

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 CONSUMER AFFAIRS
STATE OF CALIFORNIA**

Case No. 2009-31

In the Matter of the Accusation Against:

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

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Registered Applicator's License No. RA
41025,

Respondent.

FINDINGS OF FACT

1. On or about December 2, 2008, Complainant Kelli Okuma, in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board (Board), filed Accusation No. 2009-31 against James Jay Davis (Respondent) before the Board.

2. On or about December 5, 2003, the Board issued Registered Applicator's License No. RA 41025, Branches 2 and 3 to Respondent. The Registered Applicator's License (license), which was in full force and effect at all times relevant to the charges brought herein, expired on December 5, 2009 and is currently delinquent.

///

1 3. On or about January 8, 2009, Thurman Peden, an employee of the Department of
2 Justice, served by Certified and First Class Mail a copy of Accusation No. 2009-31, Statement to
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
4 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:

5 5205 San Bernardino #514
6 Montclair, CA 91763.

7 4. On or about May 8, 2009, Thurman Peden, an employee of the Department of Justice,
8 served by Certified and First Class Mail a copy of Accusation No. 2009-31, Statement to
9 Respondent, Notice of Defense, Request for Discovery, and Government Code sections
10 11507.5, 11507.6, and 11507.7 to Respondent's forwarding address as of January 14, 2009,
11 which was provided by the U.S. Postal Service when the above referenced documents were
12 returned after service was attempted at the address indicated in paragraph three (3) above:

13 P.O. Box 336
14 Montclair, CA 91763-0336.

15 5. On or about May 8, 2009, Thurman Peden, an employee of the Department of
16 Justice, served by Certified and First Class Mail a copy of Accusation No. 2009-31,
17 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
18 sections 11507.5, 11507.6, and 11507.7 to the address of Respondent's last known
19 employer, which was and still is:

20 Stat Exterminating Inc.
21 2105 W. San Bernardino Road
22 West Covina, CA 91790-1007

23 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

24 6. Service of the Accusation was effective as a matter of law under the provisions of
25 Government Code section 11505, subdivision (c).

26 7. Accordingly, attempts have been made to serve Respondent with the aforementioned
27 documents at every conceivable address for Respondent known to the Board.

28 ///

 ///

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

2 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
3 notice of defense, and the notice shall be deemed a specific denial of all parts of the
4 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.

5 9. Respondent failed to file a Notice of Defense within 15 days after service upon him
6 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
7 2009-31.

8 10. 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 hearing, the
10 agency may take action based upon the respondent's express admissions or upon other evidence
11 and affidavits may be used as evidence without any notice to respondent; and where the burden of
12 proof is on the respondent to establish that the respondent is entitled to the agency action sought,
13 the agency may act without taking evidence. Pursuant to its authority under Government Code
14 section 11520, the Board finds Respondent is in default. The Board will take action without
15 further hearing and, based on the evidence on file herein, finds that the allegations in Accusation
16 No. 2009-31 are true.

17 11. The total cost for investigation and enforcement in connection with the Accusation
18 are \$3,860.25 as of January 19, 2010.

19 DETERMINATION OF ISSUES

20 1. Based on the foregoing findings of fact, Respondent James Jay Davis has subjected
21 his Registered Applicator's License No. RA 41025, Branches 2 and 3 to discipline.

22 2. A copy of the Accusation is attached.

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

24 4. The Board is authorized to revoke Respondent's Registered Applicator's License
25 based upon the following violations alleged in the Accusation:

26 a. Misrepresentation of a Material Fact (Business and Professions Code section 8637),
27 in that Respondent submitted an Application for Structural Pest Control Field Representative
28 dated September 26, 2005 and answered "No" to Question number 16 of that application, which

1 asked if he had ever been convicted of a felony or misdemeanor other than a violation of traffic
2 laws. In fact, Respondent had previously been convicted of four felonies on November 13, 1986.
3 All four convictions pertained to sex-related crimes involving a minor-victim under the age of 14.

4
5 ORDER

6 IT IS SO ORDERED that Registered Applicator's License No. RA 41025, Branches 2 and
7 3, heretofore issued to Respondent James Jay Davis, is revoked.

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

12
13 This Decision shall become effective on March 26, 2010.

14
15 It is so ORDERED February 24, 2010

16 

17 FOR THE STRUCTURAL PEST CONTROL BOARD

18
19
20
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

default decision_LIC.rtf
DOJ docket number:LA2008100305

Attachment:
Exhibit A: Accusation No.2009-31

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) 620-2558
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 Accusation Against:
12 **JAMES JAY DAVIS, AKA**
13 **JAMES J. DAVIS**
14 5205 San Bernardino Street, #514
Montclair, CA 91763
14 and
2105 San Bernardino Road
15 West Covina, CA 91790
16 Registered Applicator's License No. RA 41025,
17 Respondent.

Case No. 2009-31

ACCUSATION

19 Complainant alleges:

20 **PARTIES**

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

24 **Registered Applicator's License**

25 2. On or about December 5, 2003, the Board issued Registered Applicator's
26 License No. RA 41025, Branches 2 and 3, to James Jay Davis, also known as James J. Davis
27 ("Respondent"), as an employee of Stat Exterminating, Inc. Company. The registered
28 applicator's license will expire on December 5, 2009, unless renewed.

STATUTORY PROVISIONS

1
2 3. Business and Professions Code ("Code") section 8620 provides, in
3 pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while
4 a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary
5 action or in lieu of a suspension may assess a civil penalty.

6 4. Code section 8625 states:

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

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

15 6. Code section 8649 states:

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

20 7. Code section 8654 states:

21 Any individual who has been denied a license for any of the reasons
22 specified in Section 8568, or who has had his or her license revoked, or whose
23 license is under suspension, or who has failed to renew his or her license while it
24 was under suspension, or who has been a member, officer, director, associate,
25 qualifying manager, or responsible managing employee of any partnership,
26 corporation, firm, or association whose application for a company registration has
27 been denied for any of the reasons specified in Section 8568, or whose company
28 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.

///

///

///

1 COST RECOVERY

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

6 FIRST CAUSE FOR DISCIPLINE

7 (Misrepresentation of a Material Fact)

8 9. Respondent's license is subject to discipline under Code section 8637, in
9 that Respondent submitted an Application for Structural Pest Control Field Representative
10 Examination, dated September 26, 2005, to the Registrar, wherein Respondent answered "No" to
11 Question No. 16 of the application, which asked if he had ever been convicted of a felony or of a
12 misdemeanor other than a violation of traffic laws. In fact, Respondent was convicted of four
13 crimes on November 13, 1986, in the Superior Court of California, Los Angeles County,
14 California, in the matter entitled *People of the State of California v. James Jay Davis, also known*
15 *as James J. Davis* (Super. Ct. Los Angeles Cty., 1986, Case No. A538102). In connection
16 therewith, Respondent was convicted by the court on his pleas of guilty of violating Penal Code
17 sections 288A(c) [oral copulation with another under 14 years of age], 288(a) [lewd or lascivious
18 act on a child under 14 years of age], 261.5 [sexual intercourse with a minor] and 289(a) [sexual
19 penetration with a foreign object by force], all felonies.

20 AGGRAVATING CIRCUMSTANCES

21 (Criminal Convictions)

22 10. Aggravating circumstances exist in this matter, based upon the fact that
23 Respondent has been convicted of four felonies, as more particularly set forth in paragraph 9
24 above.

25 ////

26 ////

27 ////

28 ////

1 OTHER MATTERS

2 11. Code section 8620 provides, in pertinent part, that a Respondent may
3 request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of
4 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request
5 must be made at the time of the hearing and must be noted in the proposed decision. The
6 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

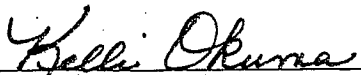
7 12. Pursuant to Code section 8654, if Registered Applicator's License
8 No. RA 41025, issued to James Jay Davis, also known as James J. Davis, is revoked or
9 suspended, then he shall be prohibited from serving as an officer, director, associate, partner,
10 qualifying manager or responsible managing employee of a registered company, and the
11 employment, election or association of him by a registered company is a ground for disciplinary
12 action.

13 PRAYER

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

- 16 1. Revoking or suspending Registered Applicator's License Number
17 RA 41025, issued to James Jay Davis, also known as James J. Davis;
- 18 2. Ordering James Jay Davis, also known as James J. Davis, to pay the
19 Structural Pest Control Board the reasonable costs of the investigation and enforcement of this
20 case, pursuant to Code section 125.3; and,
- 21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 12/5/08

23
24 
25 KELLI OKUMA
26 Registrar/Executive Officer
27 Structural Pest Control Board
28 Department of Consumer Affairs
State of California
Complainant