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FILED
Date 8/21/13 By Susan Saylor

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

In the Matter of the Accusation Against: **SWIFT TERMITE CONTROL INC.; JOHNNY RAY DURR, QUALIFYING MANAGER** **3685 Edgehill Drive** **Los Angeles, CA 90018** **Company Registration Certificate No. PR 5913,** **and** **JOHNNY RAY DURR** **3685 Edgehill Drive** **Los Angeles, CA 90018** **Operator's License No. OPR 9500** Respondents.	Case No. 2014-12 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 26, 2009, the Board issued Company Registration Certificate License Number PR 5913 in Branch 3 (termite) to Swift Termite Control Inc.; Johnny Ray Durr, as Qualifying Manager (Respondent Swift).

3. On or about March 15, 1996, the Board issued Operator's License Number OPR 9500 in Branch 3 to Johnny Ray Durr (Respondent Durr). Respondent Durr's Operator's License was in effect at all times relevant to the charges brought herein and was suspended on August 20, 2013 pursuant to Family Code Section 17520.

JURISDICTION

4. This Accusation is brought before the Structural Pest Control Board ("Board"), Department of Consumer Affairs, under the authority of the following laws. All statutory section references are to the Business and Professions Code unless otherwise indicated. All regulatory section references are to Title 16 of the California Code of Regulations unless otherwise indicated.

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

6. Code section 8625 states:

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

7. Code section 8624 states, in pertinent part:

. . .

"If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration.

The performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for

disciplinary action against any licensee who, at the time the act or omission occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm, association, or registered company whether or not he or she had knowledge of, or participated in, the prohibited act or omission."

8. Code section 8654 states, in pertinent part:

"Any individual who has . . . had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any partnership, corporation, firm, or association . . . whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or revoked, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of a registered company, and the employment, election or association of such person by a registered company is a ground for disciplinary action."

STATUTORY PROVISIONS

9. Code section 125.9 states, in pertinent part:

(a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, or commission within the department ... may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

. . .

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

. . .

(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

10. Section 8617 subdivision (f) of the Code states:

"Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board."

11. Section 8516 subdivision (b) of the Code states:

"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.

. . .

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:

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

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

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

(4) The address or location of the property.

(5) A general description of the building or premises inspected.

(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.

(8) One of the following statements, as appropriate, printed in bold type:

(A) The exterior surface of the roof was not inspected. If you want the water tightness of the roof determined, you should contact a roofing contractor who is licensed by the Contractors' State License Board.

(B) The exterior surface of the roof was inspected to determine whether or not wood destroying pests or organisms are present.

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

(10) Recommendations for corrective measures.

(11) Information regarding the pesticide or pesticides to be used for their control as set forth in subdivision (a) of Section 8538.

(12) The inspection report shall clearly disclose that if requested by the person ordering the original report, a reinspection of the structure will be performed if an estimate or bid for making repairs was given with the original inspection report, or thereafter.

(13) The inspection report shall contain the following statement, printed in boldface type:

"NOTICE: Reports on this structure prepared by various registered companies should list the same findings (i.e. termite infestations, termite damage, fungus damage, etc.). However, recommendations to correct these findings may vary from company to company. You have a right to seek a second opinion from another company."

An estimate or bid for repairs shall be given separately allocating the costs to perform each and every recommendation for corrective measures as specified in subdivision (c) with the original inspection report if the person who ordered the original inspection report so requests, and if the registered company is regularly in the business of performing corrective measures.

If no estimate or bid was given with the original inspection report, or thereafter, then the registered company shall not be required to perform a reinspection.

A reinspection shall be an inspection of those items previously listed on an original report to determine if the recommendations have been completed. Each reinspection shall be reported on an original inspection report form and shall be labeled "Reinspection" in capital letters by rubber stamp or typewritten. Each reinspection shall also identify the original report by date .

After four months from an original inspection, all inspections shall be original inspections and not reinspections.

Any reinspection shall be performed for not more than the price of the registered company's original inspection price and shall be completed within 10 working days after a reinspection has been ordered.

12. Section 8518 of the Code states:

"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.

Every property upon which work is completed 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 upon which work was completed pursuant to subdivision (b) of Section 8516 or Section 8518 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).

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."

13. Section 8624 of the Code states:

"If the board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.

If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration.

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

REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 1920 states, in pertinent part:

"(d) Compliance with Orders of Abatement: When a citation is not contested or if the citation is appealed and the person cited does not prevail, failure to comply with the order of abatement or to pay the fine in the citation within the time allowed by a licensee may result in disciplinary action being taken by the Board against the person cited, or where the cited person is unlicensed in appropriate judicial relief being taken against the person cited."

15. California Code of Regulations, title 16, section 1996.3 states:

(a) 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.

(b) The form shall contain the following information for each property inspected and/or upon which work was completed.

(1) Company Name

(2) Company registration number

(3) Branch office registration number (when a branch office issues an inspection report or notice of work completed

(4) Date of Activity

(5) Address of property inspected or upon which work was completed, including zip code

(6) Activity Code

(7) License number of licensee performing the inspection

(c) Failure of a registered company to report and file with the Board the address of any property inspected or upon which work was completed pursuant to Section 8516(b) or 8518 are grounds for disciplinary action and subject to a fine of not more then two thousand five hundred dollars ($2,500).

COST RECOVERY

16. Code section 125.3 states, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. In addition, nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

FACTUAL BACKGROUND

17. On or around September 15, 2011, the Board issued to Respondent Swift, Citation No. CF 12-32 in the amount of $3262.50 and an Order of Abatement to Respondent for violation of §§ 8516, subdivision (b) and 8518 of the Code during the time period between August 26, 2009 to September 15, 2011.

18. Citation No. CF 12-32 specifically cited Respondent Swift's failure to file "305 Wood Destroying Organism Activities (WDO) (inspections and/or completions)" with the Board during that time period.

19. On or around February 10, 2012, the Board delivered correspondence to Respondent Swift informing it that the Board had not received payment for Citation No. CF 12-32.

20. On or around August 22, 2012, a Board Specialist learned that during the time period between August 26, 2009 and August 12, 2012, Respondent Swift failed to file a total of 601 WDO Activities with the Board.

21. During the time period between September 18 to November 27, 2012, Respondent Durr's Operator License No. OPR 9500 was disassociated from Respondent Swift, however Respondent Swift continued to function without a Qualified Manager.

22. On or around November 12, 2012, the Board placed Respondent Swift's Company Registration on suspension and ordered it to cease work immediately due to Respondent Durr's disassociation from the company during that time period.

23. On or around December 12, 2012, the Board learned that Respondent Swift was not in "good standing" with the California Secretary of State Franchise Tax Board.

24. The Board also learned that Respondent Swift was issued a citation by the County of Los Angeles Department of Agriculture for violation of Food and Agriculture Code § 15204[failure to register with the commissioner prior to operating a structural pest control business in the county]. The fine remains unpaid.

25. On or around December 17, 2012, a compliance site inspection of Respondent Swift revealed that the company continued to complete, but failed to file WDO Activities reports with the Board. Respondents failed to file approximately 410 WDO after being issued Citation No. CF 12-32 on September 15, 2011.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Citation and Order of Abatement)

26. Respondents Swift and Durr are subject to disciplinary action pursuant to Code sections 125.9, 8617, subdivision (f) in conjunction with California Code of Regulations section 1920 subdivision (d) in that Respondents have failed to comply with payment for Citation CF 12-32 within the time allotted and have failed to comply with the Order of Abatement contained within the Citation as further set forth in paragraphs 17 – 20, 25 which are incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Working Outside of Scope)

Respondent Swift is subject to disciplinary action pursuant to Code sections 8516, subdivision (b) in conjunction with California Code of Regulations section 1996.3 in that Respondent commenced work on a contract relating to the absence or presence of wood destroying pests or organisms without obtaining an inspection by a licensed Branch 3 field representative or operator. Complainant incorporates by reference paragraphs 21 – 22 as if fully set forth herein.

DISCIPLINE CONSIDERATIONS

27. To determine the degree of discipline, if any, to be imposed on Respondents Swift and Durr, Complainant alleges that on or about September 15, 2011, in a prior action, the Los Angeles County Department of Agriculture issued Citation Number SP 2012-312 and ordered Respondent to pay a fine of $100.00. That Citation has not been paid, is now final and is incorporated by reference in paragraphs 23 – 24, as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Company Registration Certificate License Number PR 5913, issued to Swift Termite Control Inc.; Johnny Ray Durr Qualifying Manager;

2. Revoking or suspending Operator's License Number OPR 9500 Branch 3, issued to Johnny Ray Durr, Swift Termite Control.

3. Ordering Respondents Swift and Durr to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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4. Taking such other and further action as deemed necessary and proper.

DATED: 8/21/13

SUSAN SAYLOR
Executive Officer
Structural Pest Control Board
State of California
Complainant

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