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

In the Matter of the Accusation Against:
JOSE F. ESCALANTE,
a.k.a. JOSE FERNANDO ESCALANTE
10670 White Rock Road, Suite 200
Rancho Cordova, California 95670
Applicator's License No. RA 48537
Field Representative's License No. FR 43912
Respondent.

Case No. 2011-20

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 20, 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. 2011-20 against Jose F. Escalante (Respondent) before the Structural Pest Control Board. (Accusation attached as Exhibit A.)

2. On or about February 28, 2008, the Structural Pest Control Board (Board) issued Applicator's License No. RA 48537 to Respondent. The Applicator's License was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-20 and will expire on February 28, 2011, unless renewed.

3. On or about December 23, 2008, the Structural Pest Control Board issued Field Representative's License No. FR 43912 to Respondent. The Field Representative's License was

1 in full force and effect at all times relevant to the charges brought in Accusation No. 2011-20 and
2 will expire on June 30, 2011, unless renewed.

3 4. On or about January 11, 2011, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. 2011-20, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's addresses of record which, pursuant to Business and Professions Code
7 section 136, is required to be reported and maintained with the Board, which was and is: 10670
8 White Rock Road., Suite 200, Rancho Cordova, California 95670; c/o Ecolab 400 Plaza Drive
9 Suite 145, Folsom, CA 95630.

10 5. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
12 124.

13 6. On or about January 13, 2011 the aforementioned documents addressed to the first
14 address of record were returned by the U.S. Postal Service marked "Attempted Not Known".
15 The documents addressed to the second address in Folsom were not returned.

16 7. Government Code section 11506 states, in pertinent part:

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

22 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
23 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
24 2011-20.

25 9. California Government Code section 11520 states, in pertinent part:

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

10 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

1 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
2 as well as taking official notice of all the investigatory reports, exhibits and statements contained
3 therein on file at the Board's offices regarding the allegations contained in Accusation No. 2011-
4 20, finds that the charges and allegations in Accusation No. 2011-20, are found to be true.

5
6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Jose F. Escalante has subjected
8 his Applicator's License No. RA 48537 and Field Representative's License FR 43912 to
9 discipline.

10 2. The agency has jurisdiction to adjudicate this case by default.

11 3. The Structural Pest Control Board is authorized to revoke Respondent's Applicator's
12 License based upon the following violations alleged in the Accusation which are supported by the
13 evidence contained in the Default Decision Investigatory Evidence Packet in this case:

14 a. Respondent is subject to disciplinary action pursuant to Code sections 8649 and
15 490, subdivision (a), in that on or about June 30, 2010, in the criminal proceeding titled
16 *People v. Jose Fernando Escalante* (Super. Ct. San Mateo County, 2010, Case No.
17 NM393469A), Respondent was convicted by the court on his plea of nolo contendere to
18 violating Penal Code sections 530.5 (using another person's identity to obtain, or attempt to
19 obtain, credit, goods, or services, a misdemeanor) and 487, subdivision (a) (grand theft, a
20 misdemeanor), crimes substantially related to the qualifications, functions, and duties of a
21 field representative and applicator. The imposition of Respondent's sentence was
22 suspended and Respondent was placed on probation for two years on terms and conditions,
23 including that Respondent pay \$716.69 in restitution to the victim, South City Lumber. The
24 circumstances of the crime are as follows: On and between December 1, 2009, and April 1,
25 2010, on 3 or 4 occasions. Respondent went into the South City Lumber store (South San
26 Francisco, California), and purchased several items for his personal use. Respondent
27 charged his purchases to the La Quinta Hotel which had a charge account with the store and
28 was billed for the purchases. Respondent wore a La Quinta uniform when he made the

1 purchases and identified himself as "Richard A." Respondent admitted to investigating
2 officers with the South San Francisco Police Department that he was an ex-employee of La
3 Quinta and that Richard A. was a current employee. Only Richard A. had charging
4 privileges at the store. On April 1, 2010, Respondent returned to the store and attempted to
5 purchase approximately \$150 worth of merchandise. When store personnel requested his
6 identification, Respondent left the store.

7
8 ORDER

9 IT IS SO ORDERED that Applicator's License No. RA 48537 and Field Representative's
10 License FR 43912, heretofore issued to Respondent Jose F. Escalante, are revoked.

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

15 This Decision shall become effective on December 21, 2011.

16 It is so ORDERED November 21, 2011

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20 FOR THE STRUCTURAL PEST CONTROL
21 BOARD
22 DEPARTMENT OF PESTICIDE REGULATION

23
24 Attachment: Exhibit A: Accusation
10732669.DOC
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Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

FILED

Date 12/20/10 By *Kelli Okuma*

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

11 In the Matter of the Accusation Against:

Case No. 2011-20

12 **JOSE F. ESCALANTE,**
13 **a.k.a. JOSE FERNANDO ESCALANTE**
14 **10670 White Rock Road, Suite 200**
15 **Rancho Cordova, California 95670**
16 **Applicator's License No. RA 48537**
17 **Field Representative's License No. FR 43912**

A C C U S A T I O N

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 **Applicator's License No. RA 48537**

23 2. On or about February 28, 2008, the Board issued Applicator's License Number
24 RA 48537 in Branches 2 (general pest) and 3 (termite) to Jose F. Escalante, also known as Jose
25 Fernando Escalante ("Respondent"), employee of Ecolab, Inc. On December 23, 2008,
26 Respondent's applicator's license was downgraded to Branch 3 due to the issuance of his Branch
27 2 field's representative's license, set forth below. Respondent's applicator's license will expire
28 on February 28, 2011, unless renewed.

1 **Field Representative's License No. FR 43912**

2 3. On or about December 23, 2008, the Board issued Field Representative's License
3 Number FR 43912 in Branch 2 to Respondent, employee of Ecolab, Inc. Respondent's field
4 representative's license will expire on June 30, 2011, unless renewed.

5 **STATUTORY PROVISIONS**

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

10 5. Code section 8625 states:

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

15 6. Code section 8654 states:

16 Any individual who has been denied a license for any of the reasons
17 specified in Section 8568, or who has had his or her license revoked, or whose license
18 is under suspension, or who has failed to renew his or her license while it was under
19 suspension, or who has been a member, officer, director, associate, qualifying
20 manager, or responsible managing employee of any partnership, corporation, firm, or
21 association whose application for a company registration has been denied for any of
22 the reasons specified in Section 8568, or whose company registration has been
23 revoked as a result of disciplinary action, or whose company registration is under
24 suspension, and while acting as such member, officer, director, associate, qualifying
25 manager, or responsible managing employee had knowledge of or participated in any
26 of the prohibited acts for which the license or registration was denied, suspended or
27 revoked, shall be prohibited from serving as an officer, director, associate, partner,
28 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.

24 7. Code section 8649 states:

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

///

1 8. Code section 8655 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, and
4 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 article or
6 Section 8568 of this chapter. The board may order the license or registration
7 suspended or revoked, or may decline to issue a license, when the time for appeal has
8 elapsed, or the judgment of conviction has been affirmed on appeal or when an order
9 granting probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing
11 the individual or registered company to withdraw a plea of guilty and to enter a plea
12 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
13 information or indictment.

9 9. Code section 490, subdivision (a), states:

10 In addition to any other action that a board is permitted to take against a
11 licensee, a board may suspend or revoke a license on the ground that the licensee has
12 been convicted of a crime, if the crime is substantially related to the qualifications,
13 functions, or duties of the business or profession for which the license was issued.

13 COST RECOVERY

14 10. 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 of
16 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 (Criminal Conviction)

20 11. Respondent is subject to disciplinary action pursuant to Code sections 8649 and 490,
21 subdivision (a), in that on or about June 30, 2010, in the criminal proceeding titled *People v. Jose*
22 *Fernando Escalante* (Super. Ct. San Mateo County, 2010, Case No. NM393469A), Respondent
23 was convicted by the court on his plea of nolo contendere to violating Penal Code sections 530.5
24 (using another person's identity to obtain, or attempt to obtain, credit, goods, or services, a
25 misdemeanor) and 487, subdivision (a) (grand theft, a misdemeanor), crimes substantially related
26 to the qualifications, functions, and duties of a field representative and applicator. The imposition
27 of Respondent's sentence was suspended and Respondent was placed on probation for two years
28 on terms and conditions, including that Respondent pay \$716.69 in restitution to the victim, South

1 City Lumber. The circumstances of the crimes are as follows: On and between December 1,
2 2009, and April 1, 2010, on 3 or 4 occasions, Respondent went into the South City Lumber store
3 (South San Francisco, California), and purchased several items for his personal use. Respondent
4 charged his purchases to the La Quinta Hotel which had a charge account with the store and was
5 billed for the purchases. Respondent wore a La Quinta uniform when he made the purchases and
6 identified himself as "Richard A." Respondent admitted to investigating officers with the South
7 San Francisco Police Department that he was an ex-employee of La Quinta and that Richard A.
8 was a current employee. Only Richard A. had charging privileges at the store. On April 1, 2010,
9 Respondent returned to the store and attempted to purchase approximately \$150 worth of
10 merchandise. When store personnel requested his identification, Respondent fled the store.

11 **OTHER MATTERS**

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

17 13. Pursuant to Code section 8654, if discipline is imposed on Field Representative's
18 License Number FR 43912 and/or Applicator's License Number RA 48537, issued to Jose F.
19 Escalante, also known as Jose Fernando Escalante, Jose F. Escalante, also known as Jose
20 Fernando Escalante, shall be prohibited from serving as an officer, director, associate, partner,
21 qualifying manager, or responsible managing employee for any registered company during the
22 time the discipline is imposed, and any registered company which employs, elects, or associates
23 Jose F. Escalante, also known as Jose Fernando Escalante, shall be subject to disciplinary action.

24 **PRAAYER**

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

- 27 1. Revoking or suspending Field Representative's License Number FR 43912, issued to
28 Jose F. Escalante, also known as Jose Fernando Escalante;

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2. Revoking or suspending Applicator's License Number RA 48537, issued to Jose F. Escalante, also known as Jose Fernando Escalante;

3. Prohibiting Jose F. Escalante, also known as Jose Fernando Escalante, from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Field Representative's License Number FR 43912 and/or Applicator's License Number RA 48537, issued to Jose F. Escalante, also known as Jose Fernando Escalante;

4. Ordering Jose F. Escalante, also known as Jose Fernando Escalante, to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 12/20/10


KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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