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8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 **ANTHONY MIKE OLIVA**
32209 Riverside Drive, #C4
Lake Elsinore, CA 92530

14 Registered Applicator's License No. RA 46757

15 Respondent.

Case No. 2008-63

OAH No. 2008090599

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

16 FINDINGS OF FACT

17 1. On or about April 16, 2008, Complainant Kelli Okuma, in her official capacity as
18 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
19 Affairs, filed Accusation No. 2008-63 against Anthony Mike Oliva (Respondent) before the
20 Structural Pest Control Board.

21 2. On or about December 20, 2006, the Structural Pest Control Board (Board) issued
22 Registered Applicator's License No. RA 46757 to Respondent.

23 3. On or about May 6, 2008, Kim Cooney, an employee of the Department of
24 Justice, served by Certified and First Class Mail a copy of the Accusation No. 2008-63,
25 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
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1 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
2 was at that time 301 North Hamilton Ave., #C, Hemet, CA 92543. A copy of the Accusation is
3 attached as Exhibit A, and is incorporated herein by reference.

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

6 5. On or about May 15, 2008, Respondent signed and returned a Notice of Defense,
7 requesting a hearing in this matter. A Notice of Hearing was served by first class and certified
8 mail at Respondent's address of record of 301 North Hamilton Ave., #C, Hemet, CA 92543.
9 The Notice of Hearing informed Respondent that an administrative hearing in this matter was
10 scheduled for January 6, 2009. Respondent failed to appear at his January 6, 2009 hearing.

11 6. A Default Decision and Order was entered against Respondent. As a result of the
12 Decision, Respondent's Registered Applicator's License was revoked effective on April 12,
13 2009.

14 7. Respondent filed a motion to set aside the default decision rendered against him.
15 Respondent stated that he was unable to attend his hearing on January 6, 2009 due to his
16 incarceration. On April 14, 2009, the Board set aside the Default Decision.

17 8. Respondent advised the Board of his new address of 32209 Riverside Drive, #C4,
18 Lake Elsinore, CA 92530.

19 9. A Notice of Hearing was served by first class and certified mail at Respondent's
20 new address of record of 32209 Riverside Drive, #C4, Lake Elsinore, CA 92530. The Notice of
21 Hearing informed Respondent that an administrative hearing in this matter was scheduled for
22 October 19, 2009. Respondent failed to appear at his October 19, 2009 hearing.

23 10. Government Code section 11506 states, in pertinent part:

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

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1 11. California Government Code section 11520 states, in pertinent part:

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

6 12. Pursuant to its authority under Government Code section 11520, the Board finds
7 Respondent is in default. The Board will take action without further hearing and, based on the
8 evidence on file herein, finds that the allegations in Accusation No. 2008-63 are true.

9 13. The total cost for investigation and enforcement in connection with the Accusation
10 are \$8,080.50 as of October 19, 2009.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent Anthony Mike Oliva has
13 subjected his Registered Applicator's License No. RA 46757 to discipline.

14 2. A copy of the Accusation is attached.

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

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

18 a. Business and Professions Code sections 490 and 8649 (substantially
19 related criminal conviction): on August 28, 2007, in the Superior Court of California, County of
20 San Diego, in the case entitled *People of the State of California v. Anthony Mike Oliva (Case*
21 *number SCN229809)*, Respondent was convicted on his plea of guilty to violating Penal Code
22 sections 243(b) (battery with serious bodily injury) and 136.1(b)(1) (dissuading victim/witness of
23 a crime from reporting that crime).

24 b. On September 27, 2007, the Court placed Respondent on formal probation
25 for three years and ordered him to serve 365 days in jail, pay \$1,670.00 as fines and fees, that his
26 person and /or property be subject to search and seizure with or without a warrant, and that he
27 obey all laws and other standard terms and conditions of probation.

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ORDER

IT IS SO ORDERED that Registered Applicator's License No. RA 46757, heretofore issued to Respondent Anthony Mike Oliva, 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 15, 2010.

It is so ORDERED December 16, 2009

Cynthia J. Miller

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A: Accusation No. 2008-63

Exhibit A
Accusation No. 2008-63

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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9 Attorneys for Complainant

FILED

Date 4/16/08 By Kelli Okuma

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

13 In the Matter of the Accusation Against:

Case No. 2008-63

14 **ANTHONY MIKE OLIVA**
1202 Morena Boulevard, #400
15 San Diego, CA 92110

A C C U S A T I O N

16 Registered Applicator's License No. RA 46757,

17 Respondent.

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 20, 2006, the Board issued Registered Applicator's
26 License Number RA 46757, Branches 2 and 3, to Anthony Mike Oliva ("Respondent"), as an
27 employee of Lloyd Pest Control Company, Inc. The registered applicator's license will expire
28 on December 20, 2009.

1 action which a board is permitted to take following the establishment of a
2 conviction may be taken when the time for appeal has elapsed, or the judgment of
3 conviction has been affirmed on appeal, or when an order granting probation is
4 made suspending the imposition of sentence, irrespective of a subsequent order
5 under the provisions of "Section 1203.4 of the Penal Code.

6 8. Code section 493 states:

7 Notwithstanding any other provision of law, in a proceeding conducted by
8 a board within the department pursuant to law to deny an application for a license
9 or to suspend or revoke a license or otherwise take disciplinary action against a
10 person who holds a license, upon the ground that the applicant or the licensee has
11 been convicted of a crime substantially related to the qualifications, functions,
12 and duties of the licensee in question, the record of conviction of the crime shall
13 be conclusive evidence of the fact that the conviction occurred, but only of the
14 fact, and the board may inquire into the circumstance surrounding the commission
15 of the crime in order to fix the degree of discipline or to determine if the
16 conviction is substantially related to the qualifications, functions, and duties of
17 the licensee in question. As used in this section, "license" includes "certificate,"
18 "permit," "authority," and "registration."

19 9. Code section 482 states:

20 Each board under the provisions of this code shall develop criteria to
21 evaluate the rehabilitation of a person when:

- 22 (a) Considering the denial of a license by the board under Section 480; or
23 (b) Considering suspension or revocation of a license unde Section 490.

24 Each board shall take into account all competent evidence of rehabilitation
25 furnished by the applicant or licensee.

26 10. The California Code of Regulations, Title 16, section 1937.1 states:

27 For the purposes of denial, suspension or revocation of a license or
28 company registration pursuant to Division 1.5 (commencing with Section 475) of
the code, a crime or act shall be considered to be substantially related to the
qualifications, functions, or duties of a licensee or registered company under
Chapter 14 of Division 3 of the code 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.

11. The California Code of Regulations, Title 16, section 1937.2(b) states:

When considering the suspension or revocation of a structural pest control
license or company registration on the grounds that the licensee or registered
company has been convicted of a crime, the board, in evaluating the rehabilitation

1 of such person or company and his or her or its present eligibility for a license or
2 company registration will consider the following:

- 3 (1) Nature and severity of the act(s) or offense(s).
- 4 (2) Total criminal record.
- 5 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 6 (4) Whether the licensee or registered company has complied with any
7 terms of parole, probation, restitution or any other sanctions lawfully
8 imposed against the licensee or registered company.
- 9 (5) If applicable, evidence of expungement proceedings pursuant to
10 *Section 1203.4 of the Penal Code*.
- 11 (6) Evidence, if any of rehabilitation submitted by the licensee or
12 registered company.

13 COST RECOVERY

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

18 CAUSE FOR DISCIPLINE

19 (August 28, 2007 Substantially Related Criminal Conviction)

20 13. Respondent's license is subject to discipline under Code sections 490 and 8649,
21 in that Respondent has been convicted of crimes substantially related to the qualifications, duties
22 and functions of a registered applicator. The circumstances are as follows:

23 On August 28, 2007, in the Superior Court of California, County of San Diego, in the
24 case entitled *People of the State of California v. Anthony Mike Oliva (Case No. SCN229809)*,
25 Respondent was convicted on his plea of guilty to violating Penal Code sections 243, subdivision
26 (d) (battery inflicting serious bodily injury) and 136.1, subdivision (b)(1) (dissuading
27 victim/witness of a crime from reporting that crime), both felonies. The factual basis and
28 circumstances of the conviction are as follows:

14 14. On May 13, 2007, Respondent entered Brandon B's (BB) apartment unannounced
15 and uninvited. Respondent confronted BB and tried to provoke a fight. Respondent stated he
16 was a gang member, took off his shirt to expose his gang style tattoos and threatened BB's life if
17 he did not cooperate with him. Respondent was angry about BB having spent time with
18 Respondent's wife on the evening of May 12, 2007. Olivia learned from BB that two other

1 friends of BB's had been with them on the same evening. Respondent asked specifically about
2 the friend with "long hair." BB thought Respondent might be referring to his friend by the name
3 of Orville D (OD). Respondent demanded that BB call OD on his cell phone. When BB was
4 unable to get through to OD on his mobile phone, Respondent ordered BB to take him to OD's
5 home in Oceanside. BB told Respondent that he would not do this. Respondent told BB that he
6 had a gun in his car, that he was a member of a gang and would "bring a gun to his doorstep" if
7 BB did not do as he asked. BB felt this was a threat against his life and feared for his safety. BB
8 went with Respondent in Respondent's vehicle. He guided Respondent to OD's home in
9 Oceanside. Once at OD's home, Respondent coned his way into the residence and confronted
10 OD. He asked about OD's involvement with his wife. Respondent wanted to know where his
11 wife got the "hickies" on her neck. OD told him that a female adult he knew of as "Jackie" had
12 given her the "hickies." This appeared to inflame Respondent. He attacked OD. When OD
13 fought back, Respondent stopped the attack and told OD that he better not fight back because he
14 (Respondent) was "strapped" and would kill OD if he did. Respondent removed his shirt
15 exposing his gang tattoos and informed OD of his gang membership. OD, believing that if he
16 fought back his life would be in danger, covered up as best he could and took the beating.
17 Respondent struck OD an estimated 20 times about the head and torso. Respondent also kicked
18 and/or stomped on OD approximately six times about his face and body. After Respondent
19 completed his attack, he told OD and BB that if they went to law enforcement about what he had
20 done he would kill them. He reiterated that he had a gun and was a gang member. Respondent
21 implied that fellow gang members would assist him in retaliating against whoever told the police
22 about his crimes. Again, OD and BB felt the threats were genuine. Respondent demanded that
23 BB accompany him to look for Jackie. BB did not want to go with Respondent but out of fear for
24 his safety he complied. They drove back to the apartment complex in San Marcos where they
25 located Respondent's wife before finding Jackie. Respondent started battering his wife. BB
26 took this opportunity to escape and returned to his apartment. BB and OD feared for their
27 welfare. They did not report the attack to the police until after Respondent attacked Michael L,
28 another friend of theirs. On September 27, 2007, the Court placed Respondent on formal

1 probation for three (3) years and ordered him to serve 365 days in jail, pay \$1,670.00 as fines
2 and fees, that his person and/or property be subject to search and seizure with or without a
3 warrant, and that he obey all laws and other standard terms and conditions of probation.

4 **OTHER MATTERS**

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

10 16. Pursuant to Code section 8654, if Registered Applicator's License No. RA 46757,
11 issued to Anthony Mike Respondent is revoked or suspended, then he shall be prohibited from
12 serving as an officer, director, associate, partner, qualifying manager or responsible managing
13 employee of a registered company, and the employment, election or association of him by a
14 registered company is a ground for disciplinary action.

15 **PRAYER**

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

18 1. Revoking or suspending Registered Applicator's License Number RA 46757,
19 issued to Anthony Mike Oliva;

20 2. Ordering Anthony Mike Oliva to pay the Structural Pest Control Board the
21 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
22 125.3; and,

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

24 DATED: 4/16/08

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