

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

**APPLE TERMITE, INC.; JENHNSEN
LOPEZ; DAVE DANIEL CHAVEZ
15859 Edna Place, Unit 207
Irwindale, CA 91706
Company Registration Certificate No. PR
5934**

Respondents.

Case No. 2012-56

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 9, 2012, Complainant William H. Douglas, in his official capacity as the Interim Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Accusation No. 2012-56 against Apple Termite, Inc. ("Respondent Apple" or "Respondents"); Jenhnsen Lopez; Dave Daniel Chavez ("Respondent Chavez" or "Respondents"); and, Wendell T. Polk, Jr. ("Respondent Polk" or "Respondents") before the Structural Pest Control Board. (Accusation attached as Exhibit A.)
2. On or about September 28, 2012, Susan Saylor, in her official capacity as the Assistant Executive Officer of the Structural Pest Control Board, Department of Pesticide

1 Regulation, filed a First Supplemental Accusation for Case No. 2012-56 against Respondents
2 before the Structural Pest Control Board. (First Supplemental Accusation attached as Exhibit B.)

3 3. On or about October 1, 2009, the Structural Pest Control Board ("Board") issued
4 Company Registration Certificate No. PR-5934 to Respondent Apple in Branch 3, with Jenhnsen
5 Lopez as President and Respondent Chavez as Qualifying Manager.

6 4. On or about September 1, 2011, Branch Office Registration No. Br. 5280 was issued
7 to Respondent Apple with Respondent Chavez as Branch Office Supervisor.

8 5. On or about October 4, 2007, the Board issued Operator's License Number OPR
9 11588 in Branch 3 to Respondent Chavez. On or about October 1, 2009, Respondent Chavez
10 became the Qualifying Manager of Respondent Apple. The Operator's License will expire June
11 30, 2013, unless renewed.

12 6. On or about April 11, 2000, the Board issued Field Representative's License Number
13 FR 32146 to Respondent Chavez. The Field Representative License will expire on June 30, 2014,
14 unless renewed.

15 7. On or about May 2, 1993, the Board issued Field Representative's License Number
16 FR 21710 in Branch 3 to Respondent Polk. The Field Representative License will expire on June
17 30, 2013, unless renewed.

18 8. The Company Registration Certificate, the Branch Office Registration, the Operator's
19 License and the Field Representative Licenses delineated above were all in full force and effect at
20 all times relevant to the charges brought in Accusation No. 2012-56 and the First Supplemental
21 Accusation for Case No. 2012-56.

22 9. On or about October 8, 2012, Respondents were served by Certified and First-Class
23 Mail copies of the Accusation No. 2012-56, Statement to Respondent, Notice of Defense, Request
24 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
25 11507.7) as well as copies of the First Supplemental Accusation, Supplemental Statement to
26 Respondent, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
27 11507.6, and 11507.7) at their corresponding addresses of record which, pursuant to Business and
28

1 Professions Code section 136, is required to be reported and maintained with the Board. The
2 addresses of record for Respondent Apple were and are:

3 15859 Edna Place, Unit 207
4 Irwindale, CA 91706; and,

5 9459 Slauson
6 Pico Rivera, CA 90660.

7 Respondent Chavez's address of record was and is:

8 30130 Cove View
9 Canyon Lake, CA 92587.

10 Respondent Polk's address of record was and is:

11 P.O. Box 1909
12 South Gate, CA 90208.

13 10. On or about October 8, 2012, Respondent Apple was also served the documents
14 referenced in paragraph 9 by Certified and First Class Mail at the following address:

15 30130 Cove View
16 Canyon Lake, CA 92587

17 11. On or about October 8, 2012, Respondent Chavez was also served the documents
18 referenced in paragraph 9 by Certified and First Class Mail at the following addresses:

19 15859 Edna Place, Unit 207
20 Irwindale, CA 91706; and,

21 9459 Slauson
22 Pico Rivera, CA 90660.

23 12. Service of the Accusation was effective as a matter of law under the provisions of
24 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
25 124.

26 13. On or about October 21, 2012, Respondent Polk signed and returned by mail a Notice
27 of Defense.

28 14. On or about October 22, 2012, the documents mailed to 30130 Cove View were
returned by the U.S. Postal Service marked "not deliverable as addressed, unable to forward."

15. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent

1 files a notice of defense, and the notice shall be deemed a specific denial of all parts
2 of the accusation not expressly admitted. Failure to file a notice of defense shall
3 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
4 may nevertheless grant a hearing.

5 16. Respondent Apple and Respondent Chavez failed to file a Notice of Defense within
6 15 days after service upon them of the Accusation and First Supplemental Accusation, and
7 therefore waived their right to a hearing on the merits of Accusation No. 2012-56.

8 17. California Government Code section 11520 states, in pertinent part:

9 (a) If the respondent either fails to file a notice of defense or to appear at the
10 hearing, the agency may take action based upon the respondent's express admissions
11 or upon other evidence and affidavits may be used as evidence without any notice to
12 respondent.

13 18. Pursuant to its authority under Government Code section 11520, the Board finds
14 Respondent Apple and Respondent Chavez in default. The Board will take action without further
15 hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in
16 this matter, as well as taking official notice of all the investigatory reports, exhibits and
17 statements contained therein on file at the Board's offices regarding the allegations contained in
18 Accusation No. 2012-56 and the First Supplemental Accusation, finds that the charges and
19 allegations in Accusation No. 2012-56 and the First Supplemental Accusation, are separately and
20 severally, found to be true and correct by clear and convincing evidence.

21 19. Taking official notice of its own internal records, pursuant to Business and
22 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
23 and Enforcement is \$11,674.53 as of December 13, 2012.

24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent Apple Termite, Inc., with
26 Jenhnsen Lopez as President and Dave Daniel Chavez as Qualifying Manager, has subjected
27 Company Registration Certificate No. PR 5934 to discipline; Respondent Dave Daniel Chavez
28 has subjected Branch Office Registration No. Br. 5280 to discipline; Respondent Dave Daniel
Chavez has subjected Operator's License No. OPR 11588 to discipline; and, Respondent Dave
Daniel Chavez has subjected Field Representative License No. FR 32146 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

1 3. The Structural Pest Control Board is authorized to revoke Respondent Apple's
2 Registration Certificate, Respondent Chavez's Branch Office Registration, Respondent Chavez's
3 Operator's License and Respondent Chavez's Field Representative License based upon the
4 following violations alleged in the Accusation which are supported by the evidence contained in
5 the Default Decision Evidence Packet in this case:

6 a. Respondent Apple and Respondent Chavez are subject to discipline under Code
7 section 8641, in that on multiple occasions with respect to the Ma, Feng and Moragne properties,
8 Respondents failed to make proper inspections in violation of Code section¹ 8641 and section
9 8516 in that Respondents failed to comply with California Code of Regulations, title 16, sections
10 1990(a)(3), 1990(a)(4), 1990(b)(1), 1990(b)(3), 1990(b)(4), 1990(b)(5), 1990(e), 1991(a)(5)
11 1991(a)(8), and 1993(d). The conduct is described with greater specificity in Accusation No.
12 2012-56 and the First Supplemental Accusation for case number 2012-56, both of which are
13 hereby incorporated by reference.

14 b. Respondent Apple and Respondent Chavez are subject to disciplinary action under
15 Section 8516, subdivision (b), as well as subdivision (a) of Section 1996.3 of title 16 of the
16 California Code of Regulations, in that Respondents failed to file WDO² activities reports with
17 the Board, within 10 business days after commencement of inspection or upon completed work.
18 Respondents failed to file a WDO activities report for the Ma property, the Feng property and the
19 Moragne property. The conduct is described with greater specificity in Accusation No. 2012-56
20 and the First Supplemental Accusation for case number 2012-56, both of which are hereby
21 incorporated by reference.

22 c. Respondent Apple and Respondent Chavez are subject to discipline under Section
23 8641, in that Respondents failed to comply with Section 8622 by failing to correct the items
24 described in Report of Findings for the Ma, Feng and Moragne properties within thirty calendar
25 days of receipt of the corresponding notices and by failing to bring the properties into compliance

26 ¹ All code section references are to the Business and Professions Code, unless otherwise
27 indicated.

28 ² The abbreviation "WDO" stands for the Wood Destroying Organism Inspection and
Completion Activity Report Form (see Form No. 43M-52 Rev. 5/03).

1 with the notices and Report of Findings. The conduct is described with greater specificity in
2 Accusation No. 2012-56 and the First Supplemental Accusation for case number 2012-56, both of
3 which are hereby incorporated by reference.

4 d. Respondent Apple and Respondent Chavez are subject to discipline under Section
5 8641, in that Respondents failed to comply with Section 8525, and California Code of
6 Regulations, title 16, section 1920 subsection (d) in that Respondent Chavez has not paid \$13,650
7 in regards to 11 different Citations issued to him for violations of the Structural Pest Control Act.
8 The conduct is described with greater specificity in Accusation No. 2012-56, which is hereby
9 incorporated by reference.

10 e. Respondent Apple and Respondent Chavez are subject to discipline under Section
11 8641, in that Respondents failed to comply with the Board's rules and regulations. Respondents
12 have failed to comply with the following Code sections: Section 8516(b)(2), Section 8516(b)(3),
13 Section 8613, Section 8636, Section 8648, and Section 8650(b). The conduct is described with
14 greater specificity in Accusation No. 2012-56 and the First Supplemental Accusation for case
15 number 2012-56, both of which are hereby incorporated by reference.

16 f. Respondent Apple and Respondent Chavez are subject to discipline under Section
17 8641, in that Respondents failed to complete the work on multiple projects in a quality and
18 workmanlike manner in violation of California Code of Regulations, title 16, section 1937.14.
19 The conduct is described with greater specificity in the First Supplemental Accusation for case
20 number 2012-56, which is hereby incorporated by reference.

21 g. Respondent Apple and Respondent Chavez are subject to discipline under Sections
22 8516(b)(2), 8516(b)(3) and 8641 in that, on multiple occasions and with respect to multiple
23 properties, Respondents failed to prepare proper inspection reports and failed to deliver inspection
24 reports and completion notices for repair work completed. The conduct is described with greater
25 specificity in the First Supplemental Accusation for case number 2012-56, which is hereby
26 incorporated by reference.

27 ///

28 ///

ORDER

1
2 IT IS SO ORDERED that Company Registration Certificate No. PR 5934, heretofore issued
3 to Respondent Apple Termite, Inc.; Jenhnsen Lopez; Dave Daniel Chavez, is revoked.

4 IT IS SO ORDERED that Branch Office Registration No. Br. 5280 issued to Respondent
5 Apple Termite, Inc., with Respondent Dave Daniel Chavez as Branch Office Supervisor, is
6 revoked.

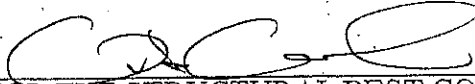
7 IT IS SO ORDERED that Operator's License No. OPR 11588 issued to Respondent Dave
8 Daniel Chavez, is revoked.

9 IT IS SO ORDERED that Field Representative License No. FR 32146 issued to Respondent
10 Dave Daniel Chavez, is revoked.

11 Pursuant to Government Code section 11520, subdivision (c), Respondents may serve a
12 written motion requesting that the Decision be vacated and stating the grounds relied on within
13 seven (7) days after service of the Decision on Respondents. The agency in its discretion may
14 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

15 This Decision shall become effective on January 27, 2013.

16 It is so ORDERED December 28, 2012

17
18 
19 _____
20 FOR THE STRUCTURAL PEST CONTROL
21 BOARD
22 DEPARTMENT OF PESTICIDE REGULATION

23 .51205276.DOC
24 DOJ Matter ID:LA2012506536

25 Attachment:
26 Exhibit A: Accusation
27
28