

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 HEATHER HUA  
Deputy Attorney General  
4 State Bar No. 223418  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2574  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 2010-2

13 **JOSE ISMAEL HERNANDEZ**

14 10227 Lanet Avenue  
Whittier, California 90605

**DEFAULT DECISION AND ORDER**

15 Registered Applicator License No. RA 43859  
16 Branches 2 and 3

[Gov. Code, §11520]

17 Respondent.

18  
19 **FINDINGS OF FACT**

20 1. On or about July 15, 2009, Complainant Kelli Okuma, in her official capacity as the  
21 Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer  
22 Affairs, filed Accusation No. 2010-2 against Jose Ismael Hernandez (Respondent) before the  
23 Structural Pest Control Board.

24 2. On or about June 4, 2005, the Structural Pest Control Board (Board) issued  
25 Registered Applicator's License No. RA 43859 to Respondent. The Registered Applicator's  
26 License was in full force and effect at all times relevant to the charges brought herein and will  
27 expire on June 14, 2011, unless renewed.  
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1           3. On or about August 3, 2009, Anna Carpenter, an employee of the Department of  
2 Justice, served by Certified and First Class Mail a copy of the Accusation No. 2010-2, Statement  
3 to Respondent, Notice of Defense, Request for Discovery, and Government Code sections  
4 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and  
5 is:

6 10227 Lanet Avenue  
7 Whittier, CA 90605.

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

9           4. Service of the Accusation was effective as a matter of law under the provisions of  
10 Government Code section 11505, subdivision (c).

11           On or about August 18, 2009, the aforementioned documents were returned by the U.S.  
12 Postal Service marked "Refused."

13           5. Government Code section 11506 states, in pertinent part:

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

18           Here, Respondent failed to file a Notice of Defense within 15 days after service upon him  
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
20 2010-2.

21           6. California Government Code section 11520 states, in pertinent part:

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

25           7. Pursuant to its authority under Government Code section 11520, the Board finds  
26 Respondent is in default. The Board will take action without further hearing and, based on the  
27 evidence on file herein, finds that the allegations in Accusation No. 2010-2 are true.

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1 8. The total cost for investigation and enforcement in connection with the Accusation  
2 are \$1,074 as of September 4, 2009.

3 **DETERMINATION OF ISSUES**

4 1. Based on the foregoing findings of fact, Respondent Jose Ismael Hernandez has  
5 subjected his Registered Applicator's License No. RA 43859 to discipline.

6 2. A copy of the Accusation is attached.

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

8 4. The Structural Pest Control Board is authorized to revoke Respondent's Registered  
9 Applicator's License based upon the following violations alleged in the Accusation:

10 a. Criminal Conviction on December 17, 2008

11 Respondent is subject to disciplinary action under section Code section 8649, in that  
12 on or about December 17, 2008, before the Superior Court of California, County of Los Angeles,  
13 in the case entitled, *People of the State of California v. Jose Ismael Hernandez* (Super. Ct. Los  
14 Angeles County, 2008, Case No. VA108273), Respondent was convicted on his plea of guilty of  
15 violating three counts of Penal Code sections 647.6, subdivision (a) (Annoy or Molest a Child)  
16 and section 243.4, subdivision (e)(1) (Unlawful Touching), felonies. The circumstances of the  
17 crime are that between September 29, 2007, and September 28, 2008, Respondent did unlawfully  
18 annoy and molest children, V. and B., both of whom were under the age of eighteen years old.  
19 Such crimes are substantially related to the qualifications, functions, and duties of a licensee.

20 **ORDER**

21 IT IS SO ORDERED that Registered Applicator's License No. RA 43859, heretofore issued  
22 to Respondent Jose Ismael Hernandez, is revoked.

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

5 This Decision shall become effective on December 18, 2009.

6 It is so ORDERED November 18, 2009

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9 FOR THE STRUCTURAL PEST CONTROL BOARD  
10 DEPARTMENT OF CONSUMER AFFAIRS

11 Attachment:  
12 Exhibit A: Accusation No.2010-2  
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Exhibit A

Accusation No. 2010-2

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 GREGORY J. SALUTE,  
Supervising Deputy Attorney General  
3 HEATHER HUA, State Bar No. 223418  
Deputy Attorney General  
4 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
5 Telephone: (213) 897-2574  
Facsimile: (213) 897-2804  
6

**FILED**

Date 7/15/09 By *Kelli Okuma*

7 Attorneys for Complainant  
8

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**STRUCTURAL PEST CONTROL BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
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11 In the Matter of the Accusation Against:

Case No. 2010-2

12 **JOSE ISMAEL HERNANDEZ**  
10227 Lanet Avenue  
13 Whittier, California 90605

**A C C U S A T I O N**

14 Registered Applicator License No. RA 43859  
Branches 2 and 3

15 Respondent.  
16

17 Kelli Okuma ("Complainant") alleges:

18 **PARTIES**

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

22 **Registered Applicator License**

23 2. On or about June 14, 2005, the Board issued Registered Applicator  
24 License Number RA 43859 ("license"), Branches 2 and 3, to Jose Ismael Hernandez  
25 ("Respondent"). The license will expire on June 14, 2011, unless renewed.

26 **JURISDICTION**

27 3. Section 8620 of the Business and Professions Code (Code) provides, in  
28 pertinent part, that the Board may suspend or revoke a license when it finds that the holder,

1 while a licensee or applicant, has committed any acts or omissions constituting cause for  
2 disciplinary action or in lieu of a suspension may assess a civil penalty.

3 4. Code section 8624 states:

4 "If the board suspends or revokes an operator's license and one or more branch  
5 offices are registered under the name of the operator, the suspension or revocation may be  
6 applied to each branch office."

7 5. Code section 8625 states:

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

#### 12 STATUTORY PROVISIONS

13 6. Code section 8649 states:

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

17 7. Section 8654 of the Code states:

18 Any individual who has been denied a license for any of  
19 the reasons specified in Section 8568, or who has had his or her  
20 license revoked, or whose license is under suspension, or who has  
21 failed to renew his or her license while it was under suspension, or  
22 who has been a member, officer, director, associate, qualifying  
23 manager, or responsible managing employee of any partnership,  
24 corporation, firm, or association whose application for a company  
25 registration has been denied for any of the reasons specified in  
26 Section 8568, or whose company registration has been revoked as  
27 a result of disciplinary action, or whose company registration is  
28 under suspension, and while acting as such member, officer,  
29 director, associate, qualifying manager, or responsible managing  
30 employee had knowledge of or participated in any of the  
31 prohibited acts for which the license or registration was denied,  
32 suspended or revoked, shall be prohibited from serving as an  
33 officer, director, associate, partner, qualifying manager, or  
34 responsible managing employee of a registered company, and the  
35 employment, election or association of such person by a registered  
36 company is a ground for disciplinary action.

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8. Section 8655 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is deemed to be a conviction within the meaning of this article or Section 8568 of this chapter. The board may order the license or registration suspended or revoked, or may decline to issue a license, when the appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the individual or registered company to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

**COST RECOVERY**

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

**CAUSE FOR DISCIPLINE**

**(Criminal Conviction)**

10. Respondent is subject to disciplinary action under section Code section 8649, in that on or about December 17, 2008, before the Superior Court of California, County of Los Angeles, in the case entitled, *People of the State of California v. Jose Ismael Hernandez* (Super. Ct. Los Angeles County, 2008, Case No. VA108273), Respondent was convicted on his plea of guilty of violating three counts of Penal Code sections 647.6, subdivision (a) (Annoy or Molest a Child) and section 243.4, subdivision (e)(1) (Unlawful Touching), felonies. The circumstances of the crime are that between September 29, 2007, and September 28, 2008, Respondent did unlawfully annoy and molest children, V. and B., both of whom were under the age of eighteen years old. Such crimes are substantially related to the qualifications, functions, and duties of a licensee.

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///



1 OTHER MATTERS

2 11. Pursuant to Code section 7121, if Respondent's application for a license is  
3 denied, then Respondent shall be prohibited from serving as an officer, director, associate,  
4 partner, or qualifying individual of any license, and any licensee which employs, elects or  
5 associates Respondent in any capacity other than as a non-supervising bona fide employee shall  
6 be subject to disciplinary action.

7 PRAYER

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

- 10 1. Revoking or suspending Registered Applicator Number RA 43859,  
11 Branches 2 and 3, issued to Jose Ismael Hernandez;
- 12 2. Prohibiting Jose Ismael Hernandez from serving as an officer, director,  
13 associate, partner, or qualifying individual of any licensee;
- 14 3. Ordering Jose Ismael Hernandez to pay the Board the reasonable costs of  
15 the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 16 4. Taking such other and further action as deemed necessary and proper.

17 DATED: 7/15/09

18  
19 Kelli Okuma  
20 KELLI OKUMA  
21 Registrar/Executive Officer  
22 Structural Pest Control Board  
23 Department of Consumer Affairs  
24 State of California  
25 Complainant

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