

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

In the Matter of the Accusation Against:

Case No. 2009-63

STEVEN WADE GARDNER
2302 Brown Road
Imperial, CA 92251-0731

Registered Applicator's License No. RA
46441

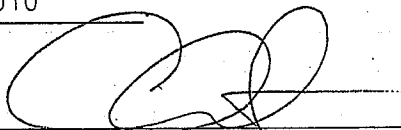
Respondent.

DECISION AND ORDER

The attached Stipulated Revocation of License and Order is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

This Decision shall become effective on March 4, 2010.

It is so ORDERED February 2, 2010



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 BEN E. JOHNSON
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Attorneys for Complainant

8
9 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
10 **DEPARTMENT OF PESTICIDE REGULATION**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2009-63

12 **STEVEN WADE GARDNER**
13 **2302 Brown Road**
14 **Imperial, CA 92251-0731**

**STIPULATED REVOCATION OF
LICENSE AND ORDER**

15 **Registered Applicator's License No. RA**
16 **46441**

Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. Kelli Okuma (Complainant) is the Registrar/Executive Officer of the Structural Pest
22 Control Board. She brought this action solely in her official capacity and is represented in this
23 matter by Ben E. Johnson, Deputy Attorney General, on behalf of Edmund G. Brown Jr.,
24 Attorney General of the State of California.

25 2. Steven Wade Gardner (Respondent) is representing himself in this proceeding and
26 has chosen not to exercise his right to be represented by counsel.

27 3. On or about October 4, 2006, the Structural Pest Control Board issued Registered
28 Applicator's License number RA 46441 to Steven Wade Gardner. The license was in full force

1 and effect at all times relevant to the charges brought in Accusation number 2009-63 and expired
2 on October 4, 2009.

3 JURISDICTION

4 4. Accusation number 2009-63 was filed before the Structural Pest Control Board
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 September 30, 2009. Respondent timely filed his Notice of Defense contesting the Accusation.
8 A copy of Accusation number 2009-63 is attached as exhibit A and incorporated herein by
9 reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation number 2009-63. Respondent also has carefully read, and understands the effects of
13 this Stipulated Revocation of License and Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in Accusation
25 number 2009-63, agrees that cause exists for imposing discipline upon his Applicator's license.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue
27 an order revoking his Registered Applicator's License without further process.

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1 15. Respondent shall lose all rights and privileges as a Registered Applicator in
2 California as of the effective date of the Board's Decision and Order.

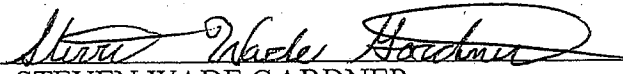
3 16. Respondent shall expend his best efforts to deliver to the Board both his wall license
4 certificate and, if one was issued, pocket license on or before the effective date of the Decision
5 and Order.

6 17. If Respondent ever files an application for licensure or a petition for reinstatement in
7 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
8 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
9 effect at the time the petition is filed, and all of the charges and allegations contained in
10 Accusation number 2009-63 shall be deemed to be true, correct and admitted by Respondent
11 when the Board determines whether to grant or deny the petition.

12 18. The Board waives its costs of investigation and prosecution in the amount of
13 \$3,150.00, unless or until Respondent applies for the issuance of a new or reinstated license, at
14 which time the costs shall be paid in full.

15
16 ACCEPTANCE

17 I, Steven Wade Gardner, have carefully read the Stipulated Revocation of License and
18 Order. I understand the stipulation and the effect it will have on my Registered Applicator's
19 License. I enter into this Stipulated Revocation of License and Order voluntarily, knowingly, and
20 intelligently, and agree to be bound by the Decision and Order of the Structural Pest Control
21 Board.

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23 DATED: NOVEMBER 12, 2009 
24 STEVEN WADE GARDNER
Respondent

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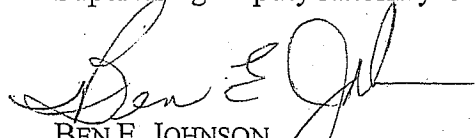
ENDORSEMENT

The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted for consideration by the Structural Pest Control Board.

Dated: November 4, 2009

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General



BEN E. JOHNSON
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation number 2009-63

1 EDMUND G. BROWN JR.
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2 LINDA K. SCHNEIDER
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3 BEN E. JOHNSON
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4 State Bar No. 84406
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8 Attorneys for Complainant

FILED

Date 6/5/09 By Kelli Okuma

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

12 In the Matter of the Accusation Against:

Case No. 2009-63

13 **STEVEN WADE GARDNER**
14 **3045 A Street**
San Diego, California 92102

ACCUSATION

15 **Registered Applicator's License**
16 **No. RA 46441, Branch 2**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about October 4, 2006, the Structural Pest Control Board issued Registered
24 Applicator's License Number RA 46441 to Steven Wade Gardner (Respondent). The Registered
25 Applicator's License was in full force and effect at all times relevant to the charges brought herein
26 and will expire on October 4, 2009, unless renewed.

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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 withing 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 house or other building when the doors are locked with intent to commit larceny or any felony is
9 guilty of burglary. "Inhabited" means currently being used for dwelling purposes, whether
10 occupied or not.

11 13. Penal Code section 460 states, in pertinent part:

12 (a) Every burglary of an inhabited dwelling house . . . is burglary of the first
13 degree.

14 (b) All other kinds of burglary are of the second degree.

15 14. Penal Code section 484e states, in pertinent part:

16 (c) Every person who, with the intent to defraud, acquires or retains
17 possession of an access card without the cardholder's or issuer's consent, with intent
18 to use, sell, or transfer it to a person other than the cardholder or issuer is guilty of
19 petty theft.

20 15. Penal Code section 484f states:

21 (a) Every person who, with the intent to defraud, designs, makes, alters, or
22 embosses a counterfeit access card or utters or otherwise attempts to use a
23 counterfeit access card is guilty of forgery.

24 (b) A person other than the cardholder or a person authorized by him or her
25 who, with the intent to defraud, signs the name of another or of a fictitious person to
26 an access card, sales slip, sales draft, or instrument for the payment of money which
27 evidences an access card transaction, is guilty of forgery.

28 16. Penal Code section 484g states:

Every person who, with the intent to defraud, (a) uses, for the purpose of
obtaining money, goods, services, or anything else of value, an access card or access
card account information that has been altered, obtained, or retained in violation of
Section 484e or 484f, or an access card which he or she knows is forged, expired, or
revoked, or (b) obtains money, goods, services, or anything else of value by
representing without the consent of the cardholder that he or she is the holder of an
access card and the card has not in fact been issued, is guilty of theft. If the value of
all money, goods, services, and other things of value obtained in violation of this
section exceeds four hundred dollars (\$400) in any consecutive six-month period,
then the same shall constitute grand theft.

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17. Penal Code section 487 states, in pertinent part:

Grand theft is theft committed in any of the following cases:

(d) When the property taken is any of the following:

(2) A firearm.

18. Health and Safety Code Section 11377 provides, in pertinent part:

(a) Every person who possesses any controlled substance unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison. No person shall prescribe, administer, or furnish a controlled substance for himself.

COST RECOVERY

19. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate 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.

REGULATORY PROVISIONS

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

For the purposes of denial, suspension or revocation of a license or company registration . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee or registered company . . . if to a substantial degree it evidences present or potential unfitness of such licensee or 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.

FIRST CAUSE FOR DISCIPLINE

(May 19, 2008 Criminal Conviction – Burglary & Theft in 2007 & 2008)

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2 21. Respondent is subject to disciplinary action pursuant to Code sections 490, 493, and
3 8649 in that on or about May 19, 2008, in the criminal proceeding entitled *People v. Steven Wade*
4 *Gardner*, Superior Court San Diego County Case No. SCD211358, Respondent pled guilty to 10
5 counts of First Degree Burglary Penal Code section 459/460 and one count of Grand Theft
6 Firearm Penal Code section 487(d)(2), crimes substantially related to the qualifications, functions,
7 and duties of a registered applicator. The circumstances of the crimes are as follows:

8 22. On or about October 9, 2007 or October 10, 2007, Respondent unlawfully entered the
9 building occupied by D.D. with intent to commit theft in violation of Penal Code section 459 and
10 committed burglary of an inhabited dwelling in violation of Penal Code section 460.

11 23. On or about October 16, 2007, Respondent unlawfully entered the building occupied
12 by Z.C. with intent to commit theft in violation of Penal Code section 459 and committed
13 burglary of an inhabited dwelling in violation of Penal Code section 460.

14 24. On or about November 5, 2007, Respondent unlawfully entered the building occupied
15 by R.C. with intent to commit theft in violation of Penal Code section 459 and committed
16 burglary of an inhabited dwelling in violation of Penal Code section 460.

17 25. On or about December 20, 2007, Respondent unlawfully entered the building
18 occupied by S.G. with intent to commit theft in violation of Penal Code section 459 and
19 committed burglary of an inhabited dwelling in violation of Penal Code section 460.

20 26. On or about December 28, 2007, Respondent unlawfully entered the building
21 occupied by L.A. with intent to commit theft in violation of Penal Code section 459 and
22 committed burglary of an inhabited dwelling in violation of Penal Code section 460.

23 27. On or about January 3, 2008 or January 4, 2008, Respondent unlawfully entered the
24 uilding occupied by D.B. with intent to commit theft in violation of Penal Code section 459 and
25 committed burglary of an inhabited dwelling in violation of Penal Code section 460.
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1 28. On or about January 3, 2008, Respondent unlawfully entered the building occupied
2 by T.M. with intent to commit theft in violation of Penal Code section 459 and committed
3 burglary of an inhabited dwelling in violation of Penal Code section 460.

4 29. On or about January 3, 2008, Respondent unlawfully entered a building with intent to
5 commit theft in violation of Penal Code section 459.

6 30. On or about January 3, 2008, Respondent unlawfully with intent to defraud acquired
7 an access card without the cardholder's consent with intent to sell it to another person in violation
8 of Penal Code section PC 484e(c).

9 31. On or about January 3, 2008, Respondent unlawfully with intent to defraud used an
10 access card obtained in violation of Penal Code sections PC 484e and 484f and with knowledge
11 that it was forged and that the value of the money, goods, services, and other things so obtained
12 exceeded \$400.00 in violation of Penal Code section 484g(a).

13 32. On or about January 9, 2008, Respondent unlawfully entered the building occupied
14 by R.T. with intent to commit theft in violation of Penal Code section 459 and committed
15 burglary of an inhabited dwelling in violation of Penal Code section 460.

16 33. On or about January 9, 2008, Respondent unlawfully stole a firearm, the personal
17 property of R.T. in violation of Penal Code section 487 (d)(2))

18 34. On or about January 14, 2008, Respondent unlawfully entered the building occupied
19 by J.S. with intent to commit theft in violation of Penal Code section 459 and committed burglary
20 of an inhabited dwelling in violation of Penal Code section 460.

21 35. On or about January 16, 2008, Respondent unlawfully entered the building occupied
22 by O.J. with intent to commit theft in violation of Penal Code section 459 and committed burglary
23 of an inhabited dwelling in violation of Penal Code section 460.

24 36. On or about January 24, 2008, Respondent unlawfully possessed the controlled
25 substance Methamphetamine in violation of Health and Safety Code section 11377a.

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1 37. On or about June 24, 2008, Respondent was sentenced to four (4) years in prison, and
2 ordered to pay a restitution fine of in the amount of \$3,200.00 plus an additional restitution fine in
3 the amount of \$3,200.00 to be stayed, unless Respondent's parole is revoked. Respondents was
4 ordered to pay victim restitution to D.S. in the amount of \$28,410.00, to O.J. in the amount of
5 \$4,500.00, and to L.A. in the amount of \$16,350.

6 **SECOND CAUSE FOR DISCIPLINE**
7 **(Acts Involving Dishonesty, Fraud or Deceit)**

8 38. Respondent is subject to disciplinary action pursuant to Code section 8620 in that
9 Respondent acted of dishonestly when he committed 10 counts of First Degree Burglary, grand
10 theft of a firearm, theft, theft with intent to defraud by taking and using an access card to as set
11 out more fully in paragraphs 21 through 35 above.

12 **OTHER MATTERS**

13 39. Pursuant to Code section 8654, if discipline is imposed on Registered Applicator's
14 License Number RA 46441, issued to Respondent Steven Gardner, Steven Gardner shall be
15 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
16 responsible managing employee for any registered company during the time the discipline is
17 imposed, and any registered company which employs, elects, or associates Steven Gardner shall
18 be subject to disciplinary action.

19 **PRAYER**

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

22 1. Revoking or suspending Registered Applicator's License Number RA 46441, issued
23 to Steven Wade Gardner;

24 2. Ordering Steven Wade Gardner to pay the Structural Pest Control Board the
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
26 Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 6/5/09

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

SD2008802434
accusation.rtf