

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER, State Bar No. 101336
Supervising Deputy Attorney General
3 AMANDA DODDS
Legal Analyst
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5
6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 2009-44

14 NICHOLAS C. SIPERLY
Fenn Termite & Pest Control, Inc.
7322 Walnut Avenue
Buena Park, CA 90620

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

15 Registered Applicator License No. RA 47275

16 Respondent.

17 **FINDINGS OF FACT**

18 1. On or about February 17, 2009, Complainant Kelli Okuma, in her official
19 capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of
20 Consumer Affairs, filed Accusation No. 2009-44 against Nicholas C. Siperly (Respondent)
21 before the Structural Pest Control Board.

22 2. On or about May 1, 2007, the Structural Pest Control Board (Board)
23 issued Registered Applicator License No. RA 47275 to Respondent. The Registered Applicator
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on May 1, 2010, unless renewed.

26 3. On or about February 24, 2009, Charlette Sheppard, an employee of the
27 Department of Justice, served by Certified and First Class Mail a copy of the Accusation
28 No. 2009-44, Statement to Respondent, Notice of Defense, Request for Discovery, and

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

3 Fenn Termite & Pest Control, Inc.
4 7322 Walnut Avenue
5 Buena Park, CA 90620.

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
8 provisions of Government Code section 11505, subdivision (c).

9 5. On or about March 3, 2009, the aforementioned documents served by
10 certified mail were returned by the U.S. Postal Service marked "Return to Sender." On or about
11 March 16, 2009, the aforementioned documents served by First Class Mail were returned by the
12 U.S. Postal Service marked "Returned to Sender" and "Not Deliverable as Addressed, Unable to
13 Forward."

14 6. Government Code section 11506 states, in pertinent part:

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

20 7. Respondent failed to file a Notice of Defense within 15 days after service
21 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
22 Accusation No. 2009-44.

23 8. California Government Code section 11520 states, in pertinent part:

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

28 9. Pursuant to its authority under Government Code section 11520, the Board
finds Respondent is in default. The Board will take action without further hearing and, based on
the evidence on file herein, finds that the allegations in Accusation No. 2009-44 are true.

10. The total cost for investigation and enforcement in connection with the
Accusation are \$443.50 as of March 17, 2009.

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Nicholas C. Siperly
3 has subjected his Registered Applicator License No. RA 47275 to discipline.

4 2. A copy of the Accusation is attached.

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

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

8 Respondent subjected his license to disciplinary action under sections 490 and
9 8649 of the Code in that on or about October 10, 2008, in a criminal proceeding entitled *People*
10 *of the State of California v. Nicholas Christopher Siperly*, in Orange County Superior Court,
11 case number 08NM12845, Respondent pled guilty to violating Penal Code section 484(a)-488,
12 petty theft, a misdemeanor, a crime substantially related to the qualifications, functions or duties
13 of a registered applicator.

14 ORDER

15 IT IS SO ORDERED that Registered Applicator License No. RA 47275,
16 heretofore issued to Respondent Nicholas C. Siperly, is revoked.

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

22 This Decision shall become effective on May 22, 2009.

23 It is so ORDERED April 22, 2009

24
25
26 
FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

27 DOJ docket number:SD2009803628

28 Exhibit A: Accusation No. 2009-44

Exhibit A
Accusation No. 2009-44

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER, State Bar No. 101336
Supervising Deputy Attorney General
3 AMANDA DODDS
Legal Analyst
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5
6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
8 Attorneys for Complainant

FILED

Date 2/17/09 By Susan Sawyer

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

12 In the Matter of the Accusation Against:

Case No. 2009-44

13 NICHOLAS C. SIPERLY
Fenn Termite & Pest Control, Inc.
14 7322 Walnut Avenue
Buena Park, CA 90620

ACCUSATION

15 Registered Applicator License No. RA 47275

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about May 1, 2007, the Structural Pest Control Board issued
24 Registered Applicator License Number RA 47275, Branches 2 and 3, to Nicholas C. Siperly
25 (Respondent). The Registered Applicator License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on May 1, 2010, unless renewed.

27 ///

28 ///

1 JURISDICTION

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

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

9 5. Section 8625 of the Code states:

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

14 STATUTORY PROVISIONS

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

19 7. Section 8649 of the Code states:

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

23 8. Section 8654 of the Code states, in pertinent part, that if discipline is
24 imposed on Registered Applicator's License Number RA 47275, Respondent shall be prohibited
25 from serving as an officer, director, associate, partner, qualifying manager, or responsible
26 managing employee for any registered company during the time the discipline is imposed, and
27 any registered company which employs, elects, or associates Respondent shall be subject to
28 disciplinary action.

1 9. Section 8655 of the Code states:

2 A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere made to a charge substantially related to the qualifications, functions,
4 and duties of a structural pest control operator, field representative, applicator, or
5 registered company is deemed to be a conviction within the meaning of this
6 article or Section 8568 of this chapter. The board may order the license or
7 registration suspended or revoked, or may decline to issue a license, when the
8 time for appeal has elapsed, or the judgment of conviction has been affirmed on
9 appeal or when an order granting probation is made suspending the imposition of
10 sentence, irrespective of a subsequent order under the provisions of Section
11 1203.4 of the Penal Code allowing the individual or registered company to
12 withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the
13 verdict of guilty, or dismissing the accusation, information or indictment.

14 10. Section 490 of the Code provides, in pertinent part, that a board may
15 suspend or revoke a license on the ground that the licensee has been convicted of a crime
16 substantially related to the qualifications, functions, or duties of the business or profession for
17 which the license was issued..

18 11. Section 493 of the Code states:

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

 As used in this section, "license" includes "certificate," "permit,"
 "authority," and "registration."

REGULATORY PROVISIONS

 12. Title 16, California Code of Regulations section 1937.1, states:

 For the purposes of denial, suspension or revocation of a license or
 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:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(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.

13. Title 16, California Code of Regulations section 1020, states:

....

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

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

....

COST RECOVERY

14. Section 125.3 of the Code states, 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.

1 CAUSE FOR DISCIPLINE

2 (October 10, 2008 Criminal Conviction for Petty Theft on September 10, 2008)

3 15. Respondent has subjected his license to disciplinary action under sections
4 490 and 8649 of the Code in that Respondent was convicted of a crime substantially related to
5 the qualifications, functions or duties of a registered applicator. The circumstances are as
6 follows:

7 a. On or about October 10, 2008, in a criminal proceeding entitled
8 *People of the State of California v. Nicholas Christopher Siperly*, in Orange County Superior
9 Court, case number 08NM12845, Respondent pled guilty to violating Penal Code section 484(a)-
10 488, petty theft, a misdemeanor.

11 b. As a result of the conviction, on or about October 10, 2008,
12 Respondent was sentenced to ten days in the county jail (or 10 days Cal Trans/Physical Labor in
13 lieu of jail), three years informal probation, and payment of fines and fees in the amount of
14 \$120.00. On or about January 6, 2009, Respondent's probation was revoked for failure to
15 provide proof of completion of the 10 days Cal Trans work service. A \$15,000 bench warrant
16 was issued and remains active.

17 c. The facts that led to the conviction were that on or about the
18 afternoon of September 10, 2008, Respondent was observed by a loss prevention officer at a
19 Buena Park Kohl's department store entering the store, selecting men's clothing from racks at
20 random, and taking them to a dressing room. Respondent was carrying a backpack when he
21 entered the dressing room. When Respondent exited the dressing room, the backpack looked
22 noticeably fuller. Respondent left the store without paying for the merchandise. The loss
23 prevention officer contacted law enforcement. Detectives from the Buena Park Police
24 Department intercepted and detained Respondent and his girlfriend at a Carl's Jr. 300 feet away
25 from Kohl's. The detectives conducted a consensual search of Respondent and his backpack and
26 they were not able to locate any of the merchandise, however, Respondent was in possession of a
27 Kohl's gift card and receipt in the amount of \$162.22. After questioning both, Respondent's
28 girlfriend finally confessed that she and Respondent planned to steal the clothing from Kohl's,

1 return it for store credit, then take the gift card to a Fullerton pawn shop where they would
2 receive cash at 50 percent of the card's value.

3 PRAYER

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

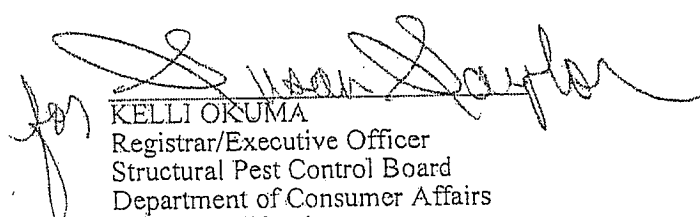
6 1. Revoking or suspending Registered Applicator License Number RA
7 47275, issued to Nicholas C. Siperly;

8 2. Prohibiting Nicholas C. Siperly from serving as an officer, director,
9 associate, partner, qualifying manager or responsible managing employee of any registered
10 company during the period that discipline is imposed on Registered Applicator's License
11 Number RA 47275, issued to Nicholas C. Siperly;

12 3. Ordering Nicholas C. Siperly to pay the Structural Pest Control Board the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3;

15 4. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 2/17/09

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

27 SD2009803628

28 80335928.wpd