

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
4 State Bar No. 244817
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2114
6 Facsimile: (213) 897-2804
Attorneys for Complainant

FILED

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

7
8 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
9 **DEPARTMENT OF PESTICIDE REGULATION**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:
11
12 **DYNASTY EXTERMINATORS, INC. DBA**
13 **DYNASTY TERMITE; DOUGLAS M.**
FIERRO, VICE PRESIDENT/ QUALIFYING
MANAGER
14 **6279 East Slauson Avenue, #408**
Commerce, CA 90040
Company Registration Certificate No. PR 6106
15
16 and
17 **DOUGLAS M. FIERRO**
6279 East Slauson Avenue, #408
Commerce, CA 90040
18 **Operator's License No. OPR 11797**
19 Respondents.

Case No. 2012-5

ACCUSATION

20
21 Complainant alleges:

22 **PARTIES**

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

26 ///
27 ///
28 ///

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

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 whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate,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. Section 8516 of the Code states:

"(a) This section, and Section 8519, apply only to wood destroying pests or organisms.

"(b) 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

1 of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3
2 field representative or operator. The address of each property inspected or upon which work is
3 completed shall be reported on a form prescribed by the board and shall be filed with the board no
4 later than 10 business days after the commencement of an inspection or upon completed work.

5 "Every property inspected pursuant to subdivision or Section 8518 shall be assessed a filing
6 fee pursuant to Section 8674.

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

11 "A written inspection report conforming to this section and on a form approved by the
12 board shall be prepared and delivered to the person requesting the inspection or to the person's
13 designated agent within 10 business days of the inspection, except that an inspection report
14 prepared for use by an attorney for litigation purposes is not required to be reported to the board.
15 The report shall be delivered before work is commenced on any property. The registered
16 company shall retain for three years all original inspection reports, field notes, and activity forms.

17 Reports shall be made available for inspection and reproduction to the executive officer of
18 the board or his or her duly authorized representative during business hours. Original inspection
19 reports or copies thereof shall be submitted to the board upon request within two business days.

20 The following shall be set forth in the report:

21

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

26 (7) Information regarding the substructure, foundation walls and footings, porches, patios
27 and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters, fascias,
28 exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack

1 by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation
2 or infection, such as earth-wood contacts, excessive cellulose debris, faulty grade levels,
3 excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be
4 reported.

5

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

10 (10) Recommendations for corrective measures.

11

12 10. Code section 8622 states, in pertinent part:

13 When a complaint is accepted for investigation of a registered company, the board, through
14 an authorized representative, may inspect any or all properties on which a report has been issued
15 pursuant to Section 8516 or a notice of completion has been issued pursuant to Section 8518 by
16 the registered company to determine compliance with the provisions of this chapter and the rules
17 and regulations issued thereunder. If the board determines the property or properties are not in
18 compliance, a notice shall be sent to the registered company so stating. The registered company
19 shall have 30 days from the receipt of the notice to bring such property into compliance, and it
20 shall submit a new original report or completion notice or both and an inspection fee of not more
21 than one hundred twenty five dollars (\$125) for each property inspected. . . .

22 11. Code section 8636 states:

23 "Disregard and violation of the buildings laws of the state, or of any of its political
24 subdivisions, or of the safety laws, labor laws, health laws, or compensation insurance laws of the
25 state relating to the practice of structural pest control is a ground for disciplinary action."

26 ///

27 ///

28 ///

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

12. Code section 8638 states:

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

13. Code section 8641 states:

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

14. Code section 8644 states:

“Fraud or misrepresentation, after inspection, by any licensee or registered company engaged in pest control work of any infestation or infection of wood destroying pests or organisms found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by wood- destroying pests or organisms, whether or not a report was made pursuant to Sections 8516 and 8517 of this code, is a ground for disciplinary action.”

15. Section 8648 of the Code states:

“Authorizing, directing, conniving at or aiding in the publication, advertisement, distribution or circulation of any material by false statement or representation concerning a registered company's business is a ground for disciplinary action.”

16. Section 8651 of the Code states:

"The performing or soliciting of structural pest control work, the inspecting for structural or household pests, or the applying of any pesticide, chemical, or allied substance for the purpose of eliminating, exterminating, controlling, or preventing structural pests in branches of pest control other than those for which the operator, field representative, or applicator is licensed or the company is registered is a ground for disciplinary action."

///
///

REGULATORY PROVISIONS

17. Regulation section 1937.14, states:

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

18. Regulation section 1990, states:

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

(1) Structural pest control license number of the person making the inspection.

.....

(3) Infestations, infections or evidence thereof.

(4) Wood members found to be damaged by wood destroying pests or organisms.

"(b) Conditions usually deemed likely to lead to infestation or infection include, but are not limited to:

(1) Faulty Grade Level. A faulty grade level exists when the top of any foundation is even with or below the adjacent earth. The existing earth level shall be considered grade.

(2) Inaccessible subareas or portions thereof and areas where there is less than 12 inches clear space between the bottom of the floor joists and the unimproved ground area.

(3) Excessive Cellulose Debris. This is defined as any cellulose debris of a size that can be raked or larger. Stumps and wood imbedded in footings in earth contact shall be reported.

(4) Earth-wood contacts.

1 (5) Commonly controllable moisture conditions which would foster the growth
2 of a fungus infection materially damaging to woodwork.

3

4 "(d) Even though the licensee may consider the following areas inaccessible for purposes
5 of inspection, the licensee must state specifically which of these areas or any other areas were not
6 inspected and why the inspection of these areas is not practical: furnished interiors; inaccessible
7 attics or portions thereof; the interior of hollow walls; spaces between a floor or porch deck and
8 the ceiling or soffit below; stall showers over finished ceilings; such structural segments as porte
9 cocheres, enclosed bay windows, buttresses, and similar areas to which there is no access without
10 defacing or tearing out lumber, masonry or finished work; built-in cabinet work; floors beneath
11 coverings, areas where storage conditions or locks make inspection impracticable.

12 "(e) Information regarding all accessible areas of the structure including but not limited to
13 the substructure, foundation walls and footings, porches, patios and steps, stairways, air vents,
14 abutments, stucco walls, columns, attached structures or other parts of a structure normally
15 subject to attack by wood-destroying pests or organisms.

16

17 19. Regulation section 1991, states:

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

22

23 (2) Remove from the subarea all excessive cellulose debris in earth contact.

24 This excludes shavings or other cellulose too small to be raked or stored goods not in
25 earth contact. Stumps and wood imbedded in footings in earth contact shall be treated
26 if removal is impractical.

27 (3) When evidence of moisture, infestations or infections exists as a result of
28 faulty grade levels, earth fill planters or loose stucco, a recommendation shall be

1 made to correct the condition. Any method of controlling infestations arising from
2 these conditions is considered adequate if the infestation is controlled.

3

4 (5) Structural members which appear to be structurally weakened by
5 wood-destroying pests to the point where they no longer serve their intended purpose
6 shall be replaced or reinforced. Structural members which are structurally weakened
7 by fungus to the point where they no longer serve their intended purpose shall be
8 removed or, if feasible, may remain in place if another structural member is installed
9 adjacent to it to perform the same function, if both members are dry (below 20%
10 moisture content), and if the excessive moisture condition responsible for the fungus
11 damage is corrected. Structural members which appear to have only surface fungus
12 damage may be chemically treated and/or left as is if, in the opinion of the inspector,
13 the structural member will continue to perform its originally intended function and if
14 correcting the excessive moisture condition will stop the further expansion of the
15 fungus.

16

17 (8) Exterminate all reported wood-destroying pests. Such extermination shall
18 not be considered repair under section 8516(b)(12) of the code. If evidence indicates
19 that wood-destroying pests extend into an inaccessible area(s), recommendation shall
20 be made to either:

21 (A) enclose the structure for an all encompassing treatment utilizing materials
22 listed in Section 8505.1 of the code, or

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

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

- 26 1. exposing the infested area(s) for local treatment,
27 2. removing the infested wood,

28 ///

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

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

8 When a limited inspection is performed, the inspection report shall state that the
9 inspection is limited to the area(s) described and diagrammed. A recommendation
10 shall be made to remove or cover all accessible pellets and frass of wood-destroying
11 pests in the limited areas. The limited inspection report shall include a
12 recommendation for further inspection of the entire structure and that all accessible
13 evidence of wood-destroying pests be removed or covered.

14

15 20. Regulation section 1993, states in pertinent part:

16 "All of the following reports must be in compliance with the requirements of Section 8516
17 of the code. All reports must be on the form prescribed by the board.

18

19 "(c) A limited report is the report on only part of a structure. Such a report shall have a
20 diagram of the area inspected and shall specifically indicate which portions of the structure were
21 inspected with recommendation for further inspection of the entire structure and the name of the
22 person or agency requesting a limited report.

23 "(d) A supplemental report is the report on the inspection performed on inaccessible areas
24 that have been made accessible as recommended on a previous report. Such report shall indicate
25 the absence or presence of wood-destroying pests or organisms or conditions conducive thereto.
26 This report can also be used to correct, add, or modify information in a previous report. A
27 licensed operator or field representative shall refer to the original report in such a manner to
28 identify it clearly.

1 Termite to perform a wood destroying organisms inspection (WDO inspection) of the property.
2 On June 3, 2010, respondent Fierro, vice president and qualifying manager of Dynasty Termite,
3 performed a WDO inspection of the subject property and issued a "complete," "separated" WDO
4 inspection report which contained 15 findings and recommendations. In his report, Fierro
5 reported evidence of drywood termites, subterranean termites and dry rot (decay fungi damage) in
6 the substructure; evidence of drywood termites in the attic; evidence of drywood termites, fungus
7 (decay fungi) and decay fungi damage in the garage; and decay fungi damage at the exterior
8 framing. Fierro recommended chemically treating the visible and accessible drywood termite
9 infestations, covering or removing the accessible evidence of infestation, chemically treating, as
10 necessary, the subterranean termite infestations, breaking the accessible evidence of infestation,
11 chemically treating the decay fungi, and repairing, reinforcing or replacing the decay fungi
12 damage. The decay fungi damage findings failed to identify the excessive moisture condition
13 responsible for the infections, and the recommendations failed to include a recommendation to
14 correct the excessive moisture conditions responsible for the infections. The report identified
15 earth-to-wood contacts and a plumbing leak in the substructure, and a roof leak in the garage.
16 Fierro recommended that proper tradesmen be hired to break the earth-to-wood contacts and
17 repair the roof leak. The inspection report also reported that the stall shower did not leak at the
18 time of inspection, the foundations and porches were concrete, the ventilation was adequate and
19 above grade, there were no abutments, there was good access in the attic spaces, there is a two-car
20 detached garage, the interiors were inspected, and occupied and the exterior was inspected. There
21 were no Further Inspection findings and recommendations. In the inspection report, Fierro cited a
22 cancelled license number (FR 40041) instead of his valid/operable license number (OPR 11797).

23 25. On July 1, 2010, Dynasty Termite issued a Standard Notice of Work Completed and
24 Not Completed (completion notice) for the subject property. The completion notice certified that
25 all recommendations made by Fierro in his June 3, 2010, inspection report had been completed.

26 26. On July 9, 2010, escrow closed on the subject property, making Sterling Reese
27 (owner) the owner of the property located at 2528 and 2530 3rd Avenue, Los Angeles, California.

28 ///

1 27. After discovering what appeared to be additional termite damage in an upstairs
2 bedroom and bathroom, on July 29, 2010, the owner obtained a "limited" WDO inspection from
3 another company, Pacific Coast Termite, Inc. The limited inspection report identified evidence
4 of drywood termites at the second floor back bedroom floorboards and wall and the second floor
5 bathroom wall. The limited report recommended that the complainant owner hire a Branch 1
6 licensed company to fumigate the structure.

7 28. In response to these findings, on August 2, 2010, respondent Dynasty Termite sent an
8 individual who identified himself as Jesus to the subject property to perform a follow up
9 inspection of the upstairs bedroom and bathroom. At that time, Dynasty's employee/agent Jesus
10 confirmed the findings of termite damage and infestation in the upstairs bedroom and bathroom.

11 29. On August 9, 2010, the owner sent a letter to Dynasty Termite about the continuing
12 termite problems and requesting a response from Dynasty Termite within 48 hours.

13 30. On August 11, 2010, the owner hired a third company, Center Termite & Pest
14 Control, Inc., to perform a WDO inspection of the subject property. The company issued a
15 "limited," "separated" inspection report which contained the following findings: evidence of
16 drywood termite termites in the substructure, attic, and garage; at the interior hardwood flooring,
17 exposed walls and wood trim; and at exterior wood members. The report recommended
18 fumigating the structure to control the drywood termites and covering or removing the accessible
19 evidence of infestation.

20 31. On or about August 17, 2010, the owner filed a complaint with Structural Pest
21 Control Board (Board) against Dynasty Termite. The complainant stated that Dynasty Termite
22 had been hired to inspect the subject property and correct any termite problems prior to the close
23 of escrow but that termite damage and infestation remain.

24 32. On or about August 30, 2010, the Board sent a letter to Dynasty Termite notifying it
25 of the complaint and requesting a response within 10 days. After Dynasty Termite failed to
26 respond to this correspondence, on or about October 12, 2010, the Board sent a second letter
27 requesting a response within 5 days. On or about October 20, 2010, respondent Dynasty Termite

28 ///

1 sent a letter to the Board stating that it would be performing a reinspection of the subject property
2 within the week.

3 33. On October 21, 2010, respondent Dynasty Termite performed a WDO inspection and
4 issued a "reinspection," "separated" inspection report on the subject property. Respondent Fierro
5 performed the WDO inspection and prepared the reinspection report, which contained the
6 following findings: decay fungi damage in the attic; evidence of drywood termites at an interior
7 open wall; evidence of subterranean termites and decay fungi damage in the garage; decay fungi
8 damage and evidence of drywood termites at the interior framing; and a decay fungi condition
9 and decay fungi damage at the exterior framing. Respondent Fierro's reinspection report made
10 the following recommendation: repair, reinforce or replace the decay fungi damage; chemically
11 treat the drywood and subterranean termite infestations; remove or cover the accessible evidence
12 of infestation; and chemically treat the decay fungi condition. Fierro's reinspection report failed
13 to identify the excessive moisture condition responsible for the infections, nor did it recommend
14 correcting any excessive moisture conditions responsible for the infections. The inspection report
15 contained the subject's cancelled license number (FR 40041) instead of his valid/operable license
16 number (OPR 11797).¹ There were no Section II or Further Inspection findings and
17 recommendations.

18 34. On October 22, 2010, a fourth company, JC Evans Termite Co., performed a WDO
19 inspection and issued a "complete" inspection report on the subject property, excluding the
20 garage. The inspection report contained a variety of findings and recommended that the structure
21 be fumigated for drywood termites and that the drywood termite and decay fungi damage be
22 repaired.

23 35. On October 28, 2010, respondent Dynasty Termite faxed a copy of its reinspection
24 report to the Board and indicated that it was going to perform the recommended corrections and
25 would submit a completion notice to the Board once the work was completed.

26
27 ¹ Respondents later submitted a second WDO inspection dated October 21, 2010, which
28 contained respondent Fierro's correct license number. As a result, there are two WDO inspection
reports dated October 21, 2010.

1 36. On or about November 5, 2010, the owner contacted the Board to explain that the
2 Dynasty Termite wanted to chemically treat the drywood termite infestations locally instead of
3 through fumigation as had been recommended by the three other companies. The owner was
4 advised that the matter would be forwarded to a Board Specialist for further review and analysis.

5 37. The Board Specialist inspected the subject property on December 9, 2010 and
6 December 10, 2010. Following his inspection, the Board Specialist issued a Report of Findings
7 ("ROF") which cited 38 violations related to Respondents' inspection and corrective work on the
8 subject property.

9 38. Respondent Dynasty Termite received a copy of the ROF on January 11, 2011. On
10 January 26, 2011, the Board Specialist met with respondent Fierro at the subject property to
11 review the violations outlined in the ROF to assist Dynasty Termite in submitting a properly
12 compliant inspection report. Respondent Fierro arrived at the subject property in a company
13 vehicle that advertised Branch 2 services which Dynasty Termite is not licensed to provide.

14 39. Between February 2, 2011 and February 23, 2011, Dynasty Termite submitted 4
15 WDO inspection reports to the Board Specialist, each one of which was found to be non-
16 compliant. Finally, on March 8, 2001, Dynasty Termite submitted a fifth WDO inspection report,
17 containing 43 findings and recommendations, which the Board specialist determined was
18 sufficiently compliant to allow Dynasty Termite and/or its subcontractors to obtain any necessary
19 permits and begin corrections.

20 40. Beginning in March 2011 and continuing until on or about May 12, 2011, respondent
21 Dynasty Termite and its subcontractors worked intermittently on the subject property without
22 ever completing the work to be performed. On or about May 12, 2011, respondent Fierro
23 contacted the Board specialist informing him that Dynasty Termite was turning the matter over to
24 its insurance company. No further work was performed at the subject property by Dynasty
25 Termite or its subcontractors.

26 ///

27 ///

28 ///

FIRST CAUSE FOR DISCIPLINE

(Improper Inspections)

1
2
3 41. Respondent Dynasty Termite and Respondent Fierro (collectively, "Respondents")
4 are subject to disciplinary action pursuant to Code section 8641 in that, as to the property located
5 at 2528 and 2530 3rd Avenue, Los Angeles, California, Respondents failed to comply with
6 pertinent statutes and regulations as follows:

7 a. Respondents failed to report the cellulose debris in the substructure in the June 3,
8 2010, and October 21, 2010, inspection reports, in violation of Code section 8516, subdivisions
9 (b)(6) and (7), and Regulation 1990, subdivision (b)(3);

10 b. Respondents failed to report the full extent of the evidence of subterranean termites in
11 the substructure in the June 3, 2010, and October 21, 2010, inspection reports, in violation of
12 Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(3);

13 c. Respondents failed to report the subterranean termite damage in the substructure in
14 the June 3, 2010, and October 21, 2010, inspection reports, in violation of Code section 8516,
15 subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(4);

16 d. Respondents failed to report the evidence of an excessive moisture condition
17 (plumbing leak) in the substructure in both October 21, 2010, inspection reports, in violation of
18 Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(5);

19 e. Respondents failed to report the faulty grade conditions in the substructure in the June
20 3, 2010, and October 21, 2010, inspection reports, in violation of Code section 8516, subdivisions
21 (b)(6) and (7), and Regulation 1990, subdivision (e);

22 e. Respondents failed to report the inaccessible portions of the substructure, and to make
23 a recommendation for further inspection and the issuance of a "supplemental" inspection report in
24 the June 3, 2010, and October 21, 2010, inspection reports, in violation of Code section 8516,
25 subdivisions (b)(6), (7) and (9), Regulation 1990, subdivision (b)(2), and Regulation 1993,
26 subdivision (d);

27 ///

28 ///

1 f. Respondents failed to report the earth-to-wood contacts and faulty grade conditions at
2 the foundation vents in the June 3, 2010, and October 21, 2010, inspection reports, in violation of
3 Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivisions (b)(4) and (e);

4 g. Respondents failed to report the full extent of the evidence of drywood termites in the
5 attic in the June 3, 2010, and October 21, 2010, inspection reports, in violation of Code section
6 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(3);

7 h. Respondents failed to report the drywood termite damage in the attic in the June 3,
8 2010, and October 21, 2010, inspection reports, in violation of Code section 8516, subdivisions
9 (b)(6) and (7), and Regulation 1990, subdivisions (a)(4);

10 i. Respondents failed to report the evidence of subterranean termites in the garages in
11 the June 3, 2010, and October 21, 2010, inspection reports, in violation of Code section 8516,
12 subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(3);

13 j. Respondents failed to report the subterranean termite damage in the garages in the
14 June 3, 2010, and October 21, 2010, inspection reports, in violation of Code section 8516,
15 subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(4);

16 k. Respondents failed to report the evidence of drywood termites in the garages in the
17 two October 21, 2010, inspection reports, in violation of Code section 8516, subdivisions (b)(6)
18 and (7), and Regulation 1990, subdivision (a)(3);

19 l. Respondents failed to report the drywood termite damage in the garages in the June 3,
20 2010, and October 21, 2010, inspection reports, in violation of Code section 8516, subdivisions
21 (b)(6) and (7), and Regulation 1990, subdivision (a)(4);

22 m. Respondents failed to report the full extent of the decay fungi damage in the garages
23 in the June 3, 2010, and October 21, 2010, inspection reports, in violation of Code section 8516,
24 subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(4);

25 n. Respondents failed to report the the evidence of an excessive moisture condition (roof
26 leaks) in the garages in the two October 21, 2010, inspection reports, in violation of Code section
27 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(5);

28 ///

1 o. Respondents failed to report the inaccessible areas at the east and south exterior walls
2 of the garages and to make a recommendation for further inspection and the issuance of a
3 "supplemental" inspection report in the June 3, 2010, and October 21, 2010, inspection reports, in
4 violation of Code section (b)(6), (7) and (9), Regulation 1990, subdivision (e), and Regulation
5 1993, subdivision (d);

6 p. Respondents failed to report the evidence of an excessive moisture condition (loose or
7 damaged stucco) at the garages in the June 3, 2010, and October 21, 2010, inspection reports, in
8 violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision
9 (b)(5);

10 q. Respondents failed to report the evidence of drywood termites and drywood termite
11 damage at the second floor bathroom window in unit 2530 in the June 3, 2010, and October 21,
12 2010, inspection reports, in violation of Code section 8516, subdivisions (b)(6) and (7), and
13 Regulation 1990, subdivisions (a)(3) and (4);

14 r. Respondents failed to report the evidence of drywood termites and drywood termite
15 damage at the second floor bedroom window in unit 2530 in the June 3, 2010, and October 21,
16 2010, inspection reports, in violation of Code section 8516, subdivisions (b)(6) and (7), and
17 Regulation 1990, subdivisions (a)(3) and (4);

18 s. Respondents failed to report the evidence of an excessive moisture condition (water
19 damage) at the frieze boards on the south side of unit 2530 in the June 3, 2010, and October 21,
20 2010, inspection reports, in violation of Code section 8516, subdivisions (b)(6) and (7), and
21 Regulation 1990, subdivisions (b)(5);

22 t. Respondents failed to report the evidence of drywood termites, drywood termite
23 damage and decay fungi damage at the doorsill on the front of unit 2530 in the June 3, 2010, and
24 October 21, 2010, inspection reports, in violation of Code section 8516, subdivisions (b)(6) and
25 (7), and Regulation 1990, subdivisions (a)(3) and (4);

26 u. Respondents failed to report the decay fungi damage at the side doorsill of unit 2530
27 in the June 3, 2010, inspection report, in violation of Code section 8516, subdivisions (b)(6) and
28 (7), and Regulation 1990, subdivision (a)(4);

1 v. Respondents failed to report the evidence of drywood termites in the second floor
2 bathtub plumbing traps of units 2528 and 2530 in the June 3, 2010, and October 21, 2010,
3 inspection reports, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation
4 1990, subdivisions (a)(3);

5 w. Respondents failed to make proper findings and recommendations regarding the
6 excessive moisture conditions responsible for the decay fungi and decay fungi damage: in the
7 substructure, garage, and exterior on the June 3, 2010, inspection report; at the attic, garage,
8 interior and exterior, on the two October 21, 2010, inspection reports; and at the garage, interior
9 and exterior on the January 26, 2011, inspection report, in violation of Code section 8516,
10 subdivisions (b)(6), (7) and (10), and Regulation 1991, subdivisions (a)(5);

11 x. Respondents failed to make a proper finding regarding the reported decay fungi
12 damage in the attic, garage, hardwood flooring and windows in the two October 21, 2010,
13 inspection reports in violation of Code section 8516, subdivisions (b)(6) and (7); the damage was
14 caused by drywood termites, not decay fungi;

15 y. Respondents failed to report the drywood termite damage at the open wall in the
16 bedroom of unit 2528 in the two October 21, 2010, inspection reports in violation of Code section
17 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (a)(4);

18 z. Respondents failed to report the evidence of an excessive moisture condition (loose or
19 damaged stucco) at the exterior of units 2528 and 2530 in the June 3, 2010, and October 21, 2010,
20 inspection reports, in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation
21 1990, subdivisions (b)(5);

22 aa. Respondents failed to make a proper recommendation regarding the reported
23 evidence of drywood termites in the substructure, attic and garage, on the June 3, 2010, inspection
24 report, and at the interior in the two October 21, 2010, inspection reports in violation of code
25 section 8516, subdivision (b)(10), Regulation section 1991, subdivision (a)(8); the reported
26 evidence indicates that the infestations extended into inaccessible areas; a recommendation
27 should have been made for an all-encompassing method of treatment, not a localized chemical
28 treatment.

1 SECOND CAUSE FOR DISCIPLINE

2 (Failure to Complete Work)

3 42. Respondents Dynasty Termite and Fierro are subject to disciplinary action pursuant to
4 Code section 8638 in that they failed to complete work they contracted to perform at the subject
5 property as follows:

6 a. Respondents failed to complete work with respect to the reported evidence of
7 subterranean termites in the substructure which was certified as having been completed in
8 Dynasty Termite's July 1, 2010, completion notice;

9 b. Respondents failed to complete work with respect to the reported plumbing leak in
10 the substructure which was certified as having been completed in Dynasty Termite's July 1, 2010,
11 completion notice;

12 c. Respondents failed to complete work with respect to the reported drywood termites in
13 the attic which was certified as having been completed in Dynasty Termite's July 1, 2010,
14 completion notice;

15 d. Respondents failed to complete work with respect to the chemical treatment
16 performed on drywood termites in the garages which was certified as having been completed in
17 Dynasty Termite's July 1, 2010, completion notice;

18 e. Respondents failed to complete work with respect to the replacement and
19 reinforcement of the reported decay fungi and decay fungi damage in the garages which was
20 certified as having been completed in Dynasty Termite's July 1, 2010, completion notice;

21 f. Respondents failed to complete work with respect to the reported roof leak in the
22 garages which was certified as having been completed in Dynasty Termite's July 1, 2010,
23 completion notice;

24 g. Respondents failed to complete work with respect to the replacement of the reported
25 decay fungi damage at the fascia boards on the front of units 2528 and 2530 which was certified
26 as having been completed in Dynasty Termite's July 1, 2010, completion notice;

27 ///

28 ///

1 January 26, 2011, the Board Specialist observed respondent Fierro driving a vehicle that
2 advertised Dynasty Termite as providing Branch 2 pest control services.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Board's Notice)**

5 46. Respondents Dynasty Termite and Fierro are subject to disciplinary action pursuant to
6 Code section 8622, in conjunction with section 8641, in that Respondents failed to comply with
7 the Report of Findings Notice. The circumstances are that Respondents failed to bring the subject
8 property into compliance by correcting all of the items described in the Report of Findings within
9 thirty (30) calendar days from their receipt of the Board's notice on January 11, 2011.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 **(Disregard/Violation of Building Laws)**

12 47. Respondents Dynasty Termite and Fierro are subject to disciplinary action
13 pursuant to Code section 8636 in that Respondents failed to comply with building codes. The
14 circumstances are that Respondents failed to obtain a building permit for the replacement of the
15 garage studs, blocking, doorjamb, roof sheathing and door.

16 **EIGHTH CAUSE FOR DISCIPLINE**

17 **(Failure to File Inspection Reports with Board)**

18 48. Respondents Dynasty Termite and Fierro are subject to disciplinary action pursuant to
19 Regulation section 1996.3, subdivision (c), in that Respondents failed to file WDO inspection
20 reports with the Board related to their inspections of the subject property on: January 26, 2011;
21 January 27, 2011; February 16, 2011; March 3, 2011; and April 15, 2011.

22 **NINTH CAUSE FOR DISCIPLINE**

23 **(Failure to Prepare Inspection Report)**

24 49. Respondents Dynasty Termite and Fierro are subject to disciplinary action pursuant to
25 Code section 8516 and Regulation section 1990, in conjunction with section 8641, in that
26 Respondents failed to prepare or deliver to the owner a WDO inspection report related to their
27 inspection of the subject property on August 2, 2011.

28 ///

1 TENTH CAUSE FOR DISCIPLINE

2 (Use of Invalid License Number)

3 50. Respondents Dynasty Termite and Fierro are subject to disciplinary action pursuant to
4 Regulation sections 1990, subdivision (a)(1), and 1996.3, subdivision(a)(7), in conjunction with
5 section 8641, in that Respondent Fierro used an invalid/cancelled license number in the
6 inspection report dated June 3, 2010, and the first inspection report dated October 21, 2010.

7 PRAYER

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

10 1. Revoking or suspending Company Registration Certificate Number PR 6106, issued
11 to Dynasty Exterminator, Inc. dba Dynasty Termite, Douglas M. Fierro, vice president and
12 qualifying manager;

13 2. Revoking or suspending Operator's License Number OPR 11797, issued to Douglas
14 M. Fierro;

15 3. Prohibiting Douglas M. Fierro from serving as an officer, director, associate, partner,
16 qualifying manager or responsible managing employee of any registered company during the
17 period that discipline is imposed on Company Registration Certificate Number PR 6106, issued to
18 Dynasty Termite;

19 4. Ordering restitution of all damages according to proof suffered by Sterling Reese as a
20 condition of probation in the event probation is ordered;

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27

28

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

5. Ordering Respondents Dynasty Termite and Douglas M. Fierro to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 8/8/11

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

LA2011601110
60658871.doc