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

In the Matter of the Accusation Against:

**RUBEN L. DOMINGUEZ  
1631 Malan Street, Space #37  
Brawley, CA 92227**

**Registered Applicator's License  
No. RA 48742**

Respondent.

Case No. 2010-79

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 1, 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. 2010-79 against Ruben L. Dominguez (Respondent) before the Structural Pest Control Board.

2. On or about April 29, 2008, the Structural Pest Control Board (Board) issued Registered Applicator's License No. RA 48742 to Respondent. The Registered Applicator's License was in full force and effect at all times relevant to the charges brought herein and will expire on April 29, 2011, unless renewed.

3. On or about June 11, 2010, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2010-79, Statement to Respondent,

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

3 1631 Malan Street, Space #37  
4 Brawley, CA 92227.

5 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

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

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

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

14 6. Respondent failed to file a Notice of Defense within 15 days after service upon him  
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
16 2010-79.

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

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

22 8. Pursuant to its authority under Government Code section 11520, the Board finds  
23 Respondent is in default. The Board will take action without further hearing and, based on the  
24 evidence on file herein, finds that the allegations in Accusation No. 2010-79 are true.

25 9. The total cost for investigation and enforcement in connection with the Accusation  
26 are \$372.50.

#### 27 DETERMINATION OF ISSUES

28 1. Based on the foregoing findings of fact, Respondent Ruben L. Dominguez has  
subjected his Registered Applicator's License No. RA 48742 to discipline.

2. A copy of the Accusation is attached.

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

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

3 a. Under Business and Professions Code sections 490, and 8649, Respondent's license  
4 is subject to revocation in that he sustained a criminal conviction that is substantially related to  
5 the qualifications, duties and functions of a registered applicator. On December 28, 2009,  
6 Respondent was convicted by his plea of guilty of violation of Penal Code section 488, petty  
7 theft.


8 ORDER

9 IT IS SO ORDERED that Registered Applicator's License No. RA 48742, heretofore issued  
10 to Respondent Ruben L. Dominguez, is 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 October 1, 2010.

16 It is so ORDERED September 1, 2010

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19 FOR THE STRUCTURAL PEST CONTROL BOARD  
20 DEPARTMENT OF PESTICIDE REGULATION

21 70308913.DOC  
22 DOJ docket number: SD2010800560

23 Attachment: Exhibit A: Accusation No. 2010-79  
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Exhibit A  
Accusation No. 2010-79

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
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P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-3037  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

**FILED**

Date 6/1/10 By Kelli Okuma

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

12 In the Matter of the Accusation Against:

Case No. 2010-79

13 **RUBEN L. DOMINGUEZ**  
14 **1631 Malan Street, Space #37**  
**Brawley, CA 92227**

**A C C U S A T I O N**

15 **Registered Applicator's License**  
16 **No. RA 48742, Branches 2 and 3**

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 April 29, 2008, the Structural Pest Control Board issued Registered  
25 Applicator's License Number RA 48742, Branch 2 and 3, to Ruben L. Dominguez (Respondent).  
26 The Registered Applicator's License was in full force and effect at all times relevant to the  
27 charges brought herein and will expire on April 29, 2011, unless renewed.

28 ///

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 8655 of the Code states:

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

#### 16                                   REGULATORY PROVISION

17           11.   California Code of Regulations, title 16, section 1937.1 states:

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

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

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

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- “(1) Fiscal dishonesty
- “(2) Fraud
- “(3) Theft
- “(4) Violations relating to the misuse of pesticides.”

12. California Code of Regulations, title 16, section 1937.2 states:

“(a) When considering the denial of a structural pest control license or company registration under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his or her or its present eligibility for a license or company registration will consider the following criteria:

- “(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- “(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
- “(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- “(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- “(5) Evidence, if any, of rehabilitation submitted by the applicant.

“(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).

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       “(c) When considering a petition for reinstatement of a structural pest control license or  
8 company registration, the board shall evaluate evidence of rehabilitation submitted by the  
9 petitioner, considering those criteria specified in subsection (b).”

#### 10   COST RECOVERY

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

#### 14   CAUSE FOR DISCIPLINE

15                                   (December 28, 2009, Conviction of Petty Theft of October 24, 2009)

16       14.   Respondent is subject to disciplinary action under Code sections 490, and 8649 in that  
17 on December 28, 2009, Respondent was convicted of a crime that is substantially related to  
18 the qualifications, functions, and duties of a registered applicator. The circumstances are as  
19 follows:

20       a.    On December 28, 2009, in a criminal proceeding entitled *The People of the State of*  
21 *California v. Ruben Leon Dominguez*, in Imperial County Superior Court, case number  
22 JCF24694, Respondent was convicted by his plea of guilty to violating Penal Code section 484,  
23 subdivision (a), petty theft, a misdemeanor.

24       b.    As a result of the conviction on December 28, 2009, Respondent was ordered to pay a  
25 total fine of \$674.00, which is payable in monthly payments of \$50.00, commencing February 1,  
26 2010, and Respondent was booked and released with the Imperial County Sheriff's Office.

27       c.    The facts that led to the conviction are that on October 24, 2009, a Brawley Police  
28 Department officer was dispatched to Walmart located at 250 Wildcat Road, on a report of


1 several males acting suspiciously in the store. Respondent was seen on video by Walmart  
2 security and later by the Brawley Police Department officer taking a bottle of personal lubricant  
3 (lube) from the pharmacy department and removing the label as he was walking through the store.  
4 He then exited the store without paying for the lube. Respondent was booked into custody of the  
5 Imperial County Sheriff on December 18, 2009, issued a citation with a promise to appear at  
6 court for violation of Penal Code section 488, petty theft, and released from custody on the same  
7 date.

8 PRAYER

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

- 11 1. Revoking or suspending Registered Applicator's License Number RA 48742, issued  
12 to Ruben L. Dominguez;
- 13 2. Ordering Ruben L. Dominguez to pay the Structural Pest Control Board the  
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
15 Professions Code section 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

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18  
19 DATED: 6/1/10

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

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