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

12 In the Matter of the Accusation Against:

Case No. 2009-66

13
14 **DURRELL TYRONE PETERS**
29035 Escalante Rd.
15 Sun City, CA 92587

16 P.O. Box 1132
Murrieta, CA 92564
17 Registered Applicator License No. RA 47766

18 Respondent.
19

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

20
21 FINDINGS OF FACT

22 1. On or about June 22, 2009, Complainant Kelli Okuma, in her official capacity as the
23 Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
24 Affairs, filed Accusation No. 2009-66 against Durrell Tyrone Peters (Respondent) before the
25 Structural Pest Control Board.

26 2. On or about July 26, 2007, the Structural Pest Control Board (Board) issued
27 Registered Applicator License No. RA 47766 to Respondent. The Registered Applicator License
28 expired on January 6, 2008, and has not been renewed.

1 3. On or about July 7, 2009, Rosita Donovan, an employee of the Department of Justice,
2 served by Certified and First Class Mail a copy of the Accusation No. 2009-66, Statement to
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
4 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: P.O.
5 Box 1132, Murrieta, CA 92564. A copy of the Accusation is attached as exhibit A, and is
6 incorporated herein by reference.

7 4. On or about August 17, 2009, Rosita Donovan, an employee of the Department of
8 Justice, also served by Certified and First Class Mail a copy of the Accusation No. 2009-66,
9 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
10 sections 11507.5, 11507.6, and 11507.7 to Respondent's last known residence address, which was
11 and is: 29035 Escalante Rd., Sun City, CA 92587. A copy of the Accusation is attached as
12 exhibit A, and is incorporated herein by reference.

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

15 6. On or about July 10 and 13, and August 3, 2009, the aforementioned documents were
16 returned by the U.S. Postal Service marked "Attempted, Not Known."

17 7. Business and Professions Code section 118 states, in pertinent part:

18 (b) The suspension, expiration, or forfeiture by operation of law of a license
19 issued by a board in the department, or its suspension, forfeiture, or cancellation by
20 order of the board or by order of a court of law, or its surrender without the written
21 consent of the board, shall not, during any period in which it may be renewed,
22 restored, reissued, or reinstated, deprive the board of its authority to institute or
23 continue a disciplinary proceeding against the licensee upon any ground provided by
24 law or to enter an order suspending or revoking the license or otherwise taking
25 disciplinary action against the license on any such ground.

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

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

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1 9. Respondent failed to file a Notice of Defense within 15 days after service upon him
2 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
3 2009-66.

4 10. California Government Code section 11520 states, in pertinent part:

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

9 11. Pursuant to its authority under Government Code section 11520, the Board finds
10 Respondent is in default. The Board will take action without further hearing and, based on the
11 evidence on file herein, finds that the allegations in Accusation No. 2009-66 are true.

12 12. The total cost for investigation and enforcement in connection with the Accusation
13 are \$3,395.25 as of September 24, 2009.

14 DETERMINATION OF ISSUES

15 1. Based on the foregoing findings of fact, Respondent Durrell Tyrone Peters has
16 subjected his Registered Applicator License No. RA 47766 to discipline.

17 2. A copy of the Accusation is attached.

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

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

21 a. Respondent has subjected his license to disciplinary action under sections 490 and
22 8649 of the Business and Professions Code in that he was convicted of a crime (DUI)
23 substantially related to the qualifications, functions, or duties of a registered applicator; with
24 aggravating factors as follows:

25 i. September 29, 2005 Criminal Conviction for Domestic Battery (violation of
26 Penal Code section 243(e) (1); and

27 ii July 20, 2007 Criminal Conviction for Petty Theft (violation of Penal Code
28 section 490.5).

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ORDER

IT IS SO ORDERED that Registered Applicator License No. RA 47766, heretofore issued to Respondent Durrell Tyrone Peters, 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 December 9, 2009.

It is so ORDERED November 9, 2009

Durrell J. Peters
FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

Attachment: Exhibit A: Accusation No. 2009-66

Exhibit A
Accusation No. 2009-66

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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3 ERIN M. SUNSERI, State Bar No. 207031
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8 Attorneys for Complainant

FILED

Date 6/22/09 By *Kelli Okuma*

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

12 In the Matter of the Accusation Against:
13 DURRELL TYRONE PETERS
14 P.O. Box 1132
Murrieta, CA 92564
15 Registered Applicator's License No. RA 47766
16 Respondent.

Case No. - 2009-66

ACCUSATION

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 July 26, 2007, the Structural Pest Control Board issued
24 Registered Applicator's License Number RA 47766, Branches 2 and 3, to Durrell Tyrone Peters
25 (Respondent). The Registered Applicator's License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on July 26, 2010. However, on or about
27 August 4, 2007, a 150-day temporary license was issued for failure to pay family support
28 obligations pursuant to Family Code section 17520, subdivision (e)(1)(A). The temporary

1 license expired on January 6, 2008. Respondent is prohibited from working in the field until the
2 family support obligations have been resolved.

3 JURISDICTION

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

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

11 5. Section 493 of the Code states:

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

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

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

24 7. Section 8625 of the Code states:

25 The lapsing or suspension of a license or company registration by
26 operation of law or by order or decision of the board or a court of law, or the
27 voluntary surrender of a license or company registration shall not deprive the
28 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.

1 STATUTORY PROVISIONS

2 8. Section 8649 of the Code states:

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

6 9. Section 8655 of the Code states:

7 A plea or verdict of guilty or a conviction following a plea of nolo
8 contendere made to a charge substantially related to the qualifications, functions,
9 and duties of a structural pest control operator, field representative, applicator, or
10 registered company is deemed to be a conviction within the meaning of this
11 article or Section 8568 of this chapter. The board may order the license or
12 registration suspended or revoked, or may decline to issue a license, when the
13 appeal or when an order granting probation is made suspending the imposition of
14 sentence, irrespective of a subsequent order under the provisions of Section
15 1203.4 of the Penal Code allowing the individual or registered company to
16 withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the
17 verdict of guilty, or dismissing the accusation, information, or indictment.

14 REGULATORY PROVISIONS

15 10. California Code of Regulations, title 16, section 1937.1, states:

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

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

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

24 (1) Fiscal dishonesty

25 (2) Fraud

26 (3) Theft

27 (4) Violations relating to the misuse of pesticides.

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11. California Code of Regulations, title 16, section 1020, states:

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(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

12. 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.

FIRST CAUSE FOR DISCIPLINE

(March 20, 2008 Criminal Conviction for Driving Under the Influence on July 27, 2007)

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

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1 a. After two failures to appear, on or about March 20, 2008, in a
2 criminal proceeding entitled *People of the State of California v. Durrell Tyrone Peters*, in
3 Riverside County Superior Court, case number SWM067002, Respondent was convicted on his
4 plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the
5 influence of alcohol; section 23152, subdivision (b), driving with a BAC of .08 or higher; and
6 12500, subdivision (a), operating a motor vehicle without a valid license, misdemeanors.

7 b. As a result of the conviction, on or about March 20, 2008,
8 Respondent was sentenced to one day in the county jail, with credit for one day served, three
9 years summary probation, and payment of fines, fees, and assessments in the amount of
10 \$1,793.40. Respondent was also ordered to attend and complete a four-month First Offender
11 DUI Program at his own expense. On or about November 3, 2008, Respondent's probation was
12 revoked for failing to attend the DUI program. The court ordered Respondent's probation
13 reinstated on the same terms. At a hearing on March 3, 2009, Respondent failed to appear and
14 his probation was again revoked for failure to complete the DUI program. A Notice of Violation
15 of Probation and outstanding warrant was mailed to defendant and remains in effect.

16 c. The facts that led to the conviction were that on or about the early
17 morning hours of July 27, 2007, a California Highway Patrol (CHP) officer patrolling
18 northbound Interstate 15 in the vicinity of Murrieta Hot Springs observed a vehicle driven by
19 Respondent. The vehicle was weaving from side to side, at times straddling two lanes. The
20 CHP officer conducted a traffic stop. During the questioning of Respondent, the officer noted a
21 strong odor of alcoholic beverage emitting from the interior of the vehicle. The officer had
22 Respondent exit his vehicle and noted that Respondent had red, watery, bloodshot eyes, slurred
23 speech, and the strong odor of an alcoholic beverage on his breath and person. Respondent
24 admitted drinking one Smirnoff Ice earlier in the evening. The officer administered a series of
25 field sobriety tests to Respondent, none of which he was able to successfully complete as
26 explained and demonstrated. Based on Respondent's objective symptoms of intoxication, he
27 was arrested for driving under the influence of alcohol. A records check revealed that
28 Respondent had a suspended/revoked driver's license. Two preliminary alcohol sensor (PAS)

1 tests were conducted with results of 0.139 and 0.149 percentage BAC. A blood test subsequent
2 to Respondent's arrest resulted in a reading of 0.13 percent BAC.

3 **FACTORS IN AGGRAVATION**

4 **(September 29, 2005 Criminal Conviction for Domestic Battery)**

5 14. To determine the degree of discipline, if any, to be imposed on
6 Respondent, Complainant alleges that on or about September 29, 2005, in a prior criminal
7 proceeding entitled *People of the State of California v. Durrell Tyrone Peters*, in Riverside
8 County Superior Court, case number SWM041199, Respondent was convicted on his plea of
9 guilty for violating Penal Code section 243, subdivision (e)(1), domestic battery, a misdemeanor.
10 As a result of the conviction, Respondent was sentenced to 36 months summary probation, and
11 10 days in custody, with credit for three days, to be served on the RSO Weekender Program.
12 Respondent was further ordered to pay \$984 in fees, fines and restitution. Respondent was
13 required to enroll in and complete a certified 52-week Domestic Violence/Batterers Program,
14 and perform 20 hours of community service. Following multiple probation violation hearings
15 for failing to complete the domestic violence program and community service, and four bench
16 warrants issued over a three-year period, probation was continued on same terms and conditions,
17 adding 15 days to custody (for a total of 25 days), and 10 hours to the community service
18 requirement (for a total of 30 hours). The circumstances that led to the conviction were that on
19 or about September 25, 2005, Respondent and his former girlfriend (DOE) met at a park in
20 Temecula. Respondent attempted to persuade DOE to get back together. DOE refused and
21 Respondent became angry, physically pulling DOE from her car and throwing her to the ground.
22 When DOE attempted to run away, Respondent caught up with her, put her in a bear hug from
23 behind, and threw DOE into her vehicle. DOE managed to lock the doors and drive away;
24 Respondent punched the rear window as she left.

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1 (July 20, 2007 Criminal Conviction for Petty Theft)

2 15. To determine the degree of discipline, if any, to be imposed on
3 Respondent, Complainant alleges that on or about July 20, 2007, in a prior criminal proceeding
4 entitled *People of the State of California v. Durrell Tyrone Peters*, in Riverside County Superior
5 Court, case number RIM500975, Respondent was convicted on his plea of guilty for violating
6 Penal Code section 490.5, theft of merchandise of a value not exceeding \$400, a misdemeanor.
7 As a result of the conviction, Respondent was sentenced to 36 months summary probation, and
8 one day in custody, to be served concurrent with the sentence in case no. SWM041199, above,
9 and payment of \$486 in fees, fines and restitution. Respondent failed to complete the one-day
10 custody requirement and a bench warrant was issued. At a hearing on March 20, 2008,
11 probation was reinstated on the same terms and conditions. The circumstances that led to the
12 conviction were that on or about the afternoon of June 8, 2007, Respondent was apprehended by
13 security outside of a Riverside J.C. Penney's department store after he was observed leaving the
14 store without paying for a tie valued at \$28.50. Respondent stated that he needed a tie to go to
15 work.

16 OTHER MATTERS

17 16. Pursuant to section 8654 of the Code, if discipline is imposed on Registered
18 Applicator License RA 47766 issued to Respondent, Respondent shall be prohibited from
19 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
20 employee for any registered company during the time the discipline is imposed, and any
21 registered company which employs, elects, or associates Respondent shall be subject to
22 disciplinary action.

23 PRAYER

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

- 26 1. Revoking or suspending Registered Applicator's License Number RA
27 47766, issued to Durrell Tyrone Peters;
28 2. Prohibiting Durrell Tyrone Peters from serving as an officer, director,

1 associate, partner, or qualifying individual of any licensee pursuant to Business and Professions
2 Code section 8654;

3 3. Ordering Durrell Tyrone Peters to pay the Structural Pest Control Board
4 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
5 Professions Code section 125.3;

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

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8 DATED: 6/22/09

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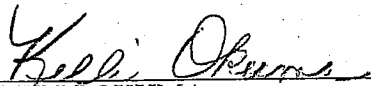
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KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant