

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

In the Matter of the Citation Against:

TOTAL RESOURCES, INC dba TOTAL  
TERMITE AND CONSTRUCTION, and PAUL  
DONALD HOPLINS,

Case No. CF 12-115

OAH No. 2013070959

Respondents.

**PROPOSED DECISION**

The Proposed Decision of Jerry Smilowitz, Administrative Law Judge, dated November 25, 2013, in Los Angeles, 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 1, paragraph 2, "William H. Douglas (Complainant) in his official capacity as the Interim Executive Officer/Registrar" is stricken and replaced with "Susan Saylor (Complainant) in her officer capacity as the Registrar/Executive Officer".
2. On page 2, paragraph 1, insert after Complainant, "William H. Douglas, former Interim Registrar/Executive Officer".

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.

The Decision shall become effective on February 27, 2014.

IT IS SO ORDERED January 28, 2014.

  
For the Structural Pest Control Board

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PROPOSED DECISION

Administrative Law Judge Jerry Smilowitz, State of California, Office of Administrative Hearings, heard this matter on October 24, 2013, in Los Angeles, California.

Deputy Attorney General Christina Thomas represented William H. Douglas (Complainant) in his official capacity as the Interim Executive Officer/Registrar, Structural Pest Control Board (Board), Department of Consumer Affairs, State of California.

Ramiro Guzman, President of Respondent Total Resources, Inc., dba Total Termite and Construction, and Respondent Paul Donald Hopkins, Qualifying Manager of Total Resources, were present without counsel.

Complainant had asked for a default against the reputed Treasurer of Total Resources, Martha Guzman, who was not present. As issued by the Board, the Citation was against Hopkins and Total Termite and Construction. However, with the exception of the caption before the Board when it conducted an Informal Office Conference, other documents in this matter, including the Notice of Hearing, named Ramiro Guzman and Martha Guzman as respondents. The record was held open until November 5, 2013, for Complainant to submit additional evidence on this issue. A subsequent order further held the record open beyond November 5, 2013, until November 12, 2013, for Complainant to submit briefing on whether Ramiro Guzman and Martha Guzman should be maintained as respondents. In response, Complainant did not submit any additional documents, and instead sent letter dated November 1, 2013, which stated, "As this is a Citation and not an Accusation case, and after further review, the Board hereby withdraws its Request for Default against Treasurer, Martha Guzman. As to President, Ramiro Guzman, we withdraw our request to include him as part of the Citation." Consequently, the only respondents in this matter are Total Resources, Inc., dba Total Termite and Construction, and Hopkins.

Upon receipt of the letter from Complainant, the record closed on November 1, 2013, and the matter was submitted for decision.

### FACTUAL FINDINGS

1. Complainant issued the Citation while he was acting solely in his official capacity.

2. On October 31, 2008, the Board issued a Branch 3 Company Registration Certificate, Number PR 5710, to Respondent Total Resources Inc., dba Total Termite and Construction, with Respondent Paul Donald Hopkins identified as the Qualifying Manager. In 2012, the Certificate was upgraded to include Branches 2 and 3. Over the years, Respondent Total Resources, Inc., was, at various times, suspended for failing to maintain general liability insurance on behalf of the State of California as required by Business and Professions Code section 8692,<sup>1</sup> not having a Qualifying Manager, and failing to post a surety bond.

3. Section 8516 prohibits a registered company or licensee from commencing any work related to the absence or presence of wood destroying pests or organisms (WDO) 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 must be reported on a form prescribed by the Board and filed with the Board no later than 10 business days after the commencement of an inspection or upon completed work.

4. For each activity reported, the registered company or licensee pays \$2.50 to the Board. Prior to commencement of any activity, the registered company or licensee must deposit its payments to the Board in an account to which the Board has access, and file its report.

5. In July of 2011, the Board sent a notice to all Branch 3 registered companies in which it announced a new 3-tiered system for the issuance of citations and fines which may result in disciplinary action if needed. The first tier established an administrative fine of \$2,500 plus the costs of unreported activities at \$2.50 per activity. Tier 2 was for a second violation with two or more unreported activities and set the administrative fine at \$5,000 plus the costs of unreported activities at \$2.50 per activity. Tier 3 provides that for a third violation with three or more unreported activities, the Board sets an administrative fine of \$2,500 for each unreported activity plus the costs of unreported activities at \$2.50 per activity. All violations past the third violation will result in disciplinary action.

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<sup>1</sup> All statutory references are to the Business and Professions Code unless otherwise noted.

6. At the time of the issuance of the Citation at issue here, Respondent Total Termite and Construction had already incurred fines and costs.

7. Complainant sent an Order of Suspension, dated October 28, 2011, to Respondents based upon the failure of Respondents to maintain, after October 19, 2011, a Certificate of Insurance. When Respondents did not respond to this Order, the Board noticed lapses in coverage and the filing of WDO reports. As a result, on February 22, 2012, the Board sent Investigator Gregory Adams to the offices of Respondent Total Termite and Construction. The only person present at the location was the secretary who did not know how to download all of the pertinent files. Nonetheless, Investigator Adams determined that Respondents had failed to report and file at least 100 WDO activities with the Board from October 6, 2011 to January 30, 2012. Further, insurance coverage had expired on October 19, 2011, yet, since that time, Respondents had engaged in the practice of structural pest control without insurance and while on suspension.

8. Later, Investigator Adams met personally with Respondent Hopkins and President Guzman, and checked additional records. As he testified at the hearing, his findings of this second visit would constitute a Tier 3 violation unless Respondents cleared up their deficiencies.

9. The report led to the issuance of a Citation, Number CF 12-115, dated March 6, 2012, in which a fine in the amount of \$5,250 was assessed for failing to file 100 WDO activities, and a fine in the amount of \$1,000 was assessed for practicing structural pest control while failing to maintain insurance coverage. The total was \$6,250. The Citation included an Order of Abatement requiring Total Termite and Construction to file all remaining unreported WDO activities within 30 days.

10. Respondent Hopkins attended an informal office conference on the citation in January of 2013. Finding that Total Termite and Construction still had not filed a minimum of 100 WDO activities, the panel, consisting of an industry member, and a Board Specialist, upheld the fines and Citation.

11. On May 15, 2013, the Board issued an Order of Suspension to Respondents for failure to maintain an insurance policy.

12. On June 28, 2013, the Operator's License of Respondent Hopkins was reinstated after Total Termite and Construction posted a Certificate of Insurance.

#### CONCLUSIONS OF LAW

1. At the hearing, Respondent Hopkins admitted the validity of the Citation and the fines. He stated that he had trouble retrieving files, and Inspector Adams offered to meet with him and assist him in identifying WDO activities Respondents agreed


to pay the total fine of \$6,250, at the rate of \$1,000 per month, starting on January 15, 2014, or 30 days following issuance of a Decision by the Board, whichever is later. They also agreed to provide the Board with all outstanding WDO activity reports no later than 30 days following issuance of the decision.

2. In light of this admission, as well as the evidence in this record, the Citation and fines are upheld in their entirety.

#### ORDER

3. The parties stipulated to the following: Commencing on January 15, 2014, or thirty days following issuance of this Decision, whichever is later, Respondents shall pay to the Board the amount of \$1,000 a month until such time as the fines in Citation Number CF 12-115 are completely paid. Respondents are further ordered to provide all outstanding WDO activities to the Board no later than 30 days following issuance of this Decision.

Dated: November 25, 2013

  
JERRY SMILOWITZ  
Administrative Law Judge  
Office of Administrative Hearings