZAPPEN EXTERMINATING
JOSEPH W. ZAPPEN

Respondents.

Case No. 2009-37

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order 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 June 25, 2010.

IT IS SO ORDERED May 26, 2010



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE TULLENERS, State Bar No. 157464
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2578
Facsimile: (213) 897-2804

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:

13 **ZAPPEN EXTERMINATING**
511 South First Avenue, #476
Arcadia, CA 91006

14 946 East Sandra Street
Arcadia, CA 91006
15 **JOSEPH W. ZAPPEN**, Qualifying Manager,
Branch 3

16 Company Registration Certificate No. PR 3982

17 and

18 **JOSEPH W. ZAPPEN**
19 511 South First Avenue, No. 476
Arcadia, CA 91006

20 Operator's License No. OPR 10234, Branch 3

21 Respondents.
22

Case No. 2009-37

OAH No. L-2009091075

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

25 **PARTIES**

26 1. Kelli Okuma (Complainant) is the Registrar/Executive Officer of the
27 Structural Pest Control Board. She brought this action solely in her official capacity and is
28 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,

1 by Desiree Tulleners, Deputy Attorney General.

2 2. Respondents Joseph W. Zappen and Zappen Exterminating (Respondents)
3 are represented in this proceeding by attorney James Frederick, whose address is Goeltz &
4 Frederick, 504 W. Mission Avenue Suite 103, Escondido, CA 92025.

5 **Operator's License No. OPR 10234**

6 3. On or about June 8, 2000, the Structural Pest Board ("Board") issued
7 Operator's License No. OPR 10234 in Branch 3 to Joseph W. Zappen. The license was in full
8 force and effect at all times relevant to the matters herein, and will expire on June 30, 2011,
9 unless renewed.

10 **Company Registration Certificate No. PR 3982**

11 4. On or about June 26, 2001, the Board issued Company Registration No.
12 PR 3982 to Zappen Exterminating with Joseph W. Zappen, as the qualifying manager. The
13 license was in full force and effect at all times relevant to the matters herein.

14 ///

15 **JURISDICTION**

16 5. Accusation No. 2009-37 was filed before the Structural Pest Control
17 Board, Department of Consumer Affairs, and is currently pending against Respondents. The
18 Accusation and all other statutorily required documents were properly served on Respondents on
19 January 15, 2009. Respondents timely filed their Notice of Defense contesting the Accusation.
20 A copy of Accusation No. 2009-37 is attached as Exhibit A, and incorporated herein by
21 reference.

22 **ADVISEMENT AND WAIVERS**

23 6. Respondents have carefully read, fully discussed with counsel, and
24 understand the charges and allegations in Accusation No. 2009-37. Respondents have also
25 carefully read, fully discussed with counsel, and understand the effects of this Stipulated
26 Settlement and Disciplinary Order.

27 7. Respondents are fully aware of their legal rights in this matter, including
28 the right to a hearing on the charges and allegations in the Accusation; the right to be represented

1 by counsel at their own expense; the right to confront and cross-examine the witnesses against
2 them; the right to present evidence and to testify on their own behalf; the right to the issuance of
3 subpoenas to compel the attendance of witnesses and the production of documents; the right to
4 reconsideration and court review of an adverse decision; and all other rights accorded by the
5 California Administrative Procedure Act and other applicable laws.

6 8. Respondents voluntarily, knowingly, and intelligently waive and give up
7 each and every right set forth above.

8 CULPABILITY

9 9. Respondents admit the truth of each and every charge and allegation in
10 Accusation No. 2009-37.

11 10. Respondents agree that their Company Registration No. PR 3982 and
12 Operator's License No. OPR 10234, Branch 3, are subject to discipline and they agree to be
13 bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

14 CONTINGENCY

15 11. This stipulation shall be subject to approval by the Board. Respondents
16 understand and agree that counsel for Complainant and the staff of the Board may communicate
17 directly with the Board regarding this stipulation and settlement, without notice to or
18 participation by Respondents or their counsel. By signing the stipulation, Respondents
19 understand and agree that they may not withdraw their agreement or seek to rescind the
20 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
21 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
22 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
23 the parties, and the Board shall not be disqualified from further action by having considered this
24 matter.

25 12. The parties understand and agree that facsimile copies of this Stipulated
26 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
27 force and effect as the originals.

28 13. In consideration of the foregoing admissions and stipulations, the parties

1 agree that the Board may, without further notice or formal proceeding, issue and enter the
2 following Disciplinary Order:

3 **DISCIPLINARY ORDER**

4 *IT IS HEREBY ORDERED* that Company Registration Certificate No. PR 3982
5 and Operator's License No. OPR 10234, Branch 3, issued to Respondents Joseph W. Zappen
6 and Zappen Exterminating are revoked. However, the revocations are stayed, and Respondents
7 are placed on probation for an *additional period of two years beyond the term of probation* set
8 forth in the prior Accusation No. 2008-14, which was to expire on December 30, 2011, on the
9 following terms and conditions.

10 1. **Actual Suspension.** Company Registration Certificate No. PR 3982 and
11 Operator's License No. OPR 10234, Branch 3, issued to Respondents Joseph W. Zappen and
12 Zappen Exterminating are suspended for twenty (20) business days beginning the effective date
13 of the Decision and Order adopting this stipulation.

14 2. **Obey All Laws.** Respondents shall obey all federal, state and local laws,
15 and all laws and rules relating to the practice of structural pest control.

16 3. **Quarterly Reports.** Respondents shall file quarterly reports with the
17 Board during the period of probation. Failure to file any quarterly report during the time period as
18 required shall be considered a violation of probation.

19 4. **Tolling of Probation.** Should Respondent Zappen leave California to
20 reside outside this state, Respondent Zappen must notify the Board in writing of the dates of
21 departure and return. Periods of residency or practice outside the state shall not apply to
22 reduction of the probationary period for either respondent.

23 5. **Notice to Employees.** Respondents shall, upon or before the effective
24 date of this decision, post or circulate a notice to all employees involved in structural pest control
25 operations which accurately recite the terms and conditions of probation. Respondents shall be
26 responsible for said notice being immediately available to said employees. "Employees" as used
27 in this provision includes all full-time, part-time, temporary and relief employees and
28 independent contractors employed or hired at any time during probation.

1 6. **Posted Notice of Suspension.** Respondents' structural pest control
2 company, Zappen Exterminating, shall prominently post a suspension notice provided by the
3 Board of the Board's order of suspension at its principal office and each of its branch offices in a
4 place conspicuous and readable to the public. Said notice shall remain so posted during the
5 entire period of actual suspension.

6 7. **Completion of Probation.** Upon successful completion of probation,
7 Respondents' license/certificates will be fully restored.

8 8. **Violation of Probation.** Should Respondents violate probation in any
9 respect, the Board, after giving Respondents notice and an opportunity to be heard, may revoke
10 probation and carry out the disciplinary order which was stayed. If a petition to revoke probation
11 is filed against Respondents during probation, the Board shall have continuing jurisdiction until
12 the matter is final, and the period of probation shall be extended until the matter is final.

13 9. **Take and Pass Licensure Examination.** Respondent shall take and pass
14 the Structural Pest Control License examination currently required of new applicants for
15 Operator Branch III before December 30, 2010. If Respondent does not pass the examination by
16 December 30, 2010, Respondents' licenses shall be suspended until Respondent submits proof of
17 passing the examination to the Board.

18 10. **Courses - Ethics.** Respondent Joseph Zappen must complete at his own
19 expense, with a passing grade before December 30, 2010, a course in business ethics.
20 Respondent shall submit the syllabus for the course to the Board for prior approval before taking
21 the course. This course is in addition to the continuing education hours required for relicensure.
22 If Respondent does not pass the examination by December 30, 2010, Respondents' licenses shall
23 be suspended until Respondent submits proof of passing the examination to the Board. In
24 addition, if Respondent does not pass the course by December 30, 2010, the Board shall consider
25 this a violation of probation.

26 11. **Pre-Operator Courses.** Respondent must complete at his own expense,
27 with a passing grade before December 30, 2010, the Branch III Pre-Operator courses, to be
28 approved by the Board prior to taking the courses. If Respondent does not pass the courses by

1 December 30, 2010, the Board shall consider this a violation of probation.

2 12. **Costs Reimbursement.** Respondents shall pay to the Board, pursuant to
3 Business and Professions Code section 125.3, the cost of investigation and enforcement in this
4 matter in the amount of \$5,000. Respondents shall be permitted to pay these costs pursuant to a
5 payment plan approved by the Board with the payment to be completed by January 1, 2012. All
6 costs for the prior disciplinary case in Accusation No. 2008-14 must also be paid by January 1,
7 2012. Failure to make a timely payment according to the payment schedule, and/or failure to
8 complete payment of costs recovery, shall constitute a violation of probation, which may subject
9 Respondents' licenses to outright revocation.

10 13. **Random Inspections.** Respondents shall reimburse the Board for one (1)
11 random inspection per quarter by Board specialists during the period of probation, not to exceed
12 \$125 per inspection.

13 14. **Submission of Notices of Work Completed.** In addition to condition 13
14 above, Respondent shall provide the Board with a copy of each and every Notice of Work
15 Completed issued during the period of probation within ten (10) days of the date of the notice for
16 the Board's review, together with the corresponding inspection report. The Board specialists
17 shall randomly inspect any and all of the work set forth in these reports during the period of
18 probation and Respondent agrees to reimburse the Board for these inspections not to exceed \$125
19 per inspection.

20 15. **Reimbursement to Consumer.** Respondents have provided proof of
21 reimbursement to the consumer Lily Liu.

22 16. **Prohibited from Serving as Officer, Director, Associate, Partner or**
23 **Qualifying Manager.** Respondent Zappen is prohibited from serving as an officer, director,
24 associate, partner, qualifying manager or branch office manager of any other registered company
25 during the period that discipline is imposed on Company Registration Certificate No. PR 3982.

26 ///

27 ///

28 ///

1 17. **No Interest In Any Registered Company.** Respondents shall not have
 2 any legal or beneficial interest in any other company currently or hereinafter registered by the
 3 Board.

ACCEPTANCE

4 We have carefully read the above Stipulated Settlement and Disciplinary Order
 5 and have fully discussed it with our attorney, James Frederick. We understand the stipulation
 6 and the effect it will have on our Structural Pest Control license/certificates. We enter into this
 7 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
 8 to be bound by the Decision and Order of the Structural Pest Control Board.

9 DATED: 3-9-10

11 *Joseph W. Zappen*
 12 JOSEPH W. ZAPPEN
 13 Respondent

14 *Zappen Exterminating*
 15 ZAPPEN EXTERMINATING
 16 Respondent

17
 18
 19 I have read and fully discussed with Respondent Joseph W. Zappen and Zappen
 20 Exterminating the terms and conditions and other matters contained in the above Stipulated
 21 Settlement and Disciplinary Order. I approve its form and content.

22 DATED: 3-9-10

23 *James L. Frederick*
 24 JAMES L. FREDERICK, ESQ.
 25 Attorney for Respondents

26 ///
 27 ///
 28 ///

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

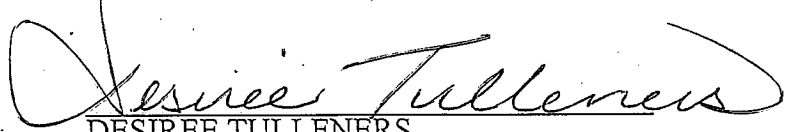
ENDORSEMENT

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

DATED: March 9, 2010

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

GREGORY J. SALUTE
Supervising Deputy Attorney General



DESIREE TULLENERS
Deputy Attorney General
Attorneys for Complainant

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE A. TULLENERS, State Bar No. 157464
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2578
6 Facsimile: (213) 897-2804
7 Attorneys for Complainant

FILED

Date 1/7/09 By *Kelli Okuma*

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

11 In the Matter of the Accusation Against:
12 **ZAPPEN EXTERMINATING**
511 South First Avenue, No. 476
13 Arcadia, California 91006
14 946 East Sandra Street
Arcadia, California 91006
15 **JOSEPH W. ZAPPEN**, Qualifying Manager
Branch 3
16 Company Registration Certificate No. PR 3982
17
and
18 **JOSEPH W. ZAPPEN**
19 511 South First Avenue, No. 476
Arcadia, California 91006
20 Operator's License No. OPR 10234, Branch 3
21 Respondents.

Case No. 2009-37
ACCUSATION

23 Kelli Okuma ("Complainant") alleges:

24 **PARTIES**

25 1. Complainant brings this Accusation solely in her official capacity as the
26 Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of
27 Consumer Affairs.

28 ///

1 **Company Registration Certificate No. PR 3982**

2 2. On or about June 26, 2001, the Board issued Company Registration
3 Certificate No. PR 3982 ("certificate"), to Zappen Exterminating ("Respondent Zappen
4 Exterminating") with Joseph W. Zappen as the qualifying manager. On June 4, 2004, the
5 certificate was suspended due to the cancellation of the company registration bond. On June 29,
6 2004, the certificate was reinstated after posting the \$4,000 company registration bond. On
7 January 23, 2006, the certificate was suspended due to the cancellation of the company
8 registration bond. On March 9, 2006, the certificate was reinstated after posting a \$4,000
9 company registration bond. On August 1, 2006, the certificate was suspended due to the
10 cancellation of the company registration bond. On August 31, 2006, the certificate was
11 reinstated after posting the \$4,000 company registration bond. The license was in full force and
12 effect at all times relevant to the matters herein, and will expire on June 30, 2035, unless
13 renewed.

14 **Operator's License No. OPR 10234**

15 3. On or about June 8, 2000, the Board issued Operator's License No. OPR
16 10234 in Branch 3 ("license"), to Joseph W. Zappen ("Respondent Zappen"). On
17 August 18, 2000, Operator's License No. OPR 10234 became the qualifying manager in Branch
18 3 for Merit Termite and Pest Control, Lytle Creek, California. On October 30, 2000, Operator's
19 License No. OPR 10234 disassociated from Merit Termite and Pest Control. On June 26, 2001,
20 Operator's License No. OPR 10234 became the owner and qualifying manager in Branch 3 for
21 Zappen Exterminating, in Arcadia, California. The license was in full force and effect at all
22 times relevant to the charges brought herein, and will expire on June 30, 2011, unless renewed.

23 **JURISDICTION**

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

28 ///

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

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 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.”

8. Code section 118, subdivision (b), provides, in pertinent part, that the

expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

///
///
///

1 hundred twenty-five dollars (\$125) for each property inspected. If a subsequent
2 reinspection is necessary, pursuant to the board's review of the new original report or
3 notice or both, a commensurate reinspection fee shall also be charged. If the board's
4 authorized representative makes no determination or determines the property is in
5 compliance, no inspection fee shall be charged.

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

12 11. Code section 8635 states:

13 "Departure from, or disregard of, plans or specifications in the performance of
14 structural pest control work in any material respect, without consent of the owner or his
15 duly authorized representative, is a ground for disciplinary action."

16 12. Code section 8636 states:

17 "Disregard and violation of the buildings laws of the state, or of any of its political
18 subdivisions, or of the safety laws, labor laws, health laws, or compensation insurance
19 laws of the state relating to the practice of structural pest control is a ground for
20 disciplinary action."

21 13. Code section 8641 states:

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

27 REGULATORY PROVISIONS

28 14. California Code of Regulations, title 16, section 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."

///

///

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

15. California Code of Regulations, title 16, section 1990, states:

“(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:

.....

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

COST RECOVERY/RESTITUTION

16. 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.

375 PUDDINGSTONE DRIVE, SAN DIMAS, CALIFORNIA

17. On or about July 22, 2007, Respondents inspected the premises at 375 Puddingstone, San Dimas, California (“the property”), for escrow purposes. That same day, Respondents issued Wood Destroying Pests and Organisms Report No. 4214, using the company name Zappen Exterminating, with a business address of 511 South First Avenue, Suite 476, Arcadia, California. Respondents reported finding drywood termite infestation, inaccessible areas, and drywood termite damage. Respondents recommended microwave treatments, covering and removing all evidence of drywood termites, further inspection and repair, reinforce, and patch damage. For long term residual treatment, Respondents further recommended treatment, mist and/or foam infested and adjacent wood members with a toxicant agent (Timbor), for the control and elimination of drywood termites.

18. On or about September 30, 2007, Respondents issued a Standard Notice of Work Completed and Not Completed. The report certified that the corrective work recommendation in Inspection Report No. 4214, relating to drywood termites had been

1 completed in accordance with the Board's rules and regulations, and that the property was free
2 and clear of active infestations and infections in visibly accessible areas.

3 19. On October 3, 2007, escrow closed on the property.

4 20. On or about November 11, 2007, Advantage Termite Control of Anaheim,
5 Inc. (Advantage) performed an inspection of the property at the request of the new property
6 owners. On the same day, Advantage issued Wood Destroying Pests and Organisms Inspection
7 Limited Report No. 39569, which consisted of four findings and recommendations. Advantage
8 reported finding evidence of drywood termites in the eave structure, decks, interior ceilings and
9 garage; evidence of drywood termite damage in the garage, decks, interior and ceiling; evidence
10 of fungus damage or dryrot in garage, decks and eaves; and evidence of earth to wood contact in
11 the deck. Advantage recommended fumigating the house, garage, and/or decks for the
12 elimination of drywood termites. Advantage further recommended employing a licensed
13 contractor to remove and replace damage or call for an estimate, and breaking contact between
14 the wood members of the deck and the soil.

15 21. On or about January 30, 2008, the Board received a complaint from the
16 property owner, Lily Liu, alleging that Respondents failed to kill the termites and fix the damage.

17 22. On February 21, 2008, respondents were given notice of the complaint and
18 given ten days to respond to the Board.

19 23. On or about April 21, 2008, a specialist from the Board inspected the
20 property. On May 5, 2008, the specialist issued a Report of Findings directing Respondent to
21 bring the property into compliance by correcting the items described in the Report of Findings
22 and to submit a corrected inspection report and notice of work completed and not completed to
23 the Board within thirty (30) calendar days from receipt of the notice.

24 24. Between on or about May 5, 2008 and July 16, 2008, Respondents tried to
25 bring the property into compliance with the Report of Findings by completing work on the
26 property.

27 25. On July 16, 2008, a specialist from the Board reinspected the property at
28 the request of the property owner Liu, and found that Respondents had failed to bring the

1 property into the compliance with the Report of Findings. On July 24, 2008, the specialist
2 notified Respondents that not all the work had been done.

3 26. On or about August 21, 2008, Respondents informed the Board specialist
4 that an engineer and a permit was required for the work on the deck. Respondents did not retain
5 an engineer or obtain a permit for the work on the deck.

6 27. Between on or about July 24, 2008, and September 11, 2008,
7 Respondents failed to complete the work.

8 **FIRST CAUSE FOR DISCIPLINE**

9 *(Failure to Comply with Codes and Regulations - Improper Inspection)*

10 28. Respondents are subject to discipline under Code section 8641 in
11 conjunction with California Code of Regulations, title 16, section 1990(a)(4) for failing to
12 comply with the following provisions of Code section 8516:

13 **Subdivision (b)(7)**

14 a. Regarding the inspection report dated September 30, 2007, Respondents
15 failed to report the decay fungi damage and /or all of the drywood termite damage at the large
16 garage door, eaves, siding, decks and beams.

17 **SECOND CAUSE FOR DISCIPLINE**

18 *(Disregard and Violation of Building Laws)*

19 29. Respondents subject to discipline under Code section 8641, in that
20 Respondents failed to comply with Code section 8636, by failing to obtain a building permit
21 which was required for the work completed at the attached decks.

22 **THIRD CAUSE FOR DISCIPLINE**

23 *(Workmanship)*

24 30. Respondents are subject to discipline under Code section 8641, in that
25 Respondents failed to comply with California Code of Regulations, title 16, section 1937.14 by
26 failing to perform the repairs at the property in a good and workmanlike manner in the following
27 respects:

28 ///

- 1 a. Respondents failed to patch and replace the areas of extensive damage.
2 b. Respondents failed to repair the decay fungi damage and drywood termite
3 damage that exists adjacent and adjoining the patched and replaced areas.
4 c. Respondents failed to nail deck boards and installed boards that serve no
5 purpose.
6 d. The patching material used is failing, and the actual patching is
7 substandard.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 *(Failure to Comply with Code - Noncompliance with Notice Issued by the Board)*

10 31. Respondents are subject to discipline under Code section 8641, in that
11 Respondent failed to comply with Code section 8622 by failing to bring the property into
12 compliance with the Board's Report of Findings within 30 days of Respondents' receipt of the
13 report. Respondents also failed to submit a new original report or completion notice.

14 **MATTERS IN AGGRAVATION**

15 32. To determine the degree of penalty, if any, to be imposed on Respondent,
16 complainant alleges:

17 a. In a Decision and Order effective December 3, 2008, *In the Matter of the*
18 *Accusation Against Zappen Exterminating; Joseph W. Zappen*, Case No. 2008-14, Respondents'
19 Company Registration Certificate No. PR 3982 and Operator's License No. OPR 10234, Branch
20 3, were revoked, stayed and placed on three (3) years probation on certain terms and conditions,
21 with ten (10) business days actual suspension for violations identical to those set forth above. A
22 true and correct copy of the Decision and Order, Stipulated Settlement and Disciplinary Order,
23 and Accusation in Case No. 2008-14 are attached hereto as Exhibit A, and incorporated by
24 reference as though fully set forth herein.

25 b. On November 29, 2005, the Company Registration Certificate No. PR
26 3982 paid a \$50 fine levied by the Los Angeles County Agricultural Commissioner for a
27 violation of Code section 8505.17.

28 ///

1 c. On July 7, 2008, Respondent Zappen Exterminating's Company
2 Registration Certificate No. PR 3982 paid a \$50 fine levied by the Los Angeles County
3 Agricultural Commissioner on July 25, 2006, for a violation of Code section 8505.17.

4 OTHER MATTERS

5 33. Code section 8620 provides, in pertinent part, that a respondent may
6 request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of
7 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request
8 must be made at the time of the hearing and must be noted in the proposed decision. The
9 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

10 34. Pursuant to Code section 8624, if Operator License No. OPR 10234,
11 issued to Respondent Zappen is suspended or revoked, the Board may suspend or revoke
12 Company Registration Certificate No. PR 3982, issued to Respondent Zappen Exterminating
13 with Joseph W. Zappen, as the qualifying manager.

14 35. Pursuant to Code section 8624, the causes for discipline established as to
15 Respondent Zappen Exterminating likewise constitute causes for discipline against Respondent
16 Zappen regardless of whether he had knowledge of or participated in the acts or omissions which
17 constitute causes for discipline against Respondent Zappen Exterminating.

18 36. Pursuant to Code section 8654, if discipline is imposed on Operator's
19 License No. OPR 10234, issued to Respondent Zappen, then Joseph W. Zappen shall be
20 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
21 responsible managing employee for any registered company during the time the discipline is
22 imposed, and any registered company which employs, elects, or associates Joseph W. Zappen
23 shall be subject to disciplinary action.

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

27 ///

28 ///

1 PRAYER

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

4 1. Revoking or suspending Company Registration Certificate No. PR.3982,
5 issued to Zappen Exterminating;

6 2. Revoking or suspending Operator's License No. OPR 10234, issued to
7 Joseph W. Zappen;


8 3. Prohibiting Joseph W. Zappen from serving as an officer, director,
9 associate, partner, qualifying manager or responsible managing employee of any registered
10 company during the period that discipline is imposed on Operator's License No.
11 OPR 10234, issued to Joseph W. Zappen;

12 4. Ordering Zappen Exterminating and Joseph W. Zappen to pay the
13 Structural Pest Control Board the reasonable costs of the investigation and enforcement of this
14 case, pursuant to Code section 125.3; and,

15 5. Taking such other and further action as deemed necessary and proper.

16 DATED: 1/7/09

17
18
19
20
21
22
23
24
25
26
27
28


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