

FILED

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

In the Matter of the Accusation Against:

Case No. 2013-15

**POWERFUL PEST MANAGEMENT
44-850 Las Palmas, Suite A
Palm Desert, CA 92260**

ACCUSATION

Company Registration Certificate No. PR 3508

**LORI ANN FAHNESTOCK,
PRESIDENT/QUALIFYING MANAGER
52-160 Avenida Mendoza
La Quinta, CA 92253**

Operator's License No. OPR 10084

Respondents.

Complainant alleges:

PARTIES

1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as the Assistant Executive Officer of the Structural Pest Control Board (Board), Department of Pesticide Regulation.

2. On or about August 26, 1999, the Board issued Company Registration Certificate Number PR 3508 to Powerful Pest Management (Respondent Powerful Pest Management), Lori Ann Fahnestock, President and Qualifying Manager, in Branch 2 with an address of 52-160

1 Avenida Mendoza, La Quinta, California. On December 9, 1999, Registration Certificate No. PR
2 3508 was upgraded to include Branches 2 and 3, with Lori Ann Fahnestock as Branch 3
3 Qualifying Manager. On June 19, 2001, Respondent Powerful Pest Management changed its
4 mailing address to P.O. Box 166, La Quinta, California, and its business address to 44-855 San
5 Pablo, Unit #7, Palm Desert, California. On October 28, 2003, Respondent Powerful Pest
6 Management changed its address to 44-850 Las Palmas, Suite A, Palm Desert, California. On
7 October 28, 2009, Respondent Powerful Pest Management's registration certificate was
8 suspended for failure to maintain the general liability insurance as required by Business and
9 Professions Code section 8690. On November 3, 2009, Respondent Powerful Pest Management's
10 registration certificate was reinstated after posting general liability insurance. On November 5,
11 2010, Respondent Powerful Pest Management's registration certificate was suspended for failure
12 to maintain general liability insurance. On November 12, 2010, Respondent Powerful Pest
13 Management's registration certificate was reinstated after posting general liability insurance. The
14 Respondent Powerful Pest Management's registration certificate was in full force and effect at all
15 times relevant to the charges brought herein.

16 3. On or about August 26, 1999, the Board issued Operator's License Number OPR
17 10084 to Lori Ann Fahnestock (Respondent Fahnestock), in Branch 2, with an address of 52-160
18 Avenida Mendoza, La Quinta, California. On December 9, 1999, Respondent Fahnestock's
19 Operator's License No. OPR 10084 was upgraded to include Branches 2 and 3, and she became
20 the Branch 3 Qualifying Manager of Respondent Powerful Pest Management. On June 19, 2001,
21 Respondent Fahnestock's changed her mailing address to P.O. Box 166, La Quinta, California,
22 and changed her business address to 44-855 San Pablo, Unit 7, Palm Desert, California. On
23 October 28, 2003, Respondent Fahnestock changed her business address to 44-850 Las Palmas,
24 Suite A, Palm Desert, California. On October 28, 2009, Respondent Fahnestock's operator's
25 license was suspended due to failure to maintain the general liability insurance as required by
26 Business and Professions Code section 8690. On November 3, 2009, Respondent Fahnestock's
27 operator's license No. OPR 10084 was reinstated after posting general liability insurance. On
28 November 5, 2010, Respondent Fahnestock's operator's license was again suspended for failure

1 to maintain general liability insurance. On November 12, 2010, Respondent Fahnestock's
2 operator's license was reinstated after posting general liability insurance. Respondent
3 Fahnestock's operator's license was in full force and effect at all times relevant to the charges
4 brought herein, and will expire on June 30, 2014, unless renewed.

5 JURISDICTION

6 4. This Accusation is brought before the Board under the authority of the following
7 laws. All section references are to the Business and Professions Code (Code) unless otherwise
8 indicated.

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

13 6. Section 8620 of the Code provides:

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

19 STATUTORY AUTHORITIES

20 7. Section 8516 of the Code states in relevant part:

21 "...

22 "(b) No registered company or licensee shall commence work on a contract, or sign, issue,
23 or deliver any documents expressing an opinion or statement relating to the absence or presence
24 of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3
25 field representative or operator. The address of each property inspected or upon which work is
26 completed shall be reported on a form prescribed by the board and shall be filed with the board no
27 later than 10 business days after the commencement of an inspection or upon completed work.

28

1 "Every property inspected pursuant to this subdivision or Section 8518 shall be assessed a
2 filing fee pursuant to Section 8674.

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

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

13 "Reports shall be made available for inspection and reproduction to the executive officer of
14 the board or his or her duly authorized representative during business hours. Original inspection
15 reports or copies thereof shall be submitted to the board upon request within two business days.

16 The following shall be set forth in the report:

17 "(1) The date of the inspection and the name of the licensed field representative or operator
18 making the inspection.

19 "(2) The name and address of the person or firm ordering the report.

20 "....

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

25 "(7) Information regarding the substructure, foundation walls and footings, porches, patios
26 and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters, fascias,
27 exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack
28 by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or

1 infection, such as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive
2 moisture conditions, evidence of roof leaks, and insufficient ventilation are to be reported.

3 "..."

4 8. Section 8619 of the Code states:

5 "(a) An inspection tag shall be posted whenever an inspection for wood destroying pests or
6 organisms is made.

7 "(b) If the registered company completes any work with respect to wood destroying pests or
8 organisms, it shall post a completion tag next to the inspection tag."

9 9. Section 8622 of the Code states:

10 "When a complaint is accepted for investigation of a registered company, the board,
11 through an authorized representative, may inspect any or all properties on which a report has been
12 issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section
13 8518 by the registered company to determine compliance with the provisions of this chapter and
14 the rules and regulations issued thereunder. If the board determines the property or properties are
15 not in compliance, a notice shall be sent to the registered company so stating. The registered
16 company shall have 30 days from the receipt of the notice to bring such property into compliance,
17 and it shall submit a new original report or completion notice or both and an inspection fee of not
18 more than one hundred twenty-five dollars (\$125) for each property inspected. If a subsequent
19 reinspection is necessary, pursuant to the board's review of the new original report or notice or
20 both, a commensurate reinspection fee shall also be charged. If the board's authorized
21 representative makes no determination or determines the property is in compliance, no inspection
22 fee shall be charged.

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

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

3 ". . . .

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

6 ". . . ."

7 13. California Code of Regulations, title 16, section 1993, states:

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

10 "(a) An original inspection report is the report of the first inspection conducted on a
11 structure at the request of a specified party or for a specified purpose. Subsequent inspections
12 conducted on a structure at the request of a different party, for a different purpose than a previous
13 inspection, or a different transaction relating to the same structure shall be deemed to be new
14 inspections for which an original inspection report shall be required. An original inspection report
15 may be either a complete or limited inspection.

16 "(b) A complete report is the report of an inspection of all visible and accessible portions of
17 a structure.

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

22 "(d) A supplemental report is the report on the inspection performed on inaccessible areas
23 that have been made accessible as recommended on a previous report. Such report shall indicate
24 the absence or presence of wood-destroying pests or organisms or conditions conducive thereto.
25 This report can also be used to correct, add, or modify information in a previous report. A
26 licensed operator or field representative shall refer to the original report in such a manner to
27 identify it clearly.

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1 recommendations, and it certified that no evidence of active infestation or infection was found in
2 the visible and accessible areas. The inspection report did contain a Roof Disclosure, which
3 reported that the exterior surface of the roof was not inspected. The inspection report did not
4 report that the underside of the eaves was not inspected, or that the eaves had been recently
5 painted.

6 18. The June 1, 2011 inspection report was not prepared on a form prescribed by the
7 Board in that the title of the inspection report is incorrect. The word "pest" should be plural. The
8 address provided on the report for Respondent Powerful Pest Management, P.O. Box 166, in La
9 Quinta, has not been the address of record with the Board since 2001. ³

10 19. On June 14, 2011, escrow closed for the sale of the property.

11 20. Sometime after June 1, 2011, Respondent Fahnestock, on behalf of Respondent
12 Powerful Pest Management, performed another WDO inspection at the request of the buyer, and
13 issued a "supplemental" inspection report also dated June 1, 2011 on the property. This
14 "supplemental" report referenced the same report number as the June 1, 2011 "complete"
15 inspection report. This report indicated that it was provided at the request of Grant Realty. The
16 supplemental report identified dry rot (decay fungi damage) at the eaves that was not visible at
17 the time the June 1, 2011 "complete" WDO inspection was performed, because the eaves had
18 been freshly painted. The recommendation stated for the owner to employ a licensed contractor
19 to inspect and make necessary repairs. The "supplemental" inspection report was also not
20 prepared on a form prescribed by the Board, in that the title of the inspection report is incorrect as
21 the word "pest" should be plural. The address provided on the report for Respondent Powerful
22 Pest Management, P.O. Box 166, in La Quinta, has not been the address of record with the Board
23 since 2001. The "supplemental" inspection report failed to contain the proper information
24 concerning who ordered the report; escrow had already closed and the property had already
25 changed hands. The inspection report also failed to contain a proper general description of the
26 building or premises inspected and the location of where the inspection tag was posted. The
27 "supplemental" inspection report statement failed to refer to the original inspection report clearly.

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1 21. On July 15, 2011, Respondents issued another version of the June 1, 2011
2 “supplemental” inspection report. This version contained “3A’s” on the inspection report
3 diagram, along with a 3A finding and recommendation, which were not present on the initial
4 “supplemental” inspection report. This version of the June 1, 2011 “supplemental” inspection
5 report contained all the same violations as the initial “supplemental” inspection report.

6 22. On or about October 5, 2011, the Board received a complaint from the buyer of the
7 property who complained that one week after purchasing the property, he noticed extensive decay
8 fungi damage in the eaves. The buyer contacted Respondent Powerful Pest Management.
9 Respondent Fahnestock returned to the property on July 15, 2011. During that inspection,
10 Respondent Fahnestock acknowledged the decay fungi damage, but indicated it was not visible at
11 the time of the June 1, 2011 “complete” inspection report, because the incident property had been
12 freshly painted.

13 23. On November 30, 2011, the Board’s investigator performed an inspection of the
14 property. That inspection revealed: evidence of an excessive moisture condition (water damage)
15 at the plywood roof sheathing, in the house eaves, and adjacent to the front porch; decay fungi
16 damage at the plywood roof sheathing, in the house eaves, adjacent to both lattice covered patios;
17 and decay fungi damage at the plywood roof sheathing, in the house eaves, at the rear of the
18 structure. This inspection also revealed the incident property had not been painted for years.

19 24. On or about December 7, 2011, the Board’s inspector prepared a Report of Findings
20 (ROF) which was served on Respondents that contained the following violations:

21 (1) failure to report the evidence of an excessive moisture condition (water damage) at the
22 plywood roof sheathing, to the right of the front porch, on the June 1, 2011 “complete” inspection
23 report, the June 1, 2011 “supplemental” inspection report, and the July 15, 2011 “supplemental
24 inspection report in violation of Code section 8516(b)(6) and 8516(b)(7), and CCR, title 16,
25 section 1990(b)(5);

26 (2) failure to report the decay fungi damage in the house eaves, at the rear of the house and
27 adjacent to both patios on the June 1, 2011 “complete” inspection report in violation of Code
28 sections 8516(b)(6) and 8516(b)(7) and CCR, title 16, section 1990(a)(4); and

1 (3) failure to report the decay fungi damage in the house eaves, and at the rear of the house
2 on the June 1, 2011 and July 15, 2011 "supplemental" inspection reports in violation of Code
3 sections 8516(b)(6) and 8516(b)(7) and CCR, title 16, section 1990(a)(4). The ROF also included
4 the following two notes: "Besides being required to address the actual damage, you are also
5 required to address the source of the damage. Furthermore, you are also required to prime and
6 paint and/or stain all completed work." and "NOTE: All repairs must comply with local building
7 code regulations and meet accepted trade standards for good and workmanlike construction."

8 25. On December 16, 2011, Respondents received the Report of Findings. The Board
9 received nothing in writing from Respondents within ten calendar days concerning whether
10 Respondents intended to comply with the ROF or not.

11 26. On February 6, 2012, the Board's investigator performed a WDO Activity Search on
12 the property which disclosed that Respondents had not filed any wood destroying organisms
13 activities with the Board after receipt of the ROF. The WDO search also disclosed that
14 Respondents had failed to file its June 1, 2011 and July 15, 2011 "supplemental" inspection
15 reports with the Board.

16 27. On February 20, 2012, the Board's investigator performed another WDO Activity
17 Search on the property which disclosed that Respondents had not filed the June 1, 2011 and/or
18 July 15, 2011 "supplemental" inspection reports with the Board.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Failure to Report an Inspection on the Appropriate Form)**

21 28. Respondents are subject to disciplinary action under section 8516, subdivision (b), for
22 failing to report an inspection on the form prescribed by the Board in violation of California Code
23 of Regulations, title 16, section 1993 as set forth in paragraph numbers 15, 16, 18 and 19 above,
24 which are incorporated here by this reference. The circumstances are as follows:

25 29. The title of the June 1, 2011 "complete" inspection report, the June 1, 2011
26 "supplemental" inspection report, and the July 15, 2011 "supplemental" inspection report is
27 incorrect. The word "pest" in the titles should be plural.

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1 violation of CCR, title 16, section 1993, subdivision (d), as set forth in paragraphs 15 through 25,
2 which are incorporated here by this reference. The circumstances are as follows: the June 1, 2011
3 and July 15, 2011 “supplemental” inspection reports fail to refer to the original inspection report
4 in such a manner to identify it clearly.

5 **TENTH CAUSE FOR DISCIPLINE**

6 **(Failure to Report Evidence of Excessive Moisture Condition)**

7 38. Respondent Fahnestock is subject to disciplinary action under section 8516,
8 subdivision (b)(6) and 8516, subdivision (b)(7), for failing to report evidence of an excessive
9 moisture condition (water damage) at the plywood roof sheathing, to the right of the front porch
10 on the June 1, 2011 “complete” and June 1, 2011 “supplemental” and July 15, 2011
11 “supplemental” inspection reports in violation of CCR, title 16, section 1990, subdivision (b)(5),
12 as set forth in paragraphs 15 through 25, which are incorporated here by this reference.

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 **(Failure to Report Evidence of Decay Fungi Damage)**

15 39. Respondent Fahnestock is subject to disciplinary action under section 8516,
16 subdivision (b)(6) and 8516, subdivision (b)(7), for failing to report evidence of decay fungi
17 damage in the June 1, 2011 “complete” inspection report, and the June 1, 2011 and July 15, 2011
18 “supplemental” inspection reports in violation of CCR, title 16, section 1990, subdivision (a)(4),
19 as set forth in paragraphs 15 through 25, which are incorporated here by this reference.

20 **TWELFTH CAUSE FOR DISCIPLINE**

21 **(Failure to Include Proper Diagram of the Structure Inspected)**

22 40. Respondent Fahnestock is subject to disciplinary action under section 8516,
23 subdivision (b)(6) for failing to include a diagram of the portions of the structure inspected as set
24 forth in paragraphs 15 through 25, which are incorporated here by this reference. The
25 circumstances are as follows: The diagram on the June 1, 2011 “complete” inspection report fails
26 to include either of the attached patios; and there is only an “X” or an “X” with a “3A” where the
27 diagram should be in the June 1, 2011 and July 15, 2011 “supplemental” inspection reports.

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