

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
Deputy Attorney General
4 State Bar No. 237926
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-6343
6 Facsimile: (213) 897-2804
Attorneys for Complainant

FILED

Date 8/5/11 **By** *William H. Douglas*

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF PESTICIDE REGULATION**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2012-4

12 **JEFF HIATT, INC.**
13 **JEFFREY SCOTT HIATT, QM**
14 **456 E. Ave K-4, Suite 1**
15 **Lancaster, CA 93535**
16 **Company Registration Certificate No. PR**
17 **4100**

ACCUSATION

16 **JEFFREY SCOTT HIATT**
17 **456 E. Ave K-4, Suite 1**
18 **Lancaster, CA 93535**
19 **Operator License No. OPR 9065, Branch 3**

Respondents.

20 Complainant alleges:

21 **PARTIES**

22 1. William H. Douglas (Complainant) brings this Accusation solely in his official
23 capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board,
24 Department of Pesticide Regulation (Board).

25 2. On or about December 15, 1992, the Board issued Operator License No. OPR 9065 in
26 Branch 3 (termite) to Jeffrey Scott Hiatt. The Operator License is currently in effect and renewed
27 through June 30, 2012.

28 //

1 3. On or about March 5, 2002, the Board issued Company Registration Certificate
2 Number PR 4100 (company registration) in Branch 3 (termite) to Jeff Hiatt, Inc., with Jeffrey
3 Scott Hiatt as President (Respondents) and Joseph G. Williams as Chief Financial Officer.

4 4. On or about March 5, 2008, the company registration was upgraded to include
5 Branches 2 (general pest) and 3 (termite) with Jason Lester Fiala as Branch 2 Qualifying
6 Manager.

7 5. On or about March 27, 2008, the company registration was changed to reflect Jeffrey
8 Scott Hiatt as Chief Executive Officer, Jason Lester Fiala as Chief Financial Officer, Scott Arnold
9 Tingle as Vice President, Dean Sager as Shareholder, and James Tilton as Shareholder.

10 6. On or about October 6, 2010, the company registration reflected the disassociation of
11 Jason Lester Fiala as Branch 2 Qualifying Manager and the company registration was
12 downgraded to only include Branch 3.

13 7. On or about November 3, 2010, the company registration was cancelled.
14

15 JURISDICTION

16 8. This Accusation is brought before the Structural Pest Control Board, Department of
17 Pesticide Regulation (Board), under the authority of the following laws. All section references
18 are to the Business and Professions Code unless otherwise indicated.

19 9. Code section 8625 states:

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

25 10. Code section 8624 states, in pertinent part:

26 If the operator is the qualifying manager, a partner, responsible officer, or owner of a
27 registered structural pest control company, the suspension or revocation may be applied to the
28 company registration. The performance by any partnership, corporation, firm, association, or

1 registered company of any act or omission constituting a cause for disciplinary action, likewise
2 constitutes a cause for disciplinary action against any licensee who, at the time the act or omission
3 occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership,
4 corporation, firm, association, or registered company whether or not he or she had knowledge of,
5 or participated in, the prohibited act or omission.

6 11. Code section 8654 states:

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

19 12. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a
20 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
21 period within which the license may be renewed, restored, reissued or reinstated.

22 23 STATUTORY PROVISIONS

24 13. Code section 8516 states, in pertinent part:

25 (b) No registered company or licensee shall commence work on a contract, or sign, issue,
26 or deliver any documents expressing an opinion or statement relating to the absence or presence
27 of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3
28 field representative or operator. The address of each property inspected or upon which work is

1 completed shall be reported on a form prescribed by the board and shall be filed with the board no
2 later than 10 business days after the commencement of an inspection or upon completed work.

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

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

22 ...

23 (9) Indication or description of any areas that are inaccessible or not inspected with
24 recommendation for further inspection, if practicable. If, after the report has been made in
25 compliance with this section, authority is given later to open inaccessible areas, a supplemental
26 report on conditions in these areas shall be made.

27 (10) Recommendations for corrective measures.

28 14. Code section 8622 states:

1 “When a complaint is accepted for investigation of a registered company, the board,
2 through an authorized representative, may inspect any or all properties on which a report has been
3 issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section
4 8518 by the registered company to determine compliance with the provisions of this chapter and
5 the rules and regulations issued there under. If the board determines the property or properties
6 are not in compliance, a notice shall be sent to the registered company so stating. The registered
7 company shall have 30 days from the receipt of the notice to bring such property into compliance,
8 and it shall submit a new original report or completion notice or both and an inspection fee of not
9 more than one hundred twenty-five dollars (\$125) for each property inspected. If a subsequent
10 reinspection is necessary, pursuant to the board's review of the new original report or notice or
11 both, a commensurate reinspection fee shall also be charged. If the board's authorized
12 representative makes no determination or determines the property is in compliance, no inspection
13 fee shall be charged.

14 The notice sent to the registered company shall inform the registered company that if it
15 desires a hearing to contest the finding of noncompliance, the hearing shall be requested by
16 written notice to the board within 20 days of receipt of the notice of noncompliance from the
17 board. Where a hearing is not requested pursuant to this section, payment of any assessment
18 shall not constitute an admission of any noncompliance charged.”

19 15. Code section 8638 states:

20 “Failure on the part of a registered company to complete any operation or construction
21 repairs for the price stated in the contract for such operation or construction repairs or in any
22 modification of such contract is a ground for disciplinary action.”

23 16. Code section 8641 states:

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

28 17. Code Section 8650 states:

1 "Acting in the capacity of a licensee or registered company under any of the licenses or
2 registrations issued hereunder except:

3 (a) In the name of the licensee or registered company as set forth upon the license or
4 registration, or

5 (b) At the address and location or place or places of business as licensed or registered or as
6 later changed as provided in this chapter is a ground for disciplinary action."

7
8 **REGULATORY PROVISIONS**

9 18. California Code of Regulations, title 16, section 1937.14, states:

10 "All work completed by licensees or registered companies shall be done within the specific
11 requirements of any plans or specifications and shall meet accepted trade standards for good and
12 workmanlike construction in any material respect, and shall comply with provisions of Section
13 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations."

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

15 "(a) All reports shall be completed as prescribed by the board. Copies filed with the board
16 shall be clear and legible. All reports must supply the information required by Section 8516 of the
17 Code and the information regarding the pesticide or pesticides used as set forth in Section 8538 of
18 the Code, and shall contain or describe the following:

19 ...

20 (3) Infestations, infections or evidence thereof.

21 ...

22 20. California Code of Regulations, title 16, section 1991 states, in pertinent part:

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

27 ...

1 (8) Exterminate all reported wood-destroying pests. Such extermination shall be
2 considered repair under section 8516(b)(12) of the code. If evidence indicates that wood-
3 destroying pests extend into an inaccessible area(s), recommendation shall be made to either:

4 (A) enclose the structure for an all encompassing treatment utilizing materials
5 listed in section 8505.1 of the code, or

6 (B) use another all encompassing method of treatment which
7 exterminates the infestation of the structure, or

8 (C) locally treat by any or all of the following:

- 9 1. exposing the infested area(s) for local treatment,
10 2. removing the infested wood,
11 3. using another method of treatment which exterminates
12 the infestation. (If any recommendation is made for local
13 treatment, the report must contain the following statement: "Local
14 treatment is not intended to be an entire structure treatment method. If
15 infestations of wood-destroying pests extend or exist beyond the area(s)
16 of local treatment, they may not be exterminated.")

17 When a complete inspection is performed, a recommendation shall be made to remove or
18 cover all accessible pellets and frass of wood-destroying pests.

19 When a limited inspection is performed, the inspection report shall state that the inspection
20 is limited to the area(s) described and diagramed. A recommendation shall be made to remove or
21 cover all accessible pellets and frass of wood-destroying pests in the limited area(s). The limited
22 inspection report shall include a recommendation for further inspection of the entire structure and
23 that all accessible evidence of wood-destroying pests be removed or covered.

24 //

25 //

26 //

27 //

28 //

1 COST RECOVERY/RESTITUTION

2 21. Code section 125.3 states, in pertinent part, that a Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.
6

7 BACKGROUND FACTS

8 (260 MIRAMAR STREET, UPLAND, CALIFORNIA)

9 22. On or about August 2, 2010, homeowner Vikki Thompson (Thompson) entered into a
10 contract with Jason Sager (Sager), a field representative employed by Respondents to inspect the
11 premises at 260 Miramar Street, Upland, California (the property). The contract included, but
12 was not limited to, activation treatments for all wood destroying pests marked on the contract,
13 corrective measures for specialty pests marked on the contract, repair all identified structural
14 damage, and to remove old attic insulation and install new TAP insulation to the attic. The total
15 cost to complete the contract was \$4997.00. The name-style listed on the title of the contract was
16 "jeff hiatt, inc. all pest professionals" and the first paragraph on the contract referenced "Jeff
17 Hiatt, Inc., All Pest Professionals (JHI). A search of the Board's records indicates that "JHI" nor
18 "jeff hiatt, inc., all pest professionals" have not and have never been registered as principal
19 registration companies by the Board.

20 23. On or about August 2, 2010, Thompson wrote a check to Respondents in the amount
21 of \$1000.00 as a deposit to complete the work on the contract and the inspection report.
22 Subsequently, on this same date, Enrique Hernandez, an employee of Respondents, inspected the
23 premises at 260 Miramar Street, Upland, California (the property). That same day, Respondents
24 issued Report No. 211626, using the company name jeff hiatt, inc. all pest professionals, with a
25 business address of 456 E Avenue K-4 Ste. 1, Lancaster, California. The inspection report
26 indicated that JHI's Company Registration Number was PR 4100. The report had findings of
27 proactive treatment for the control of drywood and subterranean termites; evidence of active
28

1 drywood termites; drywood termite damage noted at trim and fungus damage noted at a support
2 beam, and included recommendations to complete those findings.

3 24. On or about August 5, 2010, Thompson wrote a check in the amount of \$500 to
4 Respondents. The check referred to Respondents inspection report number 211626.

5 25. On or about September 11, 2010, Thompson wrote another check to Respondents in
6 the amount of \$878 to "JHI".

7 26. On or about September 16, 2010, Respondents issued an invoice to Thompson in the
8 name-style "JHI" which indicated that work was completed at the property. The invoice included
9 a "Policy Service Request for Repairs" which stated "Need to buy a new fold out ladder for the
10 attic. We broke hers. Also, we lifted up flashing to screen and never put it back need to fix that as
11 well." Respondents also failed to install TAP insulation.

12 27. On or about December 2, 2010, Steve Winfrey, a specialist with the Board, inspected
13 the property and found Respondents to be in violation of various provisions of the Structural Pest
14 Control Act as further specified below.

15 FIRST CAUSE FOR DISCIPLINE

16 **(Failure to Comply with Codes and Regulations - Improper Inspections)**

17 28. Respondents are subject to discipline under Code section 8641 and 8516 subdivisions
18 (b)(6), (b)(9), and (b)(10) in conjunction with California Code of Regulations, sections 1990,
19 subdivision (a)(3) and 1991, subdivision (8)(A), (B) and (C), in that Respondents commenced
20 work on a contract without properly preparing an inspection report by a licensed Branch 3 field
21 representative or operator. Specifically, Respondents failed to indicate and describe areas of
22 drywood termite infestations visible at the wood trim at the front of the house which extends into
23 inaccessible areas and which are physically inaccessible for local chemical treatment.
24 Respondents also failed to include on the inspection report a proper recommendation for
25 corrective measures regarding drywood termite infestations that extend into inaccessible areas.
26 The evidence indicates that the infestations are active and extend into areas that are physically
27

28

1 inaccessible for local chemical treatment. Complainant incorporates by reference, paragraphs 22
2 - 27 as if fully set forth herein.

3
4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Operating in a Name Style Not Registered with the Board)**

6 29. Respondents are subject to discipline under Code sections 8641 and 8650 in that
7 Respondents entered into a contract and operated with the name styles "JHI" and "jhiapp", neither
8 of which are registered with the Board. Complainant incorporates by reference, paragraphs 22 -
9 27 as if fully set forth herein.

10
11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Code - Breach of Contract)**

13 30. Respondents are subject to discipline under Code section 8638, in that Respondents
14 failed to complete operation and construction repairs for the price stated in the contract in the
15 following respects:

- 16 a. Respondents failed to install the TAP insulation in the attic.
17 b. Respondents failed to complete the work as contracted in that drywood termite and
18 decay fungi damage still exists at the property.

19 Complainant incorporates by reference, paragraphs 22 - 27 as if fully set forth herein.

20
21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Code - Noncompliance with Notices Issued by the Board)**

23 31. Respondents are subject to discipline under Code section 8641 and 8622 in that after
24 receiving notice of noncompliance by the Board, Respondents failed to bring the property into
25 compliance within 30 days and submit a new original report or completion notice. Complainant
26 incorporates by reference, paragraphs 22 - 27 as if fully set forth herein.

27 //

28 //

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Workmanship)**

3 32. Respondents are subject to discipline under Code section 8641 in conjunction with
4 California Code of Regulations, title 16, section 1937.14 in that Respondents failed to perform the
5 repairs at the property in a good and workmanlike manner in the following respects:

6 a. Respondents' employee broke the attic pull down ladder in the garage while working
7 on the property.

8 b. Respondents failed to include on the inspection report a proper recommendation
9 regarding drywood termite infestations that extend into inaccessible areas. The evidence indicates
10 that the infestations are active and extend into areas that are physically inaccessible for local
11 chemical treatment.

12 Complainant incorporates by reference, paragraphs 22 – 27 as if fully set forth herein.
13

14 **MATTERS IN AGGRAVATION**

15 33. To determine the degree of penalty, if any, to be imposed on Respondents' company
16 registration, complainant alleges:

17 a. On June 15, 2004, Respondents Company Registration Certificate Number PR 4100
18 paid a \$50 fine levied by the Los Angeles County Agricultural Commissioner for a violation of
19 Code section 8505.17.

20 b. On February 23, 2005, Respondents Company Registration Certificate Number PR
21 4100 was levied a \$300 fine by the Board for a violation of Code section 8638.

22 c. On April 17, 2006, Respondents Company Registration Certificate Number PR 4100
23 was levied a \$150 fine by the Board for a violation of Code section 8638 and section 1937.14 of
24 the California Code of Regulations.

25 d. On September 19, 2006, Respondents Company Registration Certificate Number PR
26 4100 paid a \$600 fine levied by the San Bernardino County Agricultural Commissioner for a
27 violation of Code section 8551.5 and section 6738(b)(c) of the California Code of Regulations.
28

1 e. On December 18, 2006, Respondents Company Registration Certificate Number PR
2 4100 was levied a \$150 fine by the Board for a violation of Code section 8516 and section
3 1991(a)(8) of the California Code of Regulations.

4 f. On March 7, 2007, Respondents Company Registration Certificate Number PR 4100
5 paid a \$300 fine levied by the San Diego County Agricultural Commissioner for a violation of
6 section 15204 of the Food and Agricultural Code.

7 g. On April 5, 2007, Respondents Company Registration Certificate Number PR 4100
8 paid a \$700 fine levied by the San Bernardino County Agricultural Commissioner for a violation
9 of section 6702 of the California Code of Regulations.

10 h. On January 29, 2008, Respondents Company Registration Certificate Number PR
11 4100 was levied a \$250 fine by the Board for a violation of sections 1999.5(a),(f)(2) and (f)(4) of
12 the California Code of Regulations.

13 i. On November 13, 2008, Respondents' Company Registration Certificate Number PR
14 4100 was levied a \$750 fine by the Board for a violation of 1999.5(a),(f) and (6)(13) of the
15 California Code of Regulations.

16 34. To determine the degree of penalty, if any, to be imposed on Respondents' operator
17 license, complainant alleges:

18 a. On June 15, 2004, Respondents Operator's License No. OPR 4065 paid a \$50 fine
19 levied by the Los Angeles County Agricultural Commissioner for a violation of Code section
20 8505.17.

21 b. On February 23, 2005, Respondents Operator's License No. OPR 4065 was levied a
22 \$300 fine by the Board for a violation of Code section 8638.

23 c. On April 17, 2006, Respondents Operator's License No. OPR 4065 was levied a \$150
24 fine by the Board for a violation of Code section 8638 and section 1937.14 of the California Code
25 of Regulations.

26 d. On September 19, 2006, Respondents Operator's License No. OPR 4065 paid a \$600
27 fine levied by the San Bernardino County Agricultural Commissioner for a violation of Code
28 section 8551.5 and section 6738(b)(c) of the California Code of Regulations.

1 e. On December 18, 2006, Respondents Operator's License No. OPR 4065 was levied a
2 \$150 fine by the Board for a violation of Code section 8516 and section 1991(a)(8) of the
3 California Code of Regulations.

4 f. On March 7, 2007, Respondents Operator's License No. OPR 4065 paid a \$300 fine
5 levied by the San Diego County Agricultural Commissioner for a violation of section 15204 of
6 the Food and Agricultural Code.

7 g. On April 5, 2007, Respondents Operator's License No. OPR 4065 paid a \$700 fine
8 levied by the San Bernardino County Agricultural Commissioner for a violation of section 6702
9 of the California Code of Regulations.

10 h. On January 29, 2008, Respondents Operator's License No. OPR 4065 was levied a
11 \$250 fine by the Board for a violation of sections 1999.5(a),(f)(2) and (f)(4) of the California
12 Code of Regulations.

13 i. On November 13, 2008, Respondents Operator's License No. OPR 4065 was levied a
14 \$750 fine by the Board for a violation of 1999.5(a),(f) and (6)(13) of the California Code of
15 Regulations.

16
17 **OTHER MATTERS**

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

23 36. Pursuant to Code section 8624, if Operator License Number OPR 9065, issued to
24 Respondents is suspended or revoked, the Board may suspend or revoke Company Registration
25 Certificate Number PR 4100, issued to Respondents with Jeffrey Scott Hiatt, as the qualifying
26 manager.

27 37. Pursuant to Code section 8624, the causes for discipline established as to
28 Respondents likewise constitute causes for discipline against Respondents regardless of whether

1 they had knowledge of or participated in the acts or omissions which constitute causes for
2 discipline against Respondents.

3 38. Pursuant to Code section 8654, if discipline is imposed on Operator's License
4 Number OPR 9065, issued to Respondents, then Jeffrey Scott Hiatt shall be prohibited from
5 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
6 employee for any registered company during the time the discipline is imposed, and any
7 registered company which employs, elects, or associates Jeffrey Scott Hiatt shall be subject to
8 disciplinary action.

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

12
13 **PRAYER**

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

16 1. Revoking or suspending Company Registration Certificate Number PR 4100, issued
17 to Jeff Hiatt, Inc. and OPR 9065 issued to Jeffrey Scott Hiatt;

18 2. Ordering Jeff Hiatt, Inc. and/or Jeffrey Scott Hiatt to pay the Structural Pest Control
19 Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business
20 and Professions Code section 125.3;

21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 8/5/11

William H. Douglas
WILLIAM H. DOUGLAS
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

27 LA2011501347
28 60658970.docx