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

11 In the Matter of the Accusation Against:

Case No. 2010-07

12 **GERARDO ELIZARRARAZ**  
13 **P.O. Box 2887**  
**Lancaster, CA 93539**  
14 **Registered Applicator No. RA45002**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

15  
16 Respondent.

17  
18 FINDINGS OF FACT

19 1. On or about August 18, 2009, Complainant Kelli Okuma, in her official capacity as  
20 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer  
21 Affairs, filed Accusation No. 2010-07 against Gerardo Elizarraraz (Respondent) before the  
22 Structural Pest Control Board.

23 2. On or about January 9, 2006, the Structural Pest Control Board (Board) issued  
24 Registered Applicator No. RA 45002 to Respondent. The Registered Applicator expired on  
25 January 9, 2009, and was not renewed.

26 3. On or about August 25, 2009, Anna Carpenter, an employee of the Department of  
27 Justice, served by Certified and First Class Mail a copy of the Accusation No. 2010-07, Statement  
28

1 to Respondent, Notice of Defense, Request for Discovery, and Government Code sections  
2 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and  
3 is:

4 P.O. Box 2887  
5 Lancaster, CA 93539

6 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

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

9 5. On or about September 10, 2009, the aforementioned documents which were served  
10 by first class mail were returned by the U.S. Postal Service marked "Not Deliverable As  
11 Addressed – Unable to Forward." On or about September 28, 2009, the aforementioned  
12 documents which were served by certified mail were returned by the U.S. Postal Service marked  
13 "unclaimed."

14 6. On or about September 30, 2009, Ms. Carpenter also served a copy of the Accusation,  
15 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code  
16 sections 11507.5, et al. by first class mail and certified mail on Respondent at the following  
17 address which was provided by the Board:

18 348 E. Avenue, K8, #D  
19 Lancaster, CA 93535

20 7. On or about October 13, 2009, the documents which were served on September 30,  
21 2009 were returned to the Office of the Attorney General as undeliverable because there is "no  
22 person at this address with this name".

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  
27 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
28 may nevertheless grant a hearing.

1 9. Respondent failed to file a Notice of Defense within 15 days after service upon him  
2 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
3 2010-07.

4 10. California Government Code section 11520 states, in pertinent part:

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

9 11. Pursuant to its authority under Government Code section 11520, the Board finds  
10 Respondent is in default. The Board will take action without further hearing and, based on the  
11 evidence on file herein, finds that the allegations in Accusation No. 2010-07 are true.

12 12. The total cost for investigation and enforcement in connection with the Accusation  
13 are \$1,439.00 as of October 16, 2009.

14 DETERMINATION OF ISSUES

15 1. Based on the foregoing findings of fact, Respondent Gerardo Elizarraraz has  
16 subjected his Registered Applicator No. RA 45002 to discipline.

17 2. A copy of the Accusation is attached.

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

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

21 a. Respondent is subject to discipline under Business and Professions Code sections  
22 8620 and 8649, because he was convicted of a crime which is substantially related to the  
23 qualifications, functions and duties of a structural pest control applicator. On September 11,  
24 2008, in the Superior Court, County of Los Angeles, California, in the matter entitled *People v.*  
25 *Gerardo Elizarraraz*, Case No. VA100115 (2008), Respondent was convicted by the Court  
26 following his plea of nolo contendere, to violations of Penal Code section 273(D), subdivision (a)  
27 (inflict injury on a child), and Penal Code section 273A, subdivision (a) great bodily injury/death  
28 to a child), both felonies.

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ORDER

IT IS SO ORDERED that Registered Applicator No. RA 45002, heretofore issued to Respondent Gerardo Elizarraraz, is revoked.

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

This Decision shall become effective on January 14, 2010.

It is so ORDERED December 15, 2009

*Clelland J. Attley*  
\_\_\_\_\_  
FOR THE STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS

50514836.DOC  
DOJ docket number:LA2008900582

Attachment:

Exhibit A: Accusation No.2010-07

**Exhibit A**  
**Accusation No. 2010-07**

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Facsimile: (213) 897-2804  
6 *Attorneys for Complainant*

**FILED**

Date 8/18/09 By *Kelli Okuma*

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BEFORE THE  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:  
11 **GERARDO ELIZARRARAZ**  
P.O. Box 2887  
12 Lancaster, California 93539  
Registered Applicator License No. RA 45002  
13  
14 Respondent.

Case No. 2010-7

**ACCUSATION**

15 Complainant alleges:

16  
17 **PARTIES**

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

21 **Registered Applicator License**

22 2. On or about January 9, 2006, the Structural Pest Control Board issued Registered  
23 Applicator License Number RA 45002 to Gerardo Elizarraraz ("Respondent"). The registered  
24 applicator license was in full force and effect at all times relevant to the charges brought herein  
25 and will expire on January 9, 2010, unless renewed.

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## STATUTORY PROVISIONS

1  
2 3. Section 8620 of the Business and Professions Code ("Code") provides, in pertinent  
3 part, that the Board may suspend or revoke a license when it finds that the holder, while a  
4 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 board of  
10 jurisdiction to proceed with any investigation of or action or disciplinary proceeding  
11 against such licensee or company, or to render a decision suspending or revoking  
12 such license or registration.

13 5. Code section 8649 states:

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

18 6. Code section 8654 states:

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

## COST RECOVERY

7. 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

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2       8.     Respondent has subjected his registered applicator's license to discipline pursuant to  
3 Code section 8649, in that on September 11, 2008, in the Superior Court, County of Los Angeles,  
4 California, in the matter entitled *People v. Gerardo Elizarraraz*, Case No. VA100115, (2008),  
5 Respondent was convicted by the court following his plea of nolo contendere to violations of  
6 Penal Code section 273D, subdivision (a) (inflict injury on a child), and Penal Code section  
7 273A, subdivision (a) (great bodily injury/death to a child), both felonies. The circumstances of  
8 the crime are that on March 14, 2007, police officers were summoned to Whittier Presbyterian  
9 Hospital regarding injuries to Respondent's 3-month old baby. The baby was being treated for a  
10 fracture to her left tibia. When contacted by police officers, Respondent admitted that he grabbed  
11 the baby's leg and yanked it because the baby was crying and wiggling around while Respondent  
12 was trying to feed her. Respondent told the officers he heard the baby's leg snap. In a  
13 subsequent interview at the police station Respondent admitted to the detectives that he frequently  
14 spanked his children, bit their toes to discipline them, and that he had suffocated the infant by  
15 pressing her head into his shoulder to silence her. Respondent also admitted that when the baby  
16 was on the mattress he would press down on the baby's neck to silence her. Further, Respondent  
17 admitted to violently shaking the infant repeatedly. Such conduct is substantially related to the  
18 qualifications, functions, and duties of a registered applicator.

OTHER MATTERS

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

25       10.    Pursuant to Code section 8654, if discipline is imposed on Registered Applicator's  
26 License Number RA 45002, issued to Respondent, then Gerardo Elizarraraz shall be prohibited  
27 from serving as an officer, director, associate, partner, qualifying manager, or responsible  
28 managing employee for any registered company during the time the discipline is imposed, and



1 any registered company which employs, elects, or associates him shall be subject to disciplinary  
2 action.

3 PRAYER

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

- 6 1. Revoking or suspending Registered Applicator License Number RA 45002, issued to  
7 Gerardo Elizarraraz;
- 8 2. Ordering Gerardo Elizarraraz to pay the Structural Pest Control Board the reasonable  
9 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 10 3. Taking such other and further action as deemed necessary and proper.

11  
12 DATED: 8/18/09

*Kelli Okuma*  
KELLI OKUMA  
Registrar/Executive Officer  
Structural Pest Control Board  
Department of Consumer Affairs  
State of California  
Complainant

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