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

In the Matter of the Accusation Against: CB TERMITE CONTROL, Branch 3 VICTORIA MARTINEZ, Owner/President Company Registration Certificate No. PR 6410 RICARDO G. RANGEL, Qualifying Manager CB TERMITE CONTROL Operator's License No. OPR 11992 Field Representative's License No. FR 45757 Respondents.	Case No. 2012-48 OAH No. 2013090088 ORDER OF DECISION

DECISION

The Proposed Decision of James Ahler, Administrative Law Judge, dated February 25, 2014, in San Bernardino, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c) (2) (c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 3, paragraph number 3, "Richard" is stricken and replaced with "Ricardo".

2. On page 4, under Field Representative's License No. FR 45757:, "License No. OPR FR 45757" is stricken and replaced with "License No. FR 45757".

3. On page 5, paragraph number 7, "12301 Cloudburst" is stricken and replaced with "12302 Cloudburst".

4. On page 26, paragraph number 24, "section 1235.3" is stricken and replaced with "section 125.3".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Consumer Affairs, State of California.

This Decision shall become effective on May 2, 2014.

IT IS SO ORDERED April 2, 2014.

FOR THE STRUCUTRAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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STRUCTURAL PEST CONTROL BOARD
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In the Matter of the Accusation Against: CB TERMITE CONTROL, Branch 3 VICTORIA MARTINEZ, Owner/President Company Registration Certificate No. PR 6410 RICARDO G. RANGEL, Qualifying Manager CB TERMITE CONTROL Operator's License No. OPR 11992 Field Representative's License No. FR 45757 Respondents.	Case No. 2012-48 OAH No. 2013090088

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 28, 2014, in San Bernardino, California.

Christina Thomas, Deputy Attorney General, Department of Justice, State of California, represented complainant, the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer Affairs, State of California.

Respondent Victoria Martinez, the owner of CB Termite Control, represented herself and CB Termite Control. She was present throughout the administrative proceeding.

Respondent Ricardo G. Rangel, the Qualifying Manager of CB Termite Control, represented himself and assisted Ms. Martinez in the representation of CB Termite Control. He was present throughout the administrative proceeding.

The matter was submitted on January 28, 2014.

SUMMARY

In June 2010, Red Carpet Realty hired CB Termite Control to conduct a termite inspection of a Moreno Valley home that was in escrow. CB Termite issued an inspection report, made certain repairs, and issued a supplemental report representing that various repairs were completed. That report did not contain certain required information and some of the repairs referred to in the report were not completed as represented. In March 2011, CB Termite conducted another inspection and determined that additional repairs were required. When those repairs were not completed, the homeowner filed a complaint with the Structural Pest Control Board. Following an investigation, the Board's specialist determined, among other matters, that some repair work had not been completed, that other repair work did not meet accepted trade standards, and that required information had not been provided to the Board.

Respondents admitted that some reports did not meet applicable legal requirements, that some repair work was not finished, and that some repair work did not meet industry standards. Respondents claimed that the two employees who were responsible for the Moreno Valley project lied to respondents about the project's status, that respondents failed to discover the employee misrepresentations, and that respondents' subsequent efforts to provide repairs were thwarted by the homeowner who refused to provide them with reasonable access to her home. CB Termite has been in business for a long time and there is no history of any formal discipline having been imposed. Notwithstanding the violations established in this case, a pattern of shoddy and substandard pest control practices was not established.

Cause exists to impose administrative discipline. The disciplinary order set forth herein is consistent with the level of discipline recommended in the Board's disciplinary guidelines. Imposing a revocation of respondents' Branch 3 license, staying the revocation and placing the license on three years probation with standard and special terms and conditions of probation will adequately protect the public.

FACTUAL FINDINGS

Overview

1. Lenders in most California real estate transactions require the completion of wood destroying pest and organism reports before the close of escrow. The Structural Pest Control Board licenses the individuals and companies who perform such inspections, apply pesticides, provide structural repairs, and correct underlying conditions. A Branch 3 (termite control) license is required to engage in this kind of inspection and repair work.

When a Branch 3 licensee reports infestation by wood destroying pests or organisms, the licensee must make an appropriate recommendation for their extermination. Conditions

deemed likely to lead to infestation or infection must be identified and reported. Areas that are not inspected because of inaccessibility must be identified.

A Branch 3 licensee must prepare and deliver a written inspection report, on a form approved by the Board, to the person requesting the inspection or that person's agent within ten business days of an inspection. The licensee must advise the person ordering the report of the availability of a "separated report" that separately identifies and details each recommendation for corrective measures.

When a Branch 3 licensee completes repair work specified in a contract, the licensee must prepare, on a form prescribed by the Board, a Standard Notice of Work Completed and Not Completed. The licensee must furnish a copy of that notice to the property owner or to the property owner's agent within ten working days after the work is completed.

A Branch 3 licensee must report to the Board, on a form prescribed the Board, the address of each property where an inspection or repair work was completed. That report must be filed with the Board no later than ten business days after the commencement of an inspection or upon the completion of work.

Victoria Martinez

2. Victoria Martinez (Ms. Martinez) was born in Mexico in 1971. She came to the United States in 1987. She graduated from El Rancho High School in Pico Rivera a few years after settling in California. After graduating from high school, she immediately went to work as a secretary for Black J Exterminating Corporation in La Habra.

Two years later, Ms. Martinez became involved in the operation of CB Termite, Inc., and CB Termite Control, Inc. Ultimately, Ms. Martinez became licensed in her individual capacity under the fictitious business name of CB Termite Control (CB Termite).

CB Termite Control

3. On December 7, 2011, the Board issued Company Registration Certificate No. PR 6410 in Branch 3 to CB Termite Control. Ms. Martinez was identified as President and owner of CB Termite; Richard G. Rangel was identified as its Qualifying Manager.

There is no history of any formal discipline having been imposed by the Board against Company Registration Certificate No. PR 6410.

Ricardo G. Rangel

4. Ricardo G. Rangel (Mr. Rangel) has also been involved in the pest control industry most of his adult life.

Operator's License No. OPR 11992: On March 3, 2010, the Board issued Operator's License No. OPR 11992 in Branch 3 to Mr. Rangel as Qualifying Manager of CB Termite Control, Inc.

On December 7, 2011, Mr. Rangel disassociated his operator's license from CB Termite Control, Inc., and became the Qualifying Manager of CB Termite. He continues to hold that position. Mr. Rangel's operator's license expires on June 30, 2015, unless renewed.

There is no history of any formal discipline having been imposed by the Board against Operator's License No. OPR 11992.

Field Representative's License No. FR 45757: On July 20, 2010, the Board issued Field Representative's License No. OPR FR 45757 in Branch 2 to Mr. Rangel, an employee of CB Termite Control, Inc. On December 7, 2011, the license was placed on inactive status. On January 11, 2012, the field representative's license reflected Mr. Rangel's employment with Kal Fume, Inc. Mr. Rangel's field representative's license is currently in effect and is renewed through June 30, 2016.

There is no history of any formal discipline having been imposed by the Board against Field Representative's License No. FR 45757.

Jurisdictional Matters

5. On April 10, 2012, the Registrar/Executive Officer of the Board signed the accusation. The accusation alleged that in connection with licensed pest control services at residential real property located on Cloudburst Trail, Moreno Valley, respondents, and each of them, failed to comply with certain regulations (first cause for discipline); failed to timely file required activity reports (second cause for discipline); failed to issue a proper separated inspection report (third cause for discipline); failed to make proper findings and recommendations (fourth cause for discipline); failed to include required information in reports (fifth cause for discipline); failed to correct items described in a report of findings (sixth cause for discipline); failed to obtain a business license and building permit as required by the City of Moreno Valley (seventh cause for discipline); and failed to meet accepted trade standards (eighth cause for discipline). Other matters were alleged to be disciplinary considerations.

The accusation was served on respondents, each of whom timely filed a notice of defense.

On January 28, 2014, the disciplinary record was opened; sworn testimony was provided; documentary evidence was received; official notice was taken of the Board's disciplinary guidelines; closing argument was given; the record was closed; and the matter was submitted.

The Cloudburst Trail Project

6. The facts of this matter are limited to the Cloudburst Trail project in Moreno Valley. Respondents' stipulation and other credible evidence established the following factual matters.

7. In spring 2010, a prospective homeowner, TW, made an offer to purchase a home at 12301 Cloudburst Trail. By May 2010, the home was in escrow. Red Carpet Real Estate (Red Carpet) represented one of the parties to the real estate transaction.

8. On May 13, 2010, De Anza Termite & Pest Control (De Anza) performed a wood destroying organism inspection (WDO inspection) at Red Carpet's request. De Anza issued a "complete," "separated" Wood Destroying Pests and Organisms Inspection Report for escrow purposes. De Anza's report contained 13 findings and recommendations and several notes.

9. On June 1, 2010, at Red Carpet's request, CB Termite performed a WDO inspection after which it issued a "complete," "separated" inspection report for escrow purposes. Mr. Rangel performed the inspection on behalf of CB Termite. His inspection report contained 14 findings and recommendations and several notes.

Section I findings identified surface fungus and decay fungi damage at the garage, evidence of drywood termites at the patio and balcony, decay fungi damage at the balcony, termite damaged wood at the patio, decay fungi at the patio and balcony, and decay fungi and decay fungi damage at the exterior. The Section I recommendations included scraping and chemically treating the decay fungi, replacing decay fungi damaged wood as necessary, chemically treating the drywood termites, removing or covering the accessible evidence of infestation, and replacing termite damaged wood as necessary. The report contained a cost estimate of $3,720.

The inspection report did not contain required Property Owner/Party of Interest information.

The decay fungi and decay fungi damage findings in the report did not identify excessive moisture conditions as being responsible for the infections, and the report's recommendations did not contain a recommendation to correct the excessive moisture responsible for the infections. There were no Section II or further inspection findings and recommendations.

10. On June 7, 2010, CB Termite issued a Standard Notice of Work Completed and Not Completed (known as a completion notice) for the Moreno Valley home, certifying that all recommendations in the June 1, 2010 inspection report were completed for a total cost of $3,720.

The buyer of the home, TW, paid $3,720 to escrow for the work purportedly performed by CB Termite. Escrow closed.

11. Before June, 7, 2010, two CB Termite employees began repairs at the Moreno Valley home. During those repairs, one employee fell from the roof and was injured. Some repairs identified in CB Termite's WDO inspection report were not completed even though the employees told Ms. Martinez and Mr. Rangel that all of the repairs had been completed. Neither Ms. Martinez nor Mr. Rangel inspected the project before CB Termite issued the completion notice. It is likely that the homeowner did not notify Ms. Martinez or Mr. Rangel about the employees' failure to complete the repair work due to her desire to close escrow.

12. On March 17, 2011, at TW's request, CB Termite performed another WDO inspection, after which it issued a "supplemental," "separated" inspection report. Mr. Rangel prepared that report. The report contained three findings and recommendations and contained a note. Section I findings identified decay fungi damage within the roof sheathing and fascia board. Section I recommendations included replacement of the decay fungi damage as necessary, and specifically stated that roofing repairs had to be made by a licensed tradesman after CB Termite replaced damaged sheathing and fascia. The inspection report indicated that the cost to repair the decay fungi damage was under warranty.

The "Section Unknown" finding identified rusted nails as the cause of the problem, with a recommendation that those rusted nails be replaced with galvanized nails.[1]

13. The March 17, 2011, inspection report did not contain required Property Owner or Party of Interest information; it failed to identify where the inspection tag was posted; the decay fungi and damage findings did not identify excessive moisture as the source of the infections; and the recommendations did not contain a recommendation to correct the excessive moisture that was responsible for the infection.

The March 17, 2011, inspection report did not include a "supplemental" report statement. The inspection report was not, itself, a "supplemental" inspection report because it did not mention the correction of items set forth in a previous inspection report, nor did it involve a discussion of areas that were previously reported as being inaccessible. The March 17, 2011, report should have been labeled either a "complete" or "limited" inspection report.

14. TW filed a consumer complaint that the Board received on April 28, 2011. TW stated that CB Termite came to her home in June 2010, but did not complete repair work because a worker was injured on the job. TW stated she called respondent's owners, and that CB Termite returned to her home on June 7, 2010, when its personnel replaced a few boards on the second story roof/garage area, three boards on the front porch area, and did some

[1] There is not supposed to be a "Section Unknown" discussion in a "separated" inspection report, and the information about the rusted nails should have been identified as a Section II finding and recommendation.

repair work in the patio. TW stated that CB Termite represented that the repair work was completed. TW stated that after she telephoned CB Termite in March 2011, Ms. Martinez came to her home, inspected what had been done, and promised to complete the unfinished work. However, CB Termite did not provide TW with an inspection report or completion report following Ms. Martinez's inspection. According to TW, CB Termite did not return to her home and never completed the work.

15. On May 18, 2011, the Board notified CB Termite of TW's complaint. The Board requested CB Termite's written response to that complaint within 10 days.

16. On May 25, 2011, Ms. Martinez sent a letter to the Board stating that the delay in completing the repair work was a result of a misunderstanding, and that CB Termite would contact TW on May 31, 2011, to schedule another appointment. On June 2, 2011, Ms. Martinez sent another letter to the Board in which she represented that CB Termite was willing to address the items on the March 17, 2011, "supplemental" inspection report, but that CB Termite would not address any issues involving the roofing, front porch post, or rusted nails other than the rusted nails on the trim by the front entry door. In the testimony it was also established that TW did not provide CB Termite with ready access to her property.

17. On June 21, 2011, De Anza performed a WDO inspection at TW's request, after which De Anza issued another "complete," "separated" inspection report. The De Anza report contained six findings and recommendations and several notes.

18. On July 28, 2011, a Board representative sent a letter to TW that warned TW that the Board would close TW's complaint if TW did not permit CB Termite to complete the repair work. On August 19, 2011, TW requested that the Board re-open its case against CB Termite, advising the Board that her small claims court case against CB Termite Control had been dismissed without prejudice.

19. On October 25, 2011, Steven Smith (Board Specialist Smith), a respected investigator who possesses vast training and experience in structural pest control matters, inspected the Moreno Valley home. Board Specialist Smith was familiar with applicable industry standards of care and reporting requirements. On November 2, 2011, Board Specialist Smith prepared a report of findings that was delivered to CB Termite that identified 15 violations and contained a note.

20. On November 23, 2011, CB Termite performed another inspection at the Moreno Valley home, after which it and prepared a "limited," "separated" inspection report that contained six findings and recommendations and set forth three notes. The inspection report did not comply with various statutes and regulations for numerous reasons including, but not limited to, the report's failure to set forth Property Owner/Party in Interest information, the failure to indicate where the inspection tag was posted, and the failure to identify excessive moisture conditions.

21. On December 6, 2011, Board Specialist Smith spoke with Ms. Martinez. He told her about his criticisms related to CB Termite's November 23, 2011, inspection report. In addition, Board Specialist Smith advised Ms. Martinez that he found substandard repair work at the home that had not been identified in CB Termite's inspection report.

22. On December 19, 2011, Board Specialist Smith received a corrected version of CB Termite's November 23, 2011, inspection report for the Moreno Valley home, but that report still did not comply with regulations and statutes for various reasons.

23. On December 21, 2011, Board Specialist Smith received a second, corrected inspection report from CB Termite for the Moreno Valley home; he concluded that report did not comply with statutes and regulations for the same reasons previously expressed. Nevertheless, on December 23, 2011, Board Specialist Smith concluded that CB Termite's most recent report sufficiently addressed most of the required work issues, and Board Specialist Smith authorized CB Termite to commence work at the Moreno Valley home.

24. Between December 27, 2011, and January 12, 2012, CB Termite made several attempts to obtain a building permit from the City of Moreno Valley's Building and Safety Department. The department refused to issue a permit to anyone other than a homeowner, the homeowner's agent, or a licensed building contractor. TW did not request a permit and did not designate CB Termite as her agent. Board Inspector Smith knew that the City of Moreno Valley was wrongfully withholding the permit. Based upon the information available to him, Board Inspector Smith authorized CB Termite to schedule the work on the project to start on January 17, 2012, without a permit.

25. On January 13, 2012, Board Specialist Smith conducted a WDO Activity Search for the Moreno Valley home. He determined that CB Termite filed only one of its three November 23, 2011, "limited," "separated" inspection reports. He reached the following findings and conclusions related to CB Termite's acts and omissions at the Moreno Valley project:

a. Failure to report the earth-to-wood contact at the post attached to the wall on the west side of the house in the 6/1/10 "complete," "separated" and 3/17/11 "supplemental," "separated" inspection reports, in violation of Section 8516, subdivision (b)(6) & (7) and California Code of Regulations, Title 16, section 1990, subdivision (b)(4).

b. Failure to report dry rot (decay fungi damage) at the exterior siding, at the southwest corner of the house, in the 3/17/11 "supplemental," "separated" inspection report, in violation of Section 8516, subdivision (b)(6) & (7) and California Code of Regulations, Title 16, section 1990, subdivision (a)(4).

c. Failure to report decay fungi damage at the doorjamb of the wood deck French doors in the 3/17/11 "supplemental," "separated" inspection

report, in violation of Section 8516, subdivision (b)(6) & (7) and California Code of Regulations, Title 16, section 1990, subdivision (a)(4).

d. Failure to report an inaccessible area at the pillar, adjacent to the front porch, in the 6/1/10 "complete," "separated" and 3/17/11 "supplemental," "separated" inspection reports, in violation of Section 8516, subdivision (b)(6) & (7) and California Code of Regulations, Title 16, section 1990, subdivision (b).

e. Failure to make a proper finding and recommendation, regarding reported surface fungus and decay fungi damage, in the 6/1/10 "complete," "separated" and reported decay fungi damage, on the 3/17/11 "supplemental," "separated" inspection reports; the findings failed to identify excessive moisture conditions responsible for the infections and failed to include a recommendation to correct excessive moisture conditions responsible for the infections, in violation of Section 8516, subdivision (b)(6) & (7) and California Code of Regulations, Title 16, section 1991, subdivision (a)(5).

f. Failure to complete certain work in a quality and workmanlike manner including: there was no repair of the reported decay fungi damage and termite damaged wood at the patio/balcony (wood deck) as was reported on the 6/1/10 "complete," "separated" inspection report that was certified as having been completed on the 6/7/10 completion notice; a roof tile was broken adjacent to completed repairs; the replaced plywood wood deck flooring/patio roof sheathing was not properly nailed; there were water stains on top of the replaced plywood wood deck flooring/patio roof sheathing; the replaced rail on top of the balustrade did not rest flush on the balustrade; the rail above the replaced corner post was not properly cut; the replaced corner post was not properly nailed; and the wrong nails were used to secure the replacements, all in violation of California Code of Regulations, Title 16, section 1937.14.

g. Failure to complete the work in a quality and workmanlike manner related to the replacement of the reported decay fungi damage at the roof sheathing in the eave area adjacent to the fireplace. The damage was reported on the 6/1/10 "complete," "separated" inspection report and was certified as having been completed on the 6/7/10 completion notice. The replaced roof sheathing was not properly nailed in violation of California Code of Regulations, Title 16, section 1937.14.

h. Failure to complete the work in a quality and workmanlike manner regarding the replacement of the reported decay fungi damage at the exterior wood trim on the house and front porch pillar. The damage was reported on the 6/1/10 "complete," "separated" inspection report and was certified as having been completed on the 6/7/10 completion notice. Some of

the replacements were not properly cut, some of the replacements had missing knots, and the wrong nails were used to secure the replacements in violation of California Code of Regulations, Title 16, section 1937.14.

i. Failure to complete the work in a quality and workmanlike manner related to the replacement of the reported decay fungi damage at the barge rafter, adjacent to the patio/wood deck. The damage was reported on the 6/1/10 "complete," "separated" inspection report and was certified as having been completed on the 6/7/10 completion notice. The replaced barge rafter was not properly nailed, and the wrong nails were used to secure the replacement in violation of California Code of Regulations, Title 16, section 1937.14.

j. Failure to complete the work in a quality and workmanlike manner related to the replacement of the reported decay fungi damage at the southwest corner of the second story eaves above the garages. The damage was reported on the 6/1/10 "complete," "separated" report and was certified as having been completed on the 6/7/10 completion notice. Some of the roof tiles were broken/damages from walking on and leaning a ladder against the roof, the replacements are not properly nailed, and the wrong nails were used to secure the replacements in violation of California Code of Regulations, Title 16, section 1937.14.

k. Failure to complete the work in a quality and workmanlike manner related to the replacement of reported decay fungi damage at the rafter tails and roof sheathing, at the front of the house. The damage was reported on the 6/1/10 "complete," "separated" inspection report and was certified as having been completed on the 6/7/10 completion notice. Decay fungi damage remains at the reported area, and the rafter tails were not properly replaced, which has allowed the eave area to lose structural support and sag. The replacements were not properly nailed, wood has been added where there was previously no wood, some of the adjacent wood has been damaged by the nailing and sawing process, and the wrong nails were used to secure the replacements in violation of Section 8638 and California Code of Regulations, Title 16, section 1937.14.

l. Failure to complete the work related to the replacement of the reported decay fungi damage at the exterior siding, on the southeast corner of the house. The damage was reported on the 6/1/10 "complete," "separated" inspection report and was certified as having been completed on the 6/7/10 completion notice. Decay fungi damage remained at the reported area.

m. Failure to complete the work related to the replacement of the reported decay fungi damage at the fascia board, trimming and rafter tail, at the southeast corner of the second story eaves above the garages. The damage

was reported on the 6/1/10 "complete," "separated" inspection report and was certified as having been completed on the 6/7/10 completion notice. Decay fungi damage remained at the reported area.

n. Failure to comply with the building laws, in that a City of Moreno Valley business license was not obtained before performing an inspection and work in the city, and a building permit was not obtained for the repair work completed at the patio/wood deck and eaves.

Respondents stipulated to the truth of Board Inspector Smith's findings and conclusions about CB Termite's acts and omissions at the Moreno Valley project.

The Homeowner's Testimony

26. TW testified. She purchased the Moreno Valley home in June 2010. She discovered that all the repair work that had been promised had not been provided. She was obviously unhappy with CB Termite's services; and justifiably so. TW filed a complaint with the Board and filed a small claims court action. In connection with the small claims court matter, the judge dismissed TW's case without prejudice following a settlement conference in which CB Termite agreed to provide remedial services. The dismissal did not sit well with TW, who wanted damages and did not trust CB Termite, Ms. Martinez or Mr. Rangel. TW was reluctant to have CB Termite return to her home, and she communicated that to Ms. Martinez and Mr. Rangel. TW's resistance to CB Termite completing the project was the reason the Board sent a letter to TW that advised her that her consumer complaint would be dismissed if she did not provide CB Termite with the opportunity to complete the repair work.

TW testified that raw wood installed by CB Termite was not painted, that a post in the front of the home was not replaced, that there were termites around the fireplace, that she had difficulty opening and closing the French door on her patio, and that five tiles on her roof needed to be replaced. She testified that that the cost to repair these defects totaled $1,200. She did not document any of these defects with photographs or with repair estimates from other entities.

TW was composed during direct examination, but during cross-examination she demonstrated tremendous hostility towards Ms. Martinez; she provided testimony on matters that were not raised by the questions she was asked; and she became highly agitated. TW's lack of composure and obvious bias raised questions about the truthfulness of all her testimony.

Board Specialist Smith's Testimony

27. Board Specialist Smith has been employed in the structural pest control industry most of his adult life. The Board has employed Board Specialist Smith for more

than a decade. While he has many responsibilities, Board Specialist Smith is primarily involved in the investigation and resolution of consumer complaints.

Board Specialist Smith reviewed TW's consumer complaint on September 6, 2011. He conducted a site inspection on October 25, 2011, in TW's presence. He photographed what he observed. No one from CB Termite was present during that inspection. He prepared a report of findings that he filed with the Board. The Board forwarded Board Specialist Smith's report to CB Termite.

On November 29, 2011, Ms. Martinez contacted Board Specialist Smith. She represented that CB Termite always wanted to complete the work, but TW refused to allow the work to be done and, instead, wanted a refund of the $3,720 that TW paid to escrow for pest control services. CB Termite filed several reports with Board Specialist Smith thereafter that failed to comply with statutory and regulatory standards. On January 12, 2012, Board Specialist Smith (who could not convince the City of Moreno Valley that it should authorize a permit under two provisions of the Business and Professions Code) instructed Ms. Martinez to proceed with necessary repairs. Ms. Martinez said she would begin the repairs on January 17, 2012. Board Specialist Smith visited the project on January 17, 2012, and determined that the repairs had not been accomplished by that date. He had not spoken with TW and he had not visited the project since then. CB Termite has not filed a completion notice.

Respondent's Testimony and Evidence

28. Ms. Martinez testified about her education, training, and experience. She testified that Red Carpet hired CB Termite, and that TW's home was one of the few Moreno Valley projects in which CB Termite Control or its predecessors had been involved. She testified that after the initial inspection, two CB Termite employees were assigned to perform repairs. Those employees did not report an on-the-job injury; nor did they report that the required repairs had not been completed. Based upon what the two employees told Ms. Martinez and Mr. Rangel, and based upon Ms. Martinez and Mr. Rangel's failure to inspect the work allegedly performed by the CB Termite employees, CB Termite filed a notice of completion on the Moreno Valley project that was improper.

Ms. Martinez testified that well after escrow closed, TW contacted her and told her that all of the repair work was not completed. Ms. Martinez arranged for another inspection. On March 17, 2011, she and Mr. Rangel visited the Moreno Valley home. TW showed them her complaints. Ms. Martinez told TW that CB Termite would make the repairs, and she left it with TW to arrange for the date the repairs were to be made. Ms. Martinez fired the employees who lied to her. Ms. Martinez stated that TW never contacted her to set that date for the repair work but, instead, filed a complaint for damages in the small claims court. The small claims court matter was dismissed without prejudice. Ms. Martinez again attempted to make arrangements to complete the repairs. TW resisted those efforts, but with Board Specialist Smith's assistance, repairs finally began on January 17, 2011. According to Ms. Martinez, the repairs were completed on January 20, 2012. The repairs included repairing the eave, fixing a post, painting, and replacing a French door jamb. Ms. Martinez admitted

she did not repair the five roof tiles, claiming she was not obligated to do so because TW signed a waiver that excluded the repair of roof tiles that were broken before CB Termite's initial repair work began. Ms. Martinez testified that TW seemed much more interested in obtaining monetary damages than in having the repair work done, and this testimony was sincere. Ms. Martinez admitted that CB Termite did not file a completion report as required.

Ms. Martinez admitted CB Termite made many mistakes at the Moreno Valley project, and she promised that CB Termite would comply with any terms and conditions of probation that might be imposed in order to maintain CB Termite's license.

Disciplinary Guidelines

29. The Structural Pest Control Board's highest priority is to protect and benefit the public by regulating the pest control industry. To establish consistency in issuing disciplinary penalties for similar offenses, the Board established disciplinary guidelines.

The Board recognizes that the penalties and conditions of probation are merely guidelines and that administrative law judges must be free to exercise their discretion. The Board desires that its guidelines be followed to the extent possible, and the Board requests that an administrative law judge hearing a case include some explanation for any departure or omission from the guidelines.

The Board desires that matters in extenuation or mitigation, as well as those in aggravation, be fully considered and noted. Of primary importance is the effect that a licensee's conduct has had or can have on the public In determining whether the minimum, maximum, or an intermediate penalty should be imposed, factors such as the following should be considered: (1) the actual or potential harm to the public; (2) the actual or potential harm to any consumer; (3) the licensee's prior disciplinary record; (4) the number and/or variety of current violations; (5) mitigation evidence; (6) in the case of a criminal conviction, the licensee's compliance with terms of sentence; (7) the licensee's overall criminal record; (8) whether the licensee's conduct was knowing, willful, reckless or inadvertent; (9) the financial benefit to the licensee; (10) whether the unlawful act was part of a pattern of practice; and (11) whether the licensee is currently on probation.

30. For the violations alleged in the accusation, the guidelines generally recommend a minimum sanction of suspension, stayed, with three years probation, and a maximum sanction of an outright revocation.

Standard terms and conditions of probation include: (1) obey all laws; (2) file quarterly reports; (3) the tolling of probation if the licensee moves out of state; (4) providing notice to employees; (5) providing notice to employers; and (6) posting a sign if a suspension is imposed. Optional terms and conditions of probation include: (7) actual suspension; (8) completion of continuing education courses appropriate to Branch 1, Branch 2, or Branch 3; (9) reimbursement for random inspections; (10) payment of inspection fee; (11) restitution to a consumer; (12) prohibition from serving as officer, director, associate, partner or qualifying

manager; (13) no ownership of a registered company; and (14) taking and passing a licensing examination.

Evaluation

31. Criminal conduct was not involved in this matter. CB Termite has no prior disciplinary history. CB Termite is not currently on probation.

This disciplinary matter involved a number of violations that posed a potential risk of harm to the integrity of TW's home, but there was no actual or potential harm to other members of the public. The licensees' conduct cannot be characterized as conduct that was knowing, willful or reckless, and is best characterized as inadvertent. The amount of money at issue was relatively minimal.

Mitigation evidence included Ms. Martinez and Mr. Rangel's initial ignorance of their employees' failure to finish repairs at the Moreno Valley project and their good faith belief that their employees told them the truth when they represented that the repairs were completed. Ms. Martinez fired the employees who lied to her, and that remedial action was evidence of rehabilitation. Additional mitigating evidence included the homeowner's refusal to contact CB Termite to arrange for a mutually convenient date for repairs and her refusal to permit CB Termite to reenter the premises during the pendency of a small claims court action. Aggravating evidence included CB Termite's failure on several occasions to provide TW with appropriate and complete notices and the failure to file complete and appropriate notices and reports with the Board. CB Termite responded promptly to Board Specialist Smith's notifications and recommendations, which is a mitigating factor. Ms. Martinez and Mr. Rangel were highly cooperative and forthcoming in this disciplinary proceeding and that, too, is a mitigating factor. The deficiencies observed by Board Specialist Smith were limited to the Moreno Valley project, and the misconduct that occurred there does not appear to be part of a more widespread pattern of misconduct or pattern of practice.

Imposing a revocation, staying the revocation, and placing CB Termite, Ms. Martinez, and Mr. Rangel on probation for three years on standard terms and conditions of probation and on special terms and conditions of probation that require respondents pay for the Board's costs of investigation and enforcement, be subject to random inspections, pay inspection fees, to not serve as an officer, director, associate, partner or qualifying manager of any other licensee, and to not have an ownership interest in any registered company other than CB Termite will protect the public.

Other Alleged Disciplinary Matters

32. The accusation alleged that on or about December 28, 2011, Company Certificate Number PR 6410 was issued a $2,747.50 fine for violating Business and Professions Code section 8516, subdivision (b); however, that fine was dismissed and the mere filing of a request for payment of a fine is not a factor that should be considered in this disciplinary proceeding. No evidence was presented that established the alleged violation.

33. The accusation alleged that on or about March 8, 2011, Operator License No. OPR 11992 paid a $400 fine levied by the San Bernardino County Agricultural Commissioner for violating California Code of Regulations, title 16, sections 6630 and 6738; that on February 6, 2004, Field Representative's License No. FR 32330 paid a $200 fine for violating California Code of Regulations, title 15, sections 8516 and 8516, subdivision (b)(7)(9); that on February 6, 2004, Company Registration Certificate Number PR 3737 paid a $750 fine for violating California Code of Regulations, title 16, section 8638 and section 1937.14; and that on June 18, 2009, Company Registration Certificate Number PR 3737 paid a $100 fine levied by the San Bernardino County Agricultural Commissioner for violating Food and Agricultural Code section 15204. No evidence was presented that established the alleged violations actually occurred, how the payment of a fine was an actual admission of wrongdoing as opposed to a settlement of a disputed claim, or how payment of the fine was relevant to any of the issues in this matter.

34. Even if the violations alleged in 32 and 33 had been established, those violations would not impact the disciplinary outcome in this proceeding.

Costs of Investigation and Enforcement

35. A certification of Costs of Investigation was submitted that stated Board Specialists provided 35 hours of investigative services, a reasonable amount. Investigative services were billed at the rate of $27.24 per hour, a reasonable charge. Total investigative costs were $954.40.

Deputy Attorney General Christina Thomas signed a Certification of Prosecution Costs to which a billing summary was attached. The billing summary set forth the dates legal services were provided, the tasks performed, and the amount of time involved in each task. Legal services were billed at $170 per hour, a reasonable rate. Respondents did not object to attorney fees. This case was complicated. Ms. Thomas was well prepared and professional. Legal fees totaled $6,970.

The Board's reasonable cost of investigation and enforcement was $7,924.40.

LEGAL CONCLUSIONS

The Statutory Scheme

1. California enacted the Structural Pest Control Act, an elaborate statutory scheme that regulates the industry and structural pest control operators. Operators must be licensed by the state and their methods of operation are regulated. Those seeking licensure must be qualified in the use and understanding of poisonous and other chemicals used in pest control as well as in the theory and practice of pest control. Those licensed as operators are subject to discipline by the Board for noncompliance with the statute and the governing regulations. It is important that pest control businesses comply with the statute and

supporting regulations because of the serious danger to property posed in California by wood-destroying pests and organisms. Termite clearance is an important aspect of any real estate transaction. The legislative intent is most certainly to protect the public, which necessarily relies on the expertise of companies engaged in the business of structural pest control. Ensuring that property owners are fully informed with respect to the services rendered by registered companies is without a doubt a primary purpose of the reporting requirements. (*Pestmaster Services, Inc. v. Structural Pest Control Bd.* (1991) 227 Cal.App.3d 903, 909-910.)

2. Protection of the public is the highest priority for the Structural Pest Control Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, protection of the public shall be paramount. (Bus. & Prof. Code, § 8520.1.)

Disciplinary Statutes

3. Business and Professions Code section 8620 authorizes the Board to investigate the actions of any individual acting as a licensee. After a hearing, the Board may temporarily suspend or permanently revoke a license issued if the holder of the license, while a licensee, is guilty of or commits one or more of the acts or omissions constituting grounds for disciplinary action.

4. Business and Professions Code section 8516 provides in part:

> (a) This section, and Section 8519, apply only to wood destroying pests or organisms.
>
> (b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.
>
> Every property inspected pursuant to this subdivision or Section 8518 shall be assessed a filing fee pursuant to Section 8674.
>
> Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8518 or this section 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).

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

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

[¶] . . . [¶]

(3) The name and address of any person who is a party in interest.

[¶] . . . [¶]

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

(7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or infection, such as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture

conditions, evidence of roof leaks, and insufficient ventilation are to be reported.

[¶] . . . [¶]

(10) Recommendations for corrective measures.

[¶] . . . [¶]

(c) At the time a report is ordered, the registered company or licensee shall inform the person or entity ordering the report, that a separated report is available pursuant to this subdivision. If a separated report is requested at the time the inspection report is ordered, the registered company or licensee shall separately identify on the report each recommendation for corrective measures as follows:

(1) The infestation or infection that is evident.

(2) The conditions that are present that are deemed likely to lead to infestation or infection.

If a registered company or licensee fails to inform as required by this subdivision and a dispute arises, or if any other dispute arises as to whether this subdivision has been complied with, a separated report shall be provided within 24 hours of the request but, in no event, later than the next business day, and at no additional cost . . . .

5. Business and Professions Code section 8518 provides in part:

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

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

[¶] . . . [¶]

Failure of a registered company to report and file with the board the address of any property upon which work was completed pursuant to subdivision (b) of Section 8516 or Section 8518 is grounds for disciplinary action . . .

The registered company shall retain for three years all original notices of work completed, work not completed, and activity forms.

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

6. Business and Professions Code section 8519 provides in part:

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

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

(a) When the inspection report prepared pursuant to Section 8516 has disclosed no infestation or infection: "This is to certify that the above property was inspected on _____ (date) in accordance with the Structural Pest Control Act and rules and regulations adopted pursuant thereto, and that no evidence of active infestation or infection was found in the visible and accessible areas."

(b) When the inspection report prepared pursuant to Section 8516 discloses infestation or infection and the notice of work completed prepared pursuant to Section 8518 indicates that all

recommendations to remove that infestation or infection and to repair damage caused by that infestation or infection have been completed: "This is to certify that the property described herein is now free of evidence of active infestation or infection in the visible and accessible areas. . . .

7. Business and Professions Code section 8619, subdivision (a), requires that "An inspection tag shall be posted whenever an inspection for wood destroying pests and organisms is made."

8. Business and Professions Code section 8622 provides in part:

> When a complaint is accepted for investigation of a registered company, the board, through an authorized representative, may inspect any or all properties on which a report has been issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall have 30 days from the receipt of the notice to bring such property into compliance . . . If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged. If the board's authorized representative makes no determination or determines the property is in compliance, no inspection fee shall be charged.
>
> The notice sent to the registered company shall inform the registered company that if it desires a hearing to contest the finding of noncompliance, the hearing shall be requested by written notice to the board within 20 days of receipt of the notice of noncompliance from the board. Where a hearing is not requested pursuant to this section, payment of any assessment shall not constitute an admission of any noncompliance charged.

9. Business and Professions Code section 8636 provides in part, "Disregard and violation of the building laws of the state, or of any political subdivision . . . relating to the practice of structural pest control is a ground for disciplinary action."

10. Business and Professions Code section 8638 provides in part, "Failure . . . to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs . . . is a ground of disciplinary action."

11. Business and Profession Code section 8641 provides:

> 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.

Regulatory Authority

12. California Code of Regulations, title 16, section 1937.14, provides:

> 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.

13. California Code of Regulations, title 16, section 1990, provides in part:

> (a) All reports shall be completed as prescribed by the board. Copies filed with the board shall be clear and legible. All reports must supply the information required by Section 8516 of the Code and the information regarding the pesticide or pesticides used as set forth in Section 8538 of the Code, and shall contain or describe the following:
>
> [¶] . . . [¶]
>
> (4) Wood members found to be damaged by wood destroying pests or organisms.
>
> [¶] . . . [¶]
>
> (b) Conditions usually deemed likely to lead to infestation or infection include, but are not limited to:
>
> [¶] . . . [¶]
>
> (4) Earth-wood contacts.

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

[¶] . . . [¶]

(d) Even though the licensee may consider the following areas inaccessible for purposes of inspection, the licensee must state specifically which of these areas or any other areas were not inspected and why the inspection of these areas is not practical: furnished interiors; inaccessible attics or portions thereof; the interior of hollow walls; spaces between a floor or porch deck and the ceiling or soffit below; stall showers over finished ceilings; such structural segments as porte cocheres, enclosed bay windows, buttresses, and similar areas to which there is no access without defacing or tearing out lumber, masonry or finished work; built-in cabinet work; floors beneath coverings, areas where storage conditions or locks make inspection impracticable.

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

(f) The following language shall appear just prior to the first finding/recommendation on each separated report:

"This is a separated report which is defined as Section I/Section II conditions evident on the date of the inspection. Section I contains items where there is visible evidence of active infestation, infection or conditions that have resulted in or from infestation of infection. Section II items are conditions deemed likely to lead to infestation or infection but where no visible evidence of such was found. Further inspection items are defined as recommendations to inspect area(s) which during the original inspection did not allow the inspector access to complete the inspection and cannot be defined as Section I or Section II."

14. California Code of Regulations, title 16, section 1991, provides in part:

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

[¶] . . . [¶]

(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

15. California Code of Regulations, title 16, section 1993 provides in part:

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the board.

[¶] . . . [¶]

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

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate

the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

[¶] . . . [¶]

(e) A reinspection report is the report on the inspections of item(s) completed as recommended on an original report or subsequent report(s). The areas reinspected can be limited to the items requested by the person ordering the original inspection report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

16. California Code of Regulations, title 16, section 1996.3, subdivision (a), provides:

The address of each property inspected and/or upon which work was completed shall be reported on a form prescribed by the Board and designated as the WDO Inspection and Completion Activity Report Form (see Form No. 43M-52 Rev. 5/09) at the end of this section. This form shall be prepared by each registered company and shall comply with all of the requirements pursuant to Section 8516(b), and 8518.

Cause Exists to Impose Discipline

17. First Cause for Discipline (Failure to Comply with Regulations): Cause exists to impose discipline upon CB Termite's registration and Mr. Rangel's operator's license under Business and Professions Code section 8641. A preponderance of the evidence established that these respondents caused or permitted the following violations to occur:

a. Respondents failed to include a "limited" report statement on all three 11/23/11 inspection reports in violation of Business and Professions Code section 8516 and California Code of Regulations, title 16, Section 1993(d);

b. Respondents failed to include a "supplemental" report statement on the 3/17/11 inspection report in violation of Business and Professions Code section 8516, subdivision (b), section 8518 and California Code of Regulations, title 16, sections 1993 and 1996.2;

c. Respondents failed to issue an inspection report and/or completion notice for the WDO inspections and repair work completed at the Property

between 6/7/10 and 3/17/11 in violation of Business and Professions Code section 8516, subdivision (b)(10), and California Code of Regulations, title 16, Section 1991(a)(5);

d. Respondents failed to make proper findings and recommendation regarding the reported surface fungus/decay fungi and decay fungi damage, on the 6/1/10, 3/17/11 and all three 11/23/11 reports; the findings failed to identify the excessive moisture conditions responsible for the infections, and failed to include recommendations to correct those conditions, all in violation of Business and Professions Code section 8516, subdivision (b)(10), and California Code of Regulations, title 16, Section 1990(b)(5) &(e);

e. Respondents failed to make a proper finding and recommendation regarding the inaccessible areas at the garage and patio/wood deck, and water stains at the patio/wood deck, which were only reported as a note, in violation of Business and Professions Code section 8641;

f. Respondents furnished an initial 11/23/11 inspection report without making a bona fide inspection, and appear to have altered the initial report to create the corrected second and third versions which are also dated 11/23/11, in violation of Business and Professions Code section 8619, subdivision (a), and California Code of Regulations, title 16, section 1996.1, subdivision (a);

g. Respondents failed to identify where the inspection tag was posted, on the 3/17/11 and all three 11/23/11 inspection reports, in violation of Business and Professions Code section 8636;

h. Respondents failed to comply with Business and Professions Code section 863, by disregarding and/or failing to comply with the building laws, in that a City of Moreno Valley business license was not obtained before performing an inspection and work in the city, and a building permit was not obtained for the repair work completed at the patio/wood deck and eaves;

i. Respondents failed to complete certain repair work in violation of California Code of Regulations, title 16, section 1937.14;

j. Respondents failed to perform certain work in a quality and workmanlike manner in violation of California Code of Regulations, Title 16, section 1937.14.

18. Second Cause for Discipline (Failure to File WDO Activity Forms): Cause exists to impose discipline upon CB Termite and Mr. Rangel under Business and Professions Code section 8516, subdivision (b), and California Code of Regulations, title 16, section 1996.3. A preponderance of the evidence established that these respondents filed only one of its three November 23, 2011, "limited" "separated" inspection reports with the Board.

19. Third Cause for Discipline (Failure to Issue Proper Separated Inspection Report): Cause exists to impose discipline upon Mr. Rangel under Business and Professions Code section 8516, subdivision (c), and California Code of Regulations, title 16, section 1990, subdivision (f). A preponderance of the evidence established respondent failed to issue a proper separated inspection report in that the March 17, 2011, report and the March 23, 2011, reports were not "separated" inspection reports and the reports did not correct items previously mentioned or specifically mention inaccessible areas.

20. Fourth Cause for Discipline (Failure to Make Proper Findings and Recommendations): Cause exists to impose discipline upon CB Termite, Ms. Martinez and Mr. Rangel under Business and Professions Code section 8516, subdivision (b)(10), and California Code of Regulations, title 16, section 1991, subdivision (a)(5). A preponderance of the evidence established that these respondents failed to make proper recommendations and findings in an inspection report dated June 1, 2010, and improperly identified that report as a "complete report.

21. Fifth Cause for Discipline (Failure to Include Property Owner Identification): Cause exists to impose discipline upon CB Termite, Ms. Martinez, and Mr. Rangel under Business and Professions Code section 8516, subdivision (b)(3). A preponderance of the evidence established that these respondents omitted information related to the identity of the property owner or the real party in interest in several reports.

22. Sixth Cause for Discipline (Failure to Comply with Report of Findings): Cause exists to impose discipline upon CB Termite's license and upon Mr. Rangel's license under Business and Professions Code section 8641. A preponderance of the evidence established that these respondents failed to correct items described in a report of findings within 30 calendar days of receipt of a notice, and failed to bring the Moreno Valley property into compliance with the Board's Notice and Report of Findings dated November 20, 2011.

23. Eighth Cause for Discipline (Poor Workmanship): Cause exists to impose discipline upon CB Termite's license and upon Mr. Rangel's license under Business and Professions Code section 8641. A preponderance of the evidence established that certain repairs were not performed in a quality and workmanlike manner including a failure to replace decay fungi and termite damaged wood; the failure to replace broken roof tiles; the failure to properly nail wood deck flooring; the use of improper nails in some areas of repair; the improper replacement of a corner post; the improper repair of a barge rafter; the failure to replace and properly repair some infected rafter tails; and the failure to repair a portion of a fascia board.

Costs of Investigation and Enforcement

24. Business and Professions Code section 1235.3 provides in part:

> (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the entity bringing

> the proceeding 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.
>
> [¶] . . . [¶]
>
> (c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.
>
> (d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested . . . .

25. The Board is entitled to recover from respondents, and each of them, costs in the amount of $7,924.40.

The Appropriate Measure of Discipline

26. Public protection requires that the Board monitor respondents' licensed Branch 3 operations to assure respondents' competence and compliance with the applicable law. Imposing a three year period of probation will be sufficient to conduct monitoring and obtain assurance. Payment of the Board's reasonable costs of investigation and enforcement, while not a disciplinary penalty, will serve as a constant reminder of the financial impact of misconduct during probation. If, during probation, respondents, or any one of them, demonstrate an inability to conduct their operation in accordance with the law, the revocations that were stayed may, upon hearing and notice, be vacated and outright revocations of the registrations and licenses issued to respondents may be imposed.

ORDER

Company Registration Certificate No. PR 6410, issued to CB Termite Control, Victoria Martinez, Owner and President, and Operator's License No. OPR 11992 and Field Representative's License No. FR 45757 issued to Ricardo G. Rangel, Qualifying Manager of CB Termite Control, are hereby revoked. However, the orders of revocation are stayed, and the licenses and registrations referred to herein issued to CB Termite Control, Victoria

Martinez, and Ricardo G. Rangel are placed on probation for a period of three years on the following terms and conditions of probation.

1. **Obey All Laws**

Respondents CB Termite Control, Victoria Martinez, and Ricardo G. Rangel, and each of them, shall obey all laws and rules relating to the practice of structural pest control.

2. **Quarterly Reports**

Respondents CB Termite Control, Victoria Martinez, and Ricardo G. Rangel, and each of them, shall file quarterly reports with the Board during the period of probation.

3. **Tolling of Probation**

Should any respondent leave California to reside outside this state, that respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduce the probationary period.

4. **Notice to Employers**

Respondents CB Termite Control, Victoria Martinez, and Ricardo G. Rangel, and each of them, shall notify all present and prospective employers who are licensed by the Structural Pest Control Board of the Decision in Case No. 2012-48 and the terms, conditions and restrictions imposed on respondents by this decision. Within 30 days of the effective date of this decision, and within 15 days of any respondent undertaking new employment, the newly employed respondent shall cause his/her employer to report to the Board in writing acknowledging the employer has read the decision in case No. 2012-48.

5. **Notice to Employees**

Respondents CB Termite Control, Victoria Martinez, and Ricardo G. Rangel, and each of them, shall, upon or before the effective date of this Decision, post or circulate a notice to all employees of CB Termite Control who are involved in structural pest control operations a notice which accurately recite the terms and conditions of probation. Each respondent shall be responsible for said notice being immediately available to said employees. "Employees" as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors who are currently employed or who become employed or hired at any time during probation.

6. **Inspection Fees**

Respondents shall pay to the registrar, or designee, an inspection fee in the total amount of $50.00 within thirty (30) days from the effective date of this decision.

7. **Random Inspections**

Each respondent shall be subject to random inspections, and each respondent shall reimburse the Board for one random inspection per quarter by a Board Specialists during the period of probation, the fee for each individual inspection not to exceed $125 per inspection.

8. **Prohibition from Serving as Officer, Director, Associate, Partner or Qualifying Manager**

Respondents Victoria Martinez and Ricardo G. Rangel, and each of them, is prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any registered company other than CB Termite Control during the period of probation.

9. **No Interest in Any Registered Company**

Respondents Victoria Martinez and Ricardo G. Rangel, and each of them, shall be prohibited from having any legal or beneficial interest in any company currently or hereinafter registered by the Board during the period of probation other than CB Termite Control.

10. **Payment of Costs of Investigation and Enforcement**

Respondents CB Termite Control, Victoria Martinez, and Ricardo G. Rangel, and each of them, shall be jointly and severally liable for paying to the Structural Pest Control Board the total sum of $7,924.40. Payments may be made on an installment plan within the sole discretion of the Board.

11. **Failure to Make Payment Constitutes a Violation of Probation**

The failure of a respondent to make any payment when due constitutes a violation of probation, including the failure to pay an inspection fee, a random inspection fee, or a cost recovery installment.

12. **Violation of Probation**

Should respondents, or any one of them, violate probation in any respect, the Board, after giving each respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against any respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation for each respondent shall be extended until the matter is final.

13. **Completion of Probation**

Upon successful completion of probation, the license, registration or certificate that is subject to discipline in this Decision will be fully restored.

DATED: February 25, 2014

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings