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

12
13 In the Matter of the Accusation Against:

Case No. 2010-11

14 **DANIEL ALBA**
11608 Ridgecrest Lane
15 Moreno Valley, CA 92557

DEFAULT DECISION AND ORDER

16 Registered Applicator's License
No. RA 46136 in Branches 2 and 3

[Gov. Code, §11520]

17 Respondent.
18

19 FINDINGS OF FACT

20 1. On or about September 8, 2009, Complainant Kelli Okuma, in her official capacity as
21 the Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation,
22 filed Accusation No. 2010-11 against Daniel Alba (Respondent) before the Structural Pest
23 Control Board.

24 2. On or about August 7, 2006, the Structural Pest Control Board (Board) issued
25 Applicator's License No. RA 46136 in Branches 2 and 3 to Respondent. The Applicator's License
26 expired on August 7, 2009 and has not been renewed.

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1 3. On or about September 14, 2009, S. Sotelo, an employee of the Department of
2 Justice, served by Certified and First Class Mail a copy of the Accusation No. 2010-11, 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 11608 Ridgcrest Lane, Moreno Valley, CA 92557. A copy of the Accusation is attached as
6 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 21, 2009, the aforementioned documents were returned by the
10 U.S. Postal Service marked "Attempted Not Known."

11 6. On or about October 8, 2009, S. Sotelo, an employee of the Department of Justice,
12 served by Certified and First Class Mail a copy of the Accusation No. 2010-11, Statement to
13 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
14 11507.6, and 11507.7 to Respondent at P.O. Box 1707, Rancho Cucamonga, CA 91729. A copy
15 of the Declaration of Service is attached as Exhibit B, and is incorporated herein by reference.

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

18 8. On or about November 2, 2009, the aforementioned documents were returned by the
19 U.S. Postal Service marked "Attempted Unknown. Not at this PO Box."

20 9. Government Code section 11506 states, in pertinent part:

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

26 10. Respondent failed to file a Notice of Defense within 15 days after service upon him
27 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
28 2010-11.

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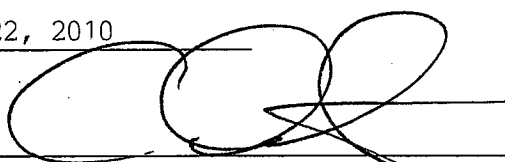
ORDER

IT IS SO ORDERED that Applicator's License No. RA 46136, heretofore issued to Respondent Daniel Alba, 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 May 22, 2010.

It is so ORDERED April 22, 2010



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

80445480.DOC
DOJ docket number:SD2009804372

Exhibit A: Accusation No.2010-11

Exhibit A
Accusation No. 2010-11

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Attorneys for Complainant

FILED

Date 9/8/09 By *Kelli Okuma*

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

In the Matter of the Accusation Against:

Case No. 2010-11

DANIEL ALBA
11608 Ridgecrest Lane
Moreno Valley, CA 92557

ACCUSATION

**Registered Applicator's License
No. RA 46136 in Branches 2 and 3**

Respondent.

Complainant alleges:

PARTIES.

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

2. On or about August 7, 2006, the Structural Pest Control Board issued Applicator's License Number RA 46136 in branches 2 and 3 to Daniel Alba (Respondent). The Applicator's License expired on August 7, 2009 and has not been renewed.

JURISDICTION

3. This Accusation is brought before the Structural Pest Control Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Section 8620 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

STATUTORY PROVISIONS

6. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on 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.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

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7. Section 493 of the Code states, in pertinent part:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications,

8. Section 8625 of the Code states:

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

9. Section 8649 of the Code states:

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

10. 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.

11. Code section 8655 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 time for appeal

1 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
2 order granting probation is made suspending the imposition of sentence, irrespective
3 of a subsequent order under the provisions of Section 1203.4 of the Penal Code
4 allowing the individual or registered company to withdraw a plea of guilty and to
5 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
6 accusation, information or indictment.

7 12. Penal Code section 459 provides, in pertinent part that every person who enters any
8 vehicle, when the doors are locked with the intent to commit larceny or any felony is guilty of
9 burglary.

10 13. Penal Code section 496 states, in pertinent part:

11 (a) Every person who buys or receives any property that has been stolen
12 or that has been obtained in any manner constituting theft or extortion, knowing the
13 property to be so stolen or obtained, or who conceals, sells, withholds, or aids in
14 concealing, selling, or withholding any property from the owner, knowing the
15 property to be so stolen or obtained, shall be punished by imprisonment in a state
16 prison, or in a county jail for not more than one year.

17 COST RECOVERY

18 14. Code section 125.3 provides, in pertinent part, that a Board may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations
20 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 REGULATORY PROVISIONS

23 15. California Code of Regulations, title 16, section 1937.1, states, in pertinent part:

24 For the purposes of denial, suspension or revocation of a license or company
25 registration . . . a crime or act shall be considered to be substantially related to the
26 qualifications, functions or duties of a licensee or registered company . . . if to a
27 substantial degree it evidences present or potential unfitness of such licensee or
28 registered company to perform the functions authorized by the license or company
registration in a manner consistent with the public health, safety, or welfare. Such
crimes or acts shall include, but not be limited to, the following:

(a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

(b) Commission of any of the following in connection with the practice of
structural pest control:

(1) Fiscal dishonesty

(2) Fraud

(3) Theft

(4) Violations relating to the misuse of pesticides.

1 **OTHER MATTERS**

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

7 21. Pursuant to Code section 8654, if discipline is imposed on Registered Applicator's
8 License Number RA 46136, issued to Respondent Daniel Alba, he shall be prohibited from
9 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
10 employee for any registered company during the time the discipline is imposed, and any
11 registered company which employs, elects, or associates Daniel Alba shall be subject to
12 disciplinary action.

13 **PRAYER**

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

- 16 1. Revoking or suspending Applicator's License Number RA 46136, issued to Daniel
17 Alba.
- 18 2. Ordering Daniel Alba to pay the Structural Pest Control Board the reasonable costs of
19 the investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.
- 22

23 DATED: 9/8/09

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

SD2009804372
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