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

In the Matter of the Statement of Issues
Against:

JAMES JAY DAVIS

Case No. 2009-30

OAH No. L-2010020058

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

Respondent.

FINDINGS OF FACT

1. On or about December 5, 2008, Complainant Kelli Okuma, in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Statement of Issues No. 2009-30 against James Jay Davis (Respondent) before the Structural Pest Control Board.

2. On or about May 14, 2007, Respondent filed an application dated May 10, 2007, with the Structural Pest Control Board to obtain a Field Representative's License, Branch 2.

3. On or about June 28, 2007, the Board issued a letter denying Respondent's application for a Field Representative's License, Branch 2. On or about August 24, 2007, Respondent appealed the Board's denial of his application and requested a hearing.

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1 4. On or about May 8, 2009, Thurman Peden, an employee of the Department of Justice,
2 served by Certified and First Class Mail a copy of the Statement of Issues No. 2009-30, Statement
3 to Respondent, Request for Discovery, Government Code sections 11507.5, 11507.6, and
4 11507.7, and Notice from Respondent/Applicant to Respondent's address on the application form,
5 which was and is 5205 San Bernardino #514, Montclair, CA 91763. A copy of the Statement of
6 Issues is attached as exhibit A, and is incorporated herein by reference.

7 5. On or about May 8, 2009, Thurman Peden, an employee of the Department of
8 Justice, also served by Certified and First Class Mail a copy of Statement of Issues No. 2009-31,
9 Statement to Respondent, Notice of Designation of Counsel (two blank copies), Notice of
10 Withdrawal of Request for hearing (two blank copies), Request for Discovery, and Government
11 Code sections 11507.5, 11507.6, and 11507.7 to the address of Respondent's last known
12 employer, which was and still is:

13 Stat Exterminating Inc.
14 2105 W. San Bernardino Road
15 West Covina, CA 91790-1007

16 6. Service of the Statement of Issues was effective as a matter of law under the
17 provisions of Government Code section 11505, subdivision (c)

18 7. On or about August 24, 2007, Respondent appealed the denial of his application and
19 requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's
20 address on the application and to the address of Respondent's last known employer, informing
21 him that an administrative hearing in this matter was scheduled for November 30, 2010.
22 Respondent failed to appear at that hearing.

23 8. Government Code section 11506 states, in pertinent part:

24 (c) The respondent shall be entitled to a hearing on the merits if the respondent
25 files a notice of defense, and the notice shall be deemed a specific denial of all parts
26 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

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1 9. California Government Code section 11520 states, in pertinent part:

2 (a) If the respondent either fails to file a notice of defense or to appear at the
3 hearing, the agency may take action based upon the respondent's express admissions
4 or upon other evidence and affidavits may be used as evidence without any notice to
5 respondent; and where the burden of proof is on the respondent to establish that the
6 respondent is entitled to the agency action sought, the agency may act without taking
7 evidence.

8 10. Pursuant to its authority under Government Code section 11520, the Board finds
9 Respondent is in default. The Board will take action without further hearing and, based on
10 evidence on file herein, finds that the allegations, in Statement of Issues No. 2009-30 are true.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent James Jay Davis has subjected
13 his application for a Field Representative's License, Branch 2, to denial.

14 2. Service of Statement of Issues No. 2009-30 and related documents was proper and in
15 accordance with the law.

16 3. The agency has jurisdiction to adjudicate this case by default.

17 4. The Structural Pest Control Board is authorized to deny Respondent's application for
18 licensure based upon the following violations alleged in the Statement of Issues:

19 a. Criminal Convictions [pursuant to Business and Professions Code section
20 480(a)(1)], in that Respondent had previously been convicted of four felonies on November 13,
21 1986. All four convictions pertained to sex-related crimes involving a minor-victim under the age
22 of 14.

23 b. Dishonest Act [pursuant to Business and Professions Code section 480(a)(2)],
24 in that Respondent had previously submitted an Application for Structural Pest Control Field
25 Representative dated September 26, 2005 and answered "No" to Question number 16 of that
26 application, which asked if he had ever been convicted of a felony or misdemeanor other than a
27 violation of traffic laws. In fact, Respondent had previously been convicted of four felonies on
28 November 13, 1986. All four convictions pertained to sex-related crimes involving a minor-
victim under the age of 14.

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1 c. Acts Which if Done by a Licentiate Constitute Cause for Discipline [pursuant
2 to Business and Professions Code section 480(a)(3)], based upon the conduct referenced above in
3 paragraph 4 (a) and (b).

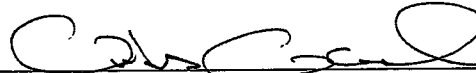
4 ORDER

5 IT IS SO ORDERED that the application of Respondent James Jay Davis is hereby denied.

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

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11 This Decision shall become effective on June 24, 2011

12 It is so ORDERED May 25, 2011

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15 FOR THE STRUCTURAL PEST CONTROL BOARD
16 DEPARTMENT OF PESTICIDE REGULATION

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24 Attachment:

25 Exhibit A: Statement of Issues No.2009-30
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Exhibit A

Statement of Issues No. 2009-30

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KEVIN J. RIGLEY, State Bar No. 131800
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 622-2558
6 Facsimile: (213) 897-2804

FILED

Date 12/5/08 By *Kelli Okuma*

7 Attorneys for Complainant

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. 2009-30

12 **JAMES JAY DAVIS, AKA**
13 **JAMES J. DAVIS**
5205 San Bernardino Street, #514
14 Montclair, CA 91763
and
2105 San Bernardino Road
15 West Covina, CA 91790

STATEMENT OF ISSUES

16 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Kelli Okuma ("Complainant") brings this Statement of Issues solely in her
21 official capacity as the Registrar/Executive Officer of the Structural Pest Control Board
22 ("Board"), Department of Consumer Affairs.

23 **Application for Field Representative's License**

24 2. On or about May 14, 2007, the Board received an Application for Field
25 Representative's License, Branch 2, from James Jay Davis, also known as James J. Davis. On or
26 about May 10, 2007, James Jay Davis, also known as James J. Davis, certified under penalty of
27 perjury to the truthfulness of all statements, answers, and representations in the application. The
28 Board denied the application on June 28, 2007.

STATUTORY PROVISIONS

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2 3. California Business and Professions Code ("Code") section 8568 states, in
3 pertinent part:

4 After a hearing the board may deny a license or a company registration
5 unless the applicant makes a showing satisfactory to the board that the applicant,
6 if an individual, has not, or if the applicant is a company applying for a company
7 registration, that its manager and each of its officers, directors, employees,
8 members and partners have not:

9 (a) Committed any act or crime constituting grounds for denial of
10 licensure under Section 480.

11 When a hearing is held under this section it shall be conducted in
12 accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
13 Division 3 of Title 2 of the Government Code, and the board shall have all of the
14 powers granted therein.

15 4. Code section 480 states, in pertinent part:

16 (a) A board may deny a license regulated by this code on the grounds
17 that the applicant has one of the following:

18 (1) Been convicted of a crime. A conviction within the meaning of this
19 section means a plea or verdict of guilty or a conviction following a plea of nolo
20 contendere. Any action which a board is permitted to take following the
21 establishment of a conviction may be taken when the time for appeal has elapsed,
22 or the judgment of conviction has been affirmed on appeal, or when an order
23 granting probation is made suspending the imposition of sentence, irrespective of
24 a subsequent order under the provisions of Section 1203.4 of the Penal Code.

25 (2) Done any act involving dishonesty, fraud or deceit with the intent
26 to substantially benefit himself or another, or substantially injure another; or

27 (3) Done any act which if done by a licentiate of the business or
28 profession in question, would be grounds for suspension or revocation of license.

29 5. Code section 8637 states, "Misrepresentation of a material fact by the
30 applicant in obtaining a license or company registration is a ground for disciplinary action."

31 6. Code section 8649 states:

32 Conviction of a crime substantially related to the qualifications, functions,
33 and duties of a structural pest control operator, field representative, applicator, or
34 registered company is a ground for disciplinary action. The certified record of
35 conviction shall be conclusive evidence thereof.

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7. Code section 8654 states:

Any individual who has been denied a license for any of the reasons specified in Section 8568, or 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 application for a company registration has been denied for any of the reasons specified in Section 8568, or 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.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Convictions)

8. Respondent's application is subject to denial pursuant to Code section 480, subdivision (a)(1), in that on November 13, 1986, in the Superior Court of California, Los Angeles County, California, in the matter entitled *People of the State of California v. James Jay Davis, also known as James J. Davis* (Super. Ct. Los Angeles Cty., 1986, Case No. A538102), Respondent was convicted by the court on his pleas of guilty of violating Penal Code sections 288 a (c) [oral copulation with another under 14 years of age], 288(a) [lewd or lascivious act on a child under 14 years of age], 261.5 [sexual intercourse with a minor] and 289(a) [sexual penetration with a foreign object by force], all felonies.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dishonest Act)

9. Respondent's application is subject to denial pursuant to Code section 480, subdivision (a)(2), in that Respondent committed a dishonest act with the intent to substantially benefit himself. Respondent submitted an Application for Structural Pest Control Field Representative Examination, dated September 26, 2005, to the Registrar, wherein Respondent answered "No" to Question No. 9 of the application, which asked if he had ever been convicted of a felony or of a misdemeanor other than a violation of traffic laws. In fact,

1 Respondent was convicted of four crimes, as fully set forth in paragraph 8, above.

2 **THIRD CAUSE FOR DENIAL OF APPLICATION**

3 (Acts Which if Done by a Licentiate Constitute Cause for Discipline)

4 10. Respondent's application is subject to denial pursuant to Code 480,
5 subdivision (a)(3), in that Respondent committed acts, which, if done by a licentiate constitute
6 cause for discipline, pursuant to Code sections 8649 and 8637, as more particularly set forth in
7 paragraphs 8 and 9, above.

8 **OTHER MATTERS**


9 11. Pursuant to Code section 8654, if the application of Respondent is denied,
10 then James Jay Davis, also known as James J. Davis, shall be prohibited from serving as an
11 officer, director, associate, partner, qualifying manager or responsible managing employee of a
12 registered company, and the employment, election or association of him by a registered company
13 is a ground for disciplinary action.

14 **PRAYER**

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

- 17 1. Denying the application of James Jay Davis, also known as James J.
18 Davis, for a field representative's license;
- 19 2. Prohibiting James Jay Davis, also known as James J. Davis, from serving
20 as an officer, director, associate, partner, qualifying manager or responsible managing employee
21 of any licensee; and,
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 12/5/08

24 
25 KELLI OKUMA
26 Registrar/Executive Officer
27 Structural Pest Control Board
28 Department of Consumer Affairs
State of California
Complainant