

BEFORE THE  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARCO ANTONIO ARELLANO  
4623 De Soto Street  
San Diego, CA 92109

Registered Applicator's License No. RA  
48813,

Respondent.

No. 2010-5

OAH No. 2009090810

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by  
the Structural Pest Control Board as its Decision in the above-entitled matter.

This Decision shall become effective March 5, 2010.

IT IS SO ORDERED. Petition for Reconsideration denied. New effective date is March 8, 2010.

Date: February 3, 2010



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President  
Structural Pest Control Board

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**PROPOSED DECISION**

On December 7, 2009, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

William A. Buess, Deputy Attorney General, represented the complainant.

Respondent represented himself.

The matter was submitted on December 7, 2009.

**FACTUAL FINDINGS**

1. On August 6, 2009, Kelli Okuma, Registrar/Executive Officer, Structural Pest Control Board, Department of Consumer Affairs, State of California (hereafter, "Board") filed Accusation No. 2010-5 in her official capacity. Respondent filed a timely Notice of Defense.

2. On May 9, 2008, the Board issued Registered Applicator's License No. RA 48813 in Branches 2 and 3 to respondent as an employee of Dewey Pest Control in San Diego, California.

3. On March 9, 2009, in the Superior Court of San Diego County, respondent pled guilty and was convicted of violating Penal Code section 508, fraudulent appropriation by a clerk, agent, or employee, a felony. On May 6, 2009, the court placed respondent on

formal probation for three years on condition, among others, that he perform fifteen days of community service, pay various fines and fees in excess of \$1,200.00, and pay restitution to the victim of the theft in the amount of \$14,710.01.

4. The facts and circumstances of the offense are as follows:<sup>1</sup>

Between November 1, 2007 and January 30, 2008, respondent was an employee of Daphne's Greek Restaurant, and fraudulently appropriated to his own use with a fraudulent intent the amount of \$14,710.01.

The offense is substantially related to the qualifications, functions, and duties of a licensee of the Structural Pest Control Board. (Cal. Code. Regs., tit. 16, § 1937.1, subd. (a).)

5. The plea agreement reached between respondent and the District Attorney provided that upon respondent's payment of half of the amount of restitution, the District Attorney would not oppose reduction of the offense to a misdemeanor. To date, respondent has paid about \$1,000.00 of the restitution order and the offense remains a felony.

Respondent has not completed the community service ordered by the court. He remains on probation.

6. Respondent testified that he made a big mistake when he misappropriated money from his employer and as a result lost a job that he had held at Daphne's Greek restaurant for a number of years. He presently works for Dewey Pest Control about once a week. He is married and supports his wife and twenty-month-old child.

7. The Board incurred costs for the investigation and enforcement of this matter in the amount of \$2,513.00 for the services of the Attorney General. The amount of is reasonable.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 8649 provides;

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

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<sup>1</sup> Complainant did not offer into evidence a police report describing the offense. The only evidence of the offense is contained in the criminal complaint, change of plea form, and court minutes.

2. Business and Professions Code section 490 provides in part:

*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. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere . . . .*

3. Title 16, California Code of Regulations section 1937.2 provides in part:

*(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.*

4. Cause to revoke or suspend respondent's registered applicator's license pursuant to Business and Professions Code sections 8649 and 490 was established by Findings 3 and 4 in that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a structural pest control operator.

5. The evidence introduced in this matter points conclusively toward revocation of respondent's registered applicator's license. Respondent offered no evidence of rehabilitation. He committed the crime within the last two years, was convicted of it eight months ago, has not paid restitution, has not completed his community service, and will remain on probation for two more years. Respondent took advantage of his position as an employee of a restaurant to defraud it of more than \$14,000.00, and he offered no evidence of mitigation or rehabilitation that would suggest that such conduct would not recur. Respondent presented no oral or documentary evidence that might show that he should continue to work in a licensed capacity notwithstanding his recent and serious conviction.

6. Cause to order respondent to reimburse the Board for its costs of investigation and enforcement of this matter in the amount of \$2,513.00 was established by reason of Finding 7.

ORDER

1. Registered Applicator's License number RA 48813 issued to respondent Marco Antonio Arellano is revoked.

2. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$2,513.00.

DATED: 12/29/89



for

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ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings

FILED

Date 8/6/09 By Kelli Okuma

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

13 In the Matter of the Accusation Against:

Case No. 2010-5

14 MARCO ANTONIO ARELLANO  
4623 De Soto Street  
15 San Diego, CA 92109

ACCUSATION

16 Registered Applicator's License No. RA 48813

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 ("Board"), Department of  
23 Consumer Affairs.

24 2. On or about May 9, 2008, the Board issued Registered Applicator's License Number  
25 RA 48813 in Branches 2 (general pest) and 3 (termite) to Marco Antonio Arellano  
26 ("Respondent"), employee of Dewey Pest Control, doing business as Dewey Pest Services.  
27 Respondent's registered applicator's license will expire on May 9, 2011, unless renewed.

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STATUTORY PROVISIONS

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

6 4. Code section 8654 states:

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

22 5. Code section 8649 states:

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

27 6. Code section 8655 states:

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

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1 7. Code section 490, subdivision (a), states:

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

6 **COST RECOVERY**

7 8. Code section 125.3 states, in pertinent part, that a Board may request the  
8 administrative law judge to direct a licentiate found to have committed a violation or violations of  
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case.

11 **CAUSE FOR DISCIPLINE**

12 **(Criminal Conviction)**

13 9. Respondent is subject to disciplinary action pursuant to Code sections 8649 and 490,  
14 subdivision (a), in that on or about March 9, 2009, in the criminal proceeding titled *People v.*  
15 *Marco Antonio Arellano* (Super. Ct. County of San Diego, 2009, Case No. CD218060),  
16 Respondent pled guilty to violating Penal Code section 508 (embezzlement by employee, a  
17 misdemeanor), a crime substantially related to the qualifications, functions, and duties of a  
18 registered applicator. On May 6, 2009, the imposition of Respondent's sentence was suspended  
19 and Respondent was placed on formal probation for a period of 3 years on terms and conditions,  
20 including that Respondent pay restitution to the victim in the amount of \$14,710.01. The  
21 circumstances of the crime are as follows: On and between November 1, 2007, and January 30,  
22 2008, while employed as the general manager for Daphne's Greek Café ("Daphne's") located in  
23 Poway, California, Respondent stole money from Daphne's by manipulating coupons, deleting  
24 items, and taking non-existent discounts, totaling approximately \$16,583. Respondent was  
25 confronted by senior management and admitted to taking the money from Daphne's. Respondent  
26 signed a promissory note agreeing to repay Daphne's \$15,000 over 5 years (Respondent was to  
27 make 60 payments in the amount of \$289.99). Respondent paid the first installment, but made no

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1 further payments. Daphne's was reimbursed for their loss by their insurance company,  
2 WAUSAU Business Insurance Company ("WAUSAU"). Since Respondent failed to make any  
3 additional payments, WAUSAU requested prosecution against Respondent.

4 OTHER MATTERS

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

10 11. Pursuant to Code section 8654, if discipline is imposed on Registered Applicator's  
11 License Number RA 48813, issued to Marco Antonio Arellano, Marco Antonio Arellano 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 Marco Antonio  
15 Arellano shall 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 48813, issued  
20 to Marco Antonio Arellano;
- 21 2. Prohibiting Marco Antonio Arellano from serving as an officer, director, associate,  
22 partner, qualifying manager or responsible managing employee of any registered company during  
23 the period that discipline is imposed on Registered Applicator's License Number RA 48813,  
24 issued to Marco Antonio Arellano;
- 25 3. Ordering Marco Antonio Arellano to pay the Structural Pest Control Board the  
26 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
27 Professions Code section 125.3;

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

DATED: 8/6/09

*Kelli Okuma*

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

SD2009804425  
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