

1 KAMALA D. HARRIS.
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
4 State Bar No. 192983
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5794
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

FILED

Date 4/11/12 By

William H. Douglas

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

12 In the Matter of the Accusation Against:

Case No. 2012-49

13 **ARISTON TERMITE COMPANY; MAYRA**
LEON, OWNER
14 6429 Alondra Blvd.
Paramount, California 90723
15 Mailing Address:
P.O. Box 1489
16 Paramount, California 90723
17 **SAMUEL RODRIGUEZ, Qualifying Manager**
Company Registration Certificate No. PR 6010,
Branch 3,
18 **Operator's License No. OPR 10765, Branch 3**

ACCUSATION
AGAINST ARISTON TERMITE
COMPANY; MAYRA LEON, OWNER,
AND SAMUEL RODRIGUEZ

AND

PETITION TO REVOKE
AGAINST ARISTON TERMITE;
MAYRA LEON, OWNER, ONLY

19 Respondents.

20
21 Complainant alleges:

22 **PARTIES**

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

26 **Ariston Termite Company: Company Registration Certificate Number PR 6010**

27 2. On or about March 4, 2010, the Board issued Company Registration Certificate
28 Number PR 6010 in Branch 3 to Ariston Termite Company with Mayra Leon as owner

1 ("Respondent Ariston Termite") and Samuel Rodriguez ("Respondent Rodriguez"), as qualifying
2 manager.

3 3. On March 4, 2010, Company Registration Certificate No. 6010 was placed on
4 probation for the remaining period of the three (3) year period of probation rendered on
5 November 25, 2009, in the *In the Matter of the First Amended Accusation Against Ariston*
6 *Termite, et al.*, Case No. 2008-67, with regard to Company Registration Certificate Number PR
7 4476, on the same terms and conditions that continue and/or have not yet been completed.

8 **Ariston Termite Company: Company Registration Certificate Number PR 4476**

9 4. On or about February 6, 2004, the Board issued Company Registration Certificate
10 Number PR 4476 in Branch 3 to Ariston Termite Company, with Mayra Leon, Partner, Carlos
11 Moncada, Partner, and Jerry Walker as Qualifying Manager.

12 5. On November 25, 2009, the decision rendered in the *In the Matter of the First*
13 *Amended Accusation Against Ariston Termite, et al.*, Case No. 2008-67 ordered Company
14 Registration Certificate No. PR 4476 revoked, revocation stayed, and placed the registration on
15 three (3) years probation, with terms and conditions. The Decision provided that if any other
16 license is granted to Respondent Ariston Termite, that license shall be placed on probation for any
17 remaining period of the three (3) year period of probation on the same terms and conditions that
18 continue and/or have not yet been completed.

19 6. On December 31, 2009, Company Registration Certificate Number PR 4476 was
20 suspended for no Qualifying Manager. On January 11, 2010, Company Registration Certificate
21 Number PR 4476 was suspended due to failure to maintain the general liability insurance as
22 required by section 8690 of the Business and Professions Code. On January 19, 2010, was
23 reinstated after posting the general liability insurance, however, remained suspended for no
24 Qualifying Manager.

25 7. On or about March 4, 2010, Company Registration Certificate Number PR 4476
26 was canceled from the Board's files.

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1 **Samuel Rodriguez**

2 8. On or about July 30, 2003, the Board issued Operator's License Number OPR
3 10765 in Branch 3 to Respondent Rodriguez. The license is currently in effect and will expire on
4 June 30, 2012, unless renewed.

5 9. On or about March 4, 1997, Field Representative's License No. FR.27579 was
6 issued in Branch 3 to Samuel Rodriguez. On July 30, 2003, Field Representative's License No.
7 FR 27579 was cancelled due to the issuance of an Operators' License.

8 **JURISDICTION**

9 10. This Accusation and Petition to Revoke is brought before the Structural Pest
10 Control Board (Board), under the authority of the following laws. All section references are to
11 the Business and Professions Code, unless otherwise indicated.

12 **STATUTORY PROVISIONS**

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

16 12. Section 8625 states:

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

22 13. Section 8624 states, in part:

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

26 "The performance by any partnership, corporation, firm, association, or registered
27 company of any act or omission constituting a cause for disciplinary action, likewise
28 constitutes a cause for disciplinary action against any licensee who, at the time the act or

1 omission occurred, was the qualifying manager, a partner, responsible officer, or owner of
2 the partnership, corporation, firm, association, or registered company whether or not he or
3 she had knowledge of, or participated in, the prohibited act or omission."

4 14. Section 8654 states:

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

19 15. Section 8516 states, in part:

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

27 ...

28 ///

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

5 16. Section 8518 states, in part:

6 "When a registered company completes work under a contract, it shall prepare, on
7 a form prescribed by the board, a notice of work completed and not completed, and shall
8 furnish that notice to the owner of the property or the owner's agent within 10 working
9 days after completing the work. The notice shall include a statement of the cost of the
10 completed work and estimated cost of work not completed.

11 "The address of each property inspected or upon which work was completed shall
12 be reported on a form prescribed by the board and shall be filed with the board no later
13 than 10 working days after completed work.

14 ...

15 "Failure of a registered company to report and file with the board the address of
16 any property upon which work was completed pursuant to subdivision (b) of Section
17 8516 or Section 8518 is grounds for disciplinary action and shall subject the registered
18 company to a fine of not more than two thousand five hundred dollars (\$2,500)."

19 17. Section 8641 states:

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

25 18. Section 8652 states:

26 "Failure of a registered company to make and keep all inspection reports, field notes,
27 contracts, documents, notices of work completed, and records, other than financial records, for a
28 period of not less than three years after completion of any work or operation for the control of

1 structural pests or organisms, is a ground for disciplinary action. These records shall be made
2 available to the executive officer of the board or his or her duly authorized representative during
3 business hours.”

4 19. Section 477 states, in part, that:

5 "As used in this division:

6 ...

7 "(b) 'License' includes certificate, registration or other means to engage in a business or
8 profession regulated by this code.”

9 REGULATORY PROVISIONS

10 20. California Code of Regulations, title 16, section 1920 states, in part:

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

16 21. California Code of Regulations, title 16, section 1996.3 states, in part:

17 “(a) The address of each property inspected and/or upon which work was completed shall
18 be reported on a form prescribed by the Board and designated as the WDO Inspection and
19 Completion Activity Report Form (see Form No. 43M-52 Rev. 5/09) at the end of this section.
20 This form shall be prepared by each registered company and shall comply with all of the
21 requirements pursuant to Section 8516(b), and 8518.

22 ...

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

27

28

1 COST RECOVERY

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

5 ACCUSATION

6 FACTUAL SUMMARY

7 23. On or about May 23, 2011¹, Respondents were issued Citation No. CF 11-93 for
8 violating Sections 8691 (engaging in the practice of structural pest control while failing to
9 maintain the required liability insurance between March 22, 2011 and April 26, 2011) and 8516,
10 subsection (b), and California Code of Regulations, title 16, section 1996.3 (failure to file 164
11 Wood Destroying Organisms (WDO) Activities inspections and/or completions). The Citation
12 included a fine of \$3,410, which included a fine of \$2,910 for the failure to file the addresses of
13 properties with the Board where inspections were made or work was completed and a fine of
14 \$500 for failure to maintain the required insurance from March 22, 2011 until April 26, 2011,
15 while continuing to practice structural pest control work. The Citation Order required that the
16 fine be paid within 30 days after receipt of the Citation. The Citation also included an order of
17 abatement directing Ariston to file all remaining unreported Wood Destroying Organisms (WDO)
18 Activities (inspections and/or completions) within 30 days after receipt of the Citation Order.

19 24. On or about December 12, 2011, the Board served a corrected cover letter and a
20 copy of Citation No. CF 11-93 to Respondents. On or about December 15, 2011, the corrected
21

22 ¹ On or about May 23, 2011, the Board served Citation No. CF 11-93 on Respondents via
23 certified mail sent to Respondents' mailing address of record with the Board, which is P.O. Box
24 1489, Paramount, California 90723. On or about July 5, 2011, the citation was returned by the
25 U.S. Postal Service marked "Returned to Sender - Unclaimed - Unable to Forward." On or about
26 July 20, 2011, the Board re-served the citation to a second address. On or about August 10, 2011,
27 that mailing was also returned by the U.S. Postal Service marked "Returned to Sender -
28 Unclaimed - Unable to Forward." On or about September 21, 2011, the Board re-served the
citation on Respondents via certified mail sent to 6429 Alondra Blvd., Paramount, California
90723. On or about September 26, 2011, the signed certified mail return receipt was returned to
the Board in connection with the Board's re-service of the citation on September 21, 2011,
acknowledging receipt of the citation. On December 12, 2011, the Board re-served a corrected
cover letter and a copy of the citation on Respondents via certified mail sent to 6429 Alondra
Blvd., Paramount, California 90723.

1 cover letter dated December 12, 2011, and the copy of the citation were received and signed for
2 by Respondents.

3 25. To date, Respondents have not paid the fine and have not complied with the Order
4 of Abatement in the citation.

5 26. On or about September 20, 2011, a Board investigator performed a Wood
6 Destroying Organism Activity Search of the Boards records and found that Respondent had not
7 filed any Wood Destroying Organisms (WDO) Activities (inspections and/or completions) since
8 May 6, 2011. The investigator performed a compliance site inspection of Respondent Ariston
9 Termite and found that it had completed 148 reportable Wood Destroying Organisms (WDO)
10 Activities (inspections and/or completions) from May 6, 2011 until September 20, 2011.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Citation and Order of Abatement)**

13 27. Respondent Ariston Termite's registration and Respondent Rodriguez's operator's
14 license are subject to discipline under Sections 8641 and 8624, and California Code of
15 Regulations, title 16, section 1920, subdivision (d), in that Respondents have failed to pay the fine
16 of \$3,410.00 within the time allotted in Citation No. CF 11-93 and have failed to comply with the
17 order of abatement in the Citation, as set forth, above, in paragraphs 23 through 25, which is
18 incorporated herein by reference.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Failure to File Work Activity Reports with the Board)**

21 28. Respondent Ariston Termite's registration and Respondent Rodriguez's operator's
22 license are subject to discipline under Sections 8641, 8516, 8518, and 8624, and California Code
23 of Regulations, title 16, section 1996.3, in that Respondents failed to prepare and deliver an
24 inspection report and a completion notice for 148 inspections performed and work completed
25 between on or about May 6, 2011 and September 20, 2011, to the Board within ten (10) business
26 days following the commencement of an inspection or upon completed work, as set forth, above,
27 in paragraph 26, which is incorporated herein by reference.

28

1 **MATTERS IN AGGRAVATION RE: RESPONDENT ARISTON TERMITE**

2 29. By way of aggravation, the Board alleges the following against Respondent's
3 Company Registration Certificate No. PR 6010:

4 a. On or about November 29, 2009, in a prior disciplinary action entitled *In the*
5 *Matter of the First Amended Accusation Against Ariston Termite, et al.*, before the Structural Pest
6 Control Board, in Case No. 2008-67, Respondent Ariston's Company Registration Certificate
7 Number PR 4476 was revoked, revocation stayed, and the registration was placed on probation
8 for three (3) years with terms and conditions). That decision is now final and is incorporated by
9 reference as if fully set forth.

10 b. On or about May 12, 2005, Respondent Ariston Termite paid a \$50 fine levied by the
11 Los Angeles County Agricultural Commissioner for violating Food and Agriculture Code section
12 15204.

13 c. On or about July 26, 2005, Respondent Ariston Termite paid a \$100 fine levied by
14 San Bernardino County Agricultural Commissioner for violating Code section 8505.17.

15 d. On or about November 9, 2005, Respondent Ariston Termite paid a \$100 fine levied
16 by the Los Angeles County Agricultural Commissioner for violating California Code of
17 Regulations, title 3, sections 6678 and 6726.

18 **OTHER MATTERS**

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

24 31. Pursuant to Section 8624, the causes for discipline established as to Respondent
25 Ariston Termite likewise constitute causes for discipline against Respondent Rodriguez
26 regardless of whether he had knowledge of or participated in the acts or omissions that constitute
27 causes for discipline against Respondent Ariston Termite.

28

1 32. Pursuant to Section 8624, if Operator's License Number OPR 10765, issued to
2 Respondent Samuel Rodriguez, is suspended or revoked, the Board may suspend or revoke
3 Company Registration Certificate Number PR 6010, issued to Respondent Ariston Termite.

4 33. Pursuant to Section 8654, if discipline is imposed on Company Registration
5 Certificate Number PR 6010 and Respondent Rodriguez, while acting as the qualifying manager,
6 had knowledge of or participated in any of the prohibited acts for which the company registration
7 is disciplined, Respondent Rodriguez shall be prohibited from serving as an officer, director,
8 associate, partner, qualifying manager, or responsible managing employee for any registered
9 company during the time the discipline is imposed, and any registered company which employs,
10 elects, or associates Respondent Rodriguez shall be subject to disciplinary action.

11 **PETITION TO REVOKE**
12 **AS TO RESPONDENT ARISTON TERMITE ONLY**

13 34. In a disciplinary action entitled *In the Matter of the First Amended Accusation*
14 *Against Ariston Termite, et al.*, Case No. 2008-67, the Board issued a decision pursuant to a
15 stipulated settlement, effective November 29, 2009, in which Respondent Ariston Termite's
16 Company Registration Certificate Number PR 4476 was revoked; however, the revocation order
17 was stayed, and the registration was placed on probation for three (3) years under terms and
18 conditions. A true and correct copy of that decision is attached as exhibit "A" and is incorporated
19 by reference. The probation included the following terms and conditions:

20 a. Term No. 1 [Stipulation, page 5]:

21 **"Obey All Laws.** Respondents shall obey all laws and rules relating to the practice of
22 structural pest control."

23 b. Term No. 10 [Stipulation, p. 6]:

24 **"New Licenses.** If any Respondent named herein successfully applies for and is
25 granted a license by the Board at a future date, that license shall be immediately revoked, and the
26 order of revocation stayed and Respondent's new license be placed on probation for any
27 remaining period of the three (3) year period of probation on the same terms and conditions that
28 continue and/or have not yet been completed."

1 c. Term No. 11 [Stipulation, p. 6-7]:

2 "Cost Recovery. Respondents Ariston Termite and Coast 2 Coast shall jointly and
3 severally pay to the Board costs associated with its investigation and enforcement pursuant to
4 Business and Professions Code section 125.3 in the amount of \$10,360.00. Respondent Pineda
5 shall pay to the Board costs associated with its investigation and enforcement pursuant to
6 Business and Professions Code section 125.3 in the amount of \$2,590. Respondents shall be
7 permitted to pay these costs in a payment plan approved by the Board, with payments to be
8 completed no later than three months prior to the end of the probation term. If Respondents fail
9 to pay costs in accordance with the payment plan approved by the Board, the Board shall have
10 continuing jurisdiction and shall not be deprived of filing a petition to revoke probation and carry
11 out the order revoking all licenses. The period of probation shall be extended until the matter(s)
12 is final."

13 **FIRST CAUSE TO REVOKE PROBATION**

14 **(Failure to Obey All Laws)**

15 35. Grounds exist for revoking probation and reimposing the order of revocation of
16 Respondent Ariston Termite's registration in that it violated Probation Condition No. 1 (Obey All
17 Laws), in that it violated Sections 8641 8516, and 8518, and California Code of Regulations, title
18 16, sections 1920, subdivision (d), and 1996.3. Complainant refers to, and by this reference
19 incorporates the allegations set forth above in paragraphs 23 through 28, as though fully set forth.

20 **SECOND CAUSE TO REVOKE PROBATION**

21 **(Failure to Pay Cost Recovery)**

22 36. Grounds exist for revoking probation and reimposing the order of revocation of
23 Respondent Ariston Termite's registration in that it violated Probation Condition No. 11 (Cost
24 Recovery), in that it failed to pay investigative and prosecution costs as required. To date,
25 Respondent Ariston Termite's outstanding balance is \$8,475.30.

26 **PRAYER**

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

1 1. Revoking or suspending Company Registration Certificate Number PR 6010,
2 issued to Ariston Termite Company;

3 2. Revoking the probation that was granted by the Board in Case No. 2008-67 and
4 imposing the disciplinary order that was transferred to the new registration, stayed, thereby
5 revoking Company Registration Certificate Number PR 6010, issued to Ariston Termite
6 Company;

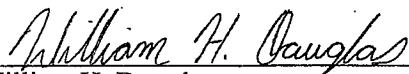
7 2. Revoking or suspending Operator's License Number OPR 10765, issued to Samuel
8 Rodriguez;

9 3. Prohibiting Samuel Rodriguez from serving as an officer, director, associate,
10 partner, qualifying manager or responsible managing employee of any registered company during
11 the period that discipline is imposed on Company Registration Certificate Number PR 6010,
12 issued to Ariston Termite Company;

13 4. Ordering Ariston Termite Company and Samuel Rodriguez to pay the Structural
14 Pest Control Board the reasonable costs of the investigation and enforcement of this case,
15 pursuant to Business and Professions Section 125.3;

16 5. Taking such other and further action as deemed necessary and proper.
17

18 DATED: 4/10/12



19 William H. Douglas
20 Interim Registrar/Executive Officer
21 Structural Pest Control Board
22 Department of Pesticide Regulation
23 State of California
24 *Complainant*

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