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FILED

Date 10/1/13 By Susan Saylor

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 2014-22

12 **MELVIN DECASTRO**
13 5812 Kester Avenue
Sherman Oaks, CA 91411

ACCUSATION

14 Field Representative License No. FR 43637
15 Applicator License No. RA 48844

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as
21 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
22 Affairs.

23 2. On or about September 30, 2008, the Structural Pest Control Board (Board) issued
24 Field Representative License No. FR 43637, in Branch 2 (general pest) to Melvin DeCastro
25 (Respondent). The Field Representative License was in full force and effect at all times relevant
26 to the charges brought herein and will expire on June 30, 2014, unless renewed.

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1 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
2 discipline a licensee for conviction of a crime that is independent of the authority granted under
3 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
4 of the business or profession for which the licensee's license was issued.

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

11 7. Section 8620 provides, in pertinent part, that the Board may suspend or revoke a
12 license when it finds that the holder, while a licensee or applicant, has committed any acts or
13 omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil
14 penalty.

15 8. Section 8625 states:

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

21 9. Section 8641 states:

22 "Failure to comply with the provisions of this chapter, or any rule or regulation adopted by
23 the board, or the furnishing of a report of inspection without the making of a bona fide inspection
24 of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed
25 prior to the completion of the work specified in the contract, is a ground for disciplinary action."

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1 10. Section 8649 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 11. Section 8654 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 12. Section 8655 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 13. California Code of Regulations, title 16, section 1920 states, in pertinent part:

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6 "(d) Compliance with Orders of Abatement: When a citation is not contested or if the
7 citation is appealed and the person cited does not prevail, failure to comply with the order of
8 abatement or to pay the fine in the citation within the time allowed by a licensee may result in
9 disciplinary action being taken by the Board against the person cited, or where the cited person is
10 unlicensed in appropriate judicial relief being taken against the person cited."

11 14. California Code of Regulations, title 16, section 1937.1 states, in pertinent part:

12 "For the purposes of denial, suspension or revocation of a license or company registration
13 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
14 considered to be substantially related to the qualifications, functions or duties of a licensee or
15 registered company under Chapter 14 of Division 3 of the code if to a substantial degree it
16 evidences present or potential unfitness of such licensee or registered company to perform the
17 functions authorized by the license or company registration in a manner consistent with the public
18 health, safety, or welfare."

19 **COST RECOVERY**

20 15. Section 125.3 states, in pertinent part, that a Board may request the administrative law
21 judge to direct a licentiate found to have committed a violation or violations of the licensing act to
22 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

23 **FACTUAL SUMMARY**

24 16. On or about August 7, 2012, Respondent was issued Citation CF 13-12 for a number
25 of violations of the Structural Pest Control Act. The Citation included a fine of \$2,500, which
26 was to be paid within 30 days after receipt of the Citation Order. On or about January 10, 2013,
27 the Board sent Respondent a letter notifying him that the fine of \$2,500 remains unpaid and that
28 this letter constitutes a formal and final demand of fine. It also warned him that failure to pay the

1 fine within ten days would result in a denial of services and that his filed representative license
2 would not be renewed until the fine has been paid.

3 17. On or about January 23, 2013 the Board sent Respondent a second letter notifying
4 him that the fine of \$2,500 remains unpaid and that this letter constitutes a formal and final
5 demand of fine. It also warned him that failure to pay the fine within ten days would result in a
6 denial of services and that his field representative license would not be renewed until the fine has
7 been paid. On or about March 15, 2013, the Board sent Respondent a third letter notifying him
8 that the fine of \$2,500 remains unpaid and that this letter constitutes a formal and final demand
9 for payment of fine. It also warned him that failure to pay the fine within ten days would result in
10 the continuance of denial of services and that his field representative license would not be
11 renewed until the fine has been paid.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Citation and Order of Abatement)**

14 18. Respondent is subject to disciplinary action under sections 125.9, subdivision (5), and
15 8641, in conjunction with California Code of Regulations 1920, subdivision (d) in that
16 Respondent has failed to comply with Citation No. CF 13-12 within the time allotted and has
17 failed to comply with the Order of Abatement contained within the Citation as further set forth in
18 paragraphs 16 and 17 which is incorporated herein by reference.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Conviction of a Substantially Related Crime)**

21 19. Respondent is subject to disciplinary action under sections 8649 and 490, in
22 conjunction with California Code of Regulations, title 16, section 1937.1, in that Respondent has
23 been convicted of a crime substantially related to the qualifications, functions or duties of a
24 licensed field representative and applicator, as follows:

25 a. On or about November 21, 2012, Respondent was convicted of one misdemeanor
26 count of violating Penal Code section 487, subdivision (a) [grand theft by embezzlement] in the
27 criminal proceeding entitled *The People of the State of California v. Melvin Decastro* (Super. Ct.
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1 Los Angeles County, 2012, No. 2NW03012.) The Court sentenced Respondent to serve one day
2 in Los Angeles County Jail and placed him on 36 months probation, with terms and conditions.

3 b. The circumstances surrounding the conviction are that in and between February 16,
4 2012 and May 26, 2012, Respondent, while an employee of Round the Clock Pest Control,
5 solicited business from, and made his own receipts for, prior clients of Round the Clock Pest
6 Control. Respondent used supplies provided by Round the Clock Pest Control for these jobs and
7 accepted approximately \$1,750.00 in payment for himself under the business name of Melvin's
8 Pest Control.

9 **DISCIPLINARY CONSIDERATIONS**

10 20. In order to determine the degree of discipline, if any to be imposed on Respondent,
11 Complainant alleges, as follows:

12 a. On or about February 15, 2001, Respondent was convicted of one misdemeanor count
13 of violating Penal Code section 484E, subdivision (d) [use/access account data without consent]
14 in the criminal proceeding entitled *The People of the State of California v. Melvin Decastro*
15 (Super. Ct. Los Angeles County, 2001, No. 0HL02813.) The Court sentenced Respondent to
16 serve one day in Los Angeles County Jail and placed him on 24 months probation, with terms and
17 conditions.

18 **OTHER MATTERS**

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

24 22. Pursuant to section 8654, if discipline is imposed on Field Representative License No.
25 FR 43637 and/or Applicator License No. RA 48844 issued to Respondent, Respondent shall be
26 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
27 responsible managing employee for any registered company during the time the discipline is
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1 imposed, and any registered company which employs, elects, or associates Melvin DeCastro shall
2 be subject to disciplinary action.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board issue a decision:

- 6 1. Revoking or suspending Field Representative License No. FR 43637, issued to
7 Melvin DeCastro;
- 8 2. Revoking or suspending Applicator License No. RA 48844, issued to Melvin
9 DeCastro;
- 10 3. Ordering Melvin DeCastro to pay the Board the reasonable costs of the investigation
11 and enforcement of this case, pursuant to section 125.3; and
- 12 4. Taking such other and further action as deemed necessary and proper.

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14 DATED: 10/1/13


15 SUSAN SAYLOR
16 Registrar/Executive Officer
17 Structural Pest Control Board
18 Department of Consumer Affairs
19 State of California
20 Complainant

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