

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

In the Matter of the Accusation Against:

Case No. 2010-88

DAMON J. CLARK
1848 Capital Street
Corona, CA 92880

Registered Applicator's License
No. RA 47665

Respondent.

DECISION AND ORDER

IT IS SO ORDERED that Registered Applicator's License No. RA 47665, heretofore issued to Respondent Damon J. Clark, 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 October 29, 2010.

It is so ORDERED September 29, 2010



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

Attachment:

Exhibit A: Accusation No. 2010-88

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

In the Matter of the Accusation Against:

Case No. 2010-88

DAMON J. CLARK
1848 Capital Street
Corona, CA 92880

DEFAULT DECISION AND ORDER

Registered Applicator's License
No. RA 47665

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about June 30, 2010, Complainant Kelli Okuma, in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Accusation No. 2010-88 against Damon J. Clark (Respondent) before the Structural Pest Control Board. (See, Default Decision Evidence Packet, Exh. 2.)

2. On or about July 10, 2007, the Structural Pest Control Board (Board) issued Registered Applicator's License No. RA 47665 to Respondent. The Registered Applicator's License was in full force and effect at all times relevant to the charges brought herein and expired on July 10, 2010, and is delinquent. This lapse in licensure, however, pursuant to Business and Professions Code Section 118, subdivision (b), does not deprive the Board of its authority to institute or continue this disciplinary proceeding. (See, Default Decision Evidence Packet, Exh. 1.)

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1 3. On or about July 13, 2010, Respondent was served by Certified and First Class Mail
2 with copies of the Accusation No. 2010-88, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 at Respondent's
4 address of record which, pursuant to Business and Professions Code Section 2715 and title 16,
5 California Code of Regulations, section 1409.1 is required to be reported and maintained with the
6 Board, and which was and is: 1848 Capital Street, Corona, CA 92880. (See, Default Decision
7 Evidence Packet, Exh. 2.)

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

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

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

16 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
18 No. 2010-88.

19 7. California Government Code section 11520 states, in pertinent part:

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

24 8. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, and based on
26 the relevant evidence before it the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation, Case No. 2010-88,
finds that the charges and allegations in Accusation No. 2010-88, are separately and severally,
found to be true and correct by clear and convincing evidence.

Exhibit A

Accusation No. 2010-88

Accusation Against: Damon J. Clark

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
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Attorneys for Complainant

FILED

Date 6/30/10 By *Kelli Okuma*

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

12 In the Matter of the Accusation Against:

Case No. 2010-88

13 **DAMON J. CLARK**
14 **1848 Capital Street**
Corona, CA 92880

ACCUSATION

15 **Registered Applicator's License**
16 **No. RA 47665**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about July 10, 2007, the Structural Pest Control Board issued Registered
25 Applicator's License Number RA 47665 to Damon J. Clark (Respondent). The Registered
26 Applicator's License was in full force and effect at all times relevant to the charges brought herein
27 and will expire on July 10, 2010, unless renewed.

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JURISDICTION

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

4. Section 118 of the Code provides 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 Business and Professions Code provides 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.

6. 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."

STATUTORY PROVISIONS

7. 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.

1 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
2 conviction following a plea of nolo contendere. Any action that a board is permitted to take
3 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
4 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
5 made suspending the imposition of sentence, irrespective of a subsequent order under the
6 provisions of Section 1203.4 of the Penal Code.

7 “(d) The Legislature hereby finds and declares that the application of this section has been
8 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
9 554, and that the holding in that case has placed a significant number of statutes and regulations
10 in question, resulting in potential harm to the consumers of California from licensees who have
11 been convicted of crimes. Therefore, the Legislature finds and declares that this section
12 establishes an independent basis for a board to impose discipline upon a licensee, and that the
13 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not
14 constitute a change to, but rather are declaratory of, existing law.”

15 8. Section 493 of the Code states:

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

25 “As used in this section, “license” includes “certificate,” “permit,” “authority,” and
26 “registration.””

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1 9. Section 8649 of the Code states:

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

5 10. Section 8654 of the Code states:

6 “Any individual who has been denied a license for any of the reasons specified in Section
7 8568, or who has had his or her license revoked, or whose license is under suspension, or who has
8 failed to renew his or her license while it was under suspension, or who has been a member,
9 officer, director, associate, qualifying manager, or responsible managing employee of any
10 partnership, corporation, firm, or association whose application for a company registration has
11 been denied for any of the reasons specified in Section 8568, or whose company registration has
12 been revoked as a result of disciplinary action, or whose company registration is under
13 suspension, and while acting as such member, officer, director, associate, qualifying manager, or
14 responsible managing employee had knowledge of or participated in any of the prohibited acts for
15 which the license or registration was denied, suspended or revoked, shall be prohibited from
16 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
17 employee of a registered company, and the employment, election or association of such person by
18 a registered company is a ground for disciplinary action.”

19 11. Section 8655 of the Code states:

20 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
21 charge substantially related to the qualifications, functions, and duties of a structural pest control
22 operator, field representative, applicator, or registered company is deemed to be a conviction
23 within the meaning of this article or Section 8568 of this chapter. The board may order the license
24 or registration suspended or revoked, or may decline to issue a license, when the time for appeal
25 has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting
26 probation is made suspending the imposition of sentence, irrespective of a subsequent order under
27 the provisions of Section 1203.4 of the Penal Code allowing the individual or registered company
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1 to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,
2 or dismissing the accusation, information or indictment.”

3 REGULATORY PROVISIONS

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

5 “For the purposes of denial, suspension or revocation of a license or company registration
6 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
7 considered to be substantially related to the qualifications, functions or duties of a licensee or
8 registered company under Chapter 14 of Division 3 of the code if to a substantial degree it
9 evidences present or potential unfitness of such licensee or registered company to perform the
10 functions authorized by the license or company registration in a manner consistent with the public
11 health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

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

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

15 “(1) Fiscal dishonesty

16 “(2) Fraud

17 “(3) Theft

18 “(4) Violations relating to the misuse of pesticides.”

19 13. California Code of Regulations, title 16, section 1937.2 states, in pertinent part:

20 “. . .

21 “(b) When considering the suspension or revocation of a structural pest control license or
22 company registration on the grounds that the licensee or registered company has been convicted
23 of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or
24 its present eligibility for a license or company registration will consider the following:

25 “(1) Nature and severity of the act(s) or offense(s).

26 “(2) Total criminal record.

27 “(3) The time that has elapsed since commission of the act(s) or offense(s).
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1 “(4) Whether the licensee or registered company has complied with any terms of parole,
2 probation, restitution or any other sanctions lawfully imposed against the licensee or registered
3 company.

4 “(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
5 Penal Code.

6 “(6) Evidence, if any of rehabilitation submitted by the licensee or registered company.

7 “. . . .”

8 COST RECOVERY

9 14. Section 125.3 of the Code provides that the Board may request the administrative law
10 judge to direct a licensee found to have committed a violation or violations of the licensing act to
11 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

12 CAUSE FOR DISCIPLINE

13 (March 16, 2010, Conviction for Embezzlement on September 24, 2007)

14 15. Respondent is subject to disciplinary action under Code sections 490, and 8649 in that
15 on March 16, 2010, Respondent was convicted of a crime that is substantially related to the
16 qualifications, functions, and duties of a registered applicator. The circumstances are as follows:

17 a. On March 16, 2010, in a criminal proceeding entitled *The People of the State of*
18 *California v. Damon Jeffrey Clark*, Riverside County Superior Court, case number RIF141710,
19 Respondent was convicted by his plea of guilty to violating Penal Code section 503,
20 embezzlement.

21 b. The facts that led to the conviction are that between September 24, 2007, and
22 November 27, 2007, Respondent, a former employee of Team Too Pest Control (Team Too),
23 used the company’s fuel card to purchase fuel at numerous locations in the cities of Norco and
24 Corona without authorization from the company.

25 c. As a result of the conviction on March 16, 2010, Respondent was sentenced to
26 summary probation for 36 months, ordered to obey all laws, be committed to the custody of the
27 Riverside County Sheriff for 120 days, with credit for 7 days of time served plus 6 days pursuant
28 to Penal Code section 4019 for a total of 13 days, to be served on consecutive weekends or as

1 authorized by the RSO Weekender Program, pay various court fees, pay victim restitution in the
2 amount of \$1,787.36 payable through the court, submit to search at any time by any probation
3 officer or law enforcement officer, and have no direct or indirect contact with Team Too.

4 **OTHER MATTERS**

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

10 17. Pursuant to Code section 8654, if discipline is imposed on Registered Applicator
11 License Number RA 47665, issued to Respondent Damon J. Clark, Damon J. Clark shall be
12 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
13 responsible managing employee for any registered company during the time the discipline is
14 imposed, and any registered company which employs, elects, or associates Damon J. Clark shall
15 be subject to disciplinary action.

16 **PRAYER**

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

19 1. Revoking or suspending Registered Applicator's License Number RA 47665, issued
20 to Damon J. Clark;

21 2. Ordering Damon J. Clark to pay the Structural Pest Control Board the reasonable
22 costs of the investigation and enforcement of this case, pursuant to Business and Professions
23 Code section 125.3;

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

25 DATED: 6/30/10

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