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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. 2009-57

12 **GARY EVANGELISTA**
13 **204 Cosky Drive, #110**
14 **Marina, CA 93933**

DEFAULT DECISION AND ORDER

15 **Registered Applicator's License No.**
16 **RA 48987, Branches 2 & 3**

[Gov. Code, §11520]

17 Respondent.

18 FINDINGS OF FACT

19 1. On or about May 14, 2009, Complainant Kelli Okuma, in her official capacity as the
20 Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
21 Affairs, filed Accusation No. 2009-57 against Gary Evangelista (Respondent) before the
22 Structural Pest Control Board.
23

24 2. On or about June 24, 2008, the Structural Pest Control Board (Board) issued
25 Registered Applicator's License No. RA 48987, Branches 2 & 3 to Respondent. The Registered
26 Applicator's License was in full force and effect at all times relevant to the charges brought herein
27 and will expire on June 24, 2011, unless renewed.

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1 3. On or about December 22, 1998, the Structural Pest Control Board issued Registered
2 Applicator's License No. RA 11295, Branch 2 to Respondent. The Registered Applicator's
3 License expired on December 22, 2004, and has not been renewed.

4 4. On or about May 27, 2009, Carol L. Grays, an employee of the Department of Justice,
5 served by Certified and First Class Mail a copy of the Accusation No. 2009-57, Statement to
6 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
7 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:
8 204 Cosky Drive, #110, Marina, California 93933. A copy of the Accusation is attached as
9 Exhibit A, and is incorporated herein by reference.

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

12 6. Government Code section 11506 states, in pertinent part:

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 2009-57.

20 8. California Government Code section 11520 states, in pertinent part:

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

24 9. Pursuant to its authority under Government Code section 11520, the Board finds that
25 Respondent is in default and has waived his right to a hearing. The Board will take action
26 without further hearing and, based on the evidence on file herein, determines that the allegations
27 in Accusation No. 2009-57 are true.

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1 10. The total costs for investigation and enforcement are \$3,401.50 as of June 16,
 2 2009.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent Gary Evangelista has subjected
 5 his Registered Applicator's License No. RA 48987, Branches 2 & 3, to discipline.

6 2. A copy of the Accusation is attached.

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

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

10 a. Respondent has subjected his license to disciplinary action pursuant to Business
 11 and Professions Code (Code) sections 490 and 8649 in that he was convicted of a crime
 12 substantially related to the qualifications, functions or duties of an applicator, in that on or about
 13 January 6, 2009, in the Superior Court of California, County of Monterey, Salinas Division, Case
 14 No. MS271021A, entitled *The People of the State of California vs. Gary Evangelista*, Respondent
 15 was convicted by his plea of nolo contendere of violating Penal Code 666/484(a) (petty theft with
 16 one prior conviction), a misdemeanor. Pursuant to said plea, Respondent admitted that he was
 17 previously convicted on or about February 13, 1974 of the crime of violating Penal Code 459
 18 (burglary, second degree) in the Superior Court of California, County of Monterey, Case No.
 19 MSR1832.

20 The factual circumstances surrounding the conviction in Case No. MS271021A are
 21 that on or about October 22, 2008, in Marina, California, Respondent, while under the influence
 22 of heroin, and accompanied by co-defendant and co-habitant Kara Dodge, conspired to pick up
 23 receipts off the ground in Wal-Mart's parking lot to use them to make fraudulent returns in order
 24 to obtain cash to buy more heroin from a dealer. On or about that same date, Respondent, using a
 25 fraudulently obtained receipt, returned an object matching the item listed in the bogus receipt and
 26 obtained \$9.27 in cash from Wal-Mart.

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1 b. Respondent has subjected his license to disciplinary action pursuant to Business
2 and Professions Code (Code) sections 490 and 8649 in that he was convicted of a crime
3 substantially related to the qualifications, functions or duties of an applicator, in that on or about
4 January 6, 2009, in the Superior Court of California, County of Monterey, Salinas Division, Case
5 No. SS082899B, entitled *The People of the State of California vs. Gary Evangelista*, Respondent
6 was convicted by his plea of guilty of violating Health and Safety Code section 11350(a) (possess
7 narcotic controlled substance), a felony, and of violating Penal Code section 459 (commercial
8 burglary, second degree), a misdemeanor. Pursuant to his conviction of violating Health and
9 Safety Code section 11350(a), the case was continued to determine Respondent's eligibility for a
10 Deferred Entry of Judgment (DEJ). On or about February 24, 2009, the Deferred Entry of
11 Judgment proceedings were terminated for his failure to enroll in an approved program and
12 appear in court, and the criminal proceedings were reinstated. On that same date, a bench warrant
13 was issued against Respondent for failing to appear for Proof of Enrollment into DEJ.

14 The factual circumstances surrounding the conviction in Case No. SS082899B are
15 that on or about December 3, 2008, in Salinas, California, Respondent, while under the influence
16 of heroin, and accompanied by co-defendant and co-habitant Kara Dodge, conspired to obtain
17 Target receipts to use them to make fraudulent returns in order to obtain cash to buy more heroin
18 from a dealer. Once inside the Target store, Dodge went into the electronics department, pulled a
19 receipt out of her purse and began to select various items to put in her shopping cart. Thereafter,
20 Dodge removed a Target plastic bag from within her purse and proceeded to conceal the
21 merchandise inside the bag. Once at the front lanes, Dodge met up with Respondent and gave
22 him the Target bag that contained the items she had selected. Thereafter, incident to his arrest,
23 Respondent's blue bag and its back pouch were searched. Paraphernalia used for ingesting heroin
24 and a small cotton ball containing a usable amount of heroin inside of it were found. After being
25 arrested, Respondent admitted that he was going to be withdrawing from heroin and would need
26 medicine to assist him in his withdrawal from heroin.

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ORDER

IT IS SO ORDERED that Registered Applicator's License No. RA 48987, Branches 2 & 3, heretofore issued to Respondent Gary Evangelista, 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 September 9, 2009.

It is so ORDERED August 10, 2009



FOR STRUCTURAL PEST-CONTROL BOARD

default decision_LIC.rtf
DOJ docket number:SF2009403632

Attachment:

Exhibit A: Accusation No.2009-57

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Attorneys for Complainant

FILED

Date 5/14/09 By Susan Taylor

8
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. 2009-57

13 **GARY EVANGELISTA**
204 Cosky Drive, #110
14 Marina, California 93933
Registered Applicator's License No. RA
15 48987, Branches 2 & 3

ACCUSATION

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kelli Okuma (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 June 24, 2008, the Structural Pest Control Board issued Registered
24 Applicator's License Number RA 48987, Branches 2 & 3 to Gary Evangelista (Respondent). The
25 Registered Applicator's License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on June 24, 2011, unless renewed.

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28 ///

1 3. On or about December 22, 1998, the Structural Pest Control Board issued Registered
2 Applicator's License Number RA 11295, Branch 2 to Gary Evangelista (Respondent). The
3 Registered Applicator's License expired on December 22, 2004, and has not been renewed.

4 JURISDICTION

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

8 STATUTORY PROVISIONS

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

13 6. Section 8625 of the Code states:

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

19 7. Section 118, subdivision (b), of the Code provides that the expiration of a license
20 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
21 within which the license may be renewed, restored, reissued, or reinstated.

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

26 9. Section 490 of the Code states:

27 "A board may suspend or revoke a license on the ground that the licensee has been
28 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties

1 of the business or profession for which the license was issued. A conviction within the meaning
2 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
3 contendere. Any action which a board is permitted to take following the establishment of a
4 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
5 been affirmed on appeal, or when an order granting probation is made suspending the imposition
6 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
7 Code.”

8 10. Section 8649 of the Code states:

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

13 FIRST CAUSE FOR DISCIPLINARY ACTION

14 (Substantially Related Conviction)

15 11. Respondent has subjected his Registered Applicator’s License to disciplinary action
16 under sections 490 and 8649 of the Code in that he was convicted of a crime substantially related
17 to the qualifications, functions or duties of an applicator, in that on or about January 6, 2009, in
18 the Superior Court of California, County of Monterey, Salinas Division, Case No. MS271021A,
19 entitled *The People of the State of California vs. Gary Evangelista*, Respondent was convicted by
20 his plea of nolo contendere of violating Penal Code 666/484(a) (petty theft with one prior
21 conviction), a misdemeanor. Pursuant to said plea, Respondent admitted that he was previously
22 convicted on or about February 13, 1974 of the crime of violating Penal Code 459 (burglary,
23 second degree) in the Superior Court of California, County of Monterey, Case No. MSR1832.

24 12. The factual circumstances surrounding the conviction in Case No. MS271021A are
25 that on or about October 22, 2008, in Marina, California, Respondent, while under the influence
26 of heroin, and accompanied by co-defendant and co-habitant Kara Dodge, conspired to pick up
27 receipts off the ground in Wal-Mart’s parking lot to use them to make fraudulent returns in order
28 to obtain cash to buy more heroin from a dealer. On or about that same date, Respondent, using a

1 fraudulently obtained receipt, returned an object matching the item listed in the bogus receipt and
2 obtained \$9.27 in cash from Wal-Mart.

3 SECOND CAUSE FOR DISCIPLINARY ACTION

4 (Substantially Related Convictions)

5 13. Respondent has subjected his Registered Applicator's License to disciplinary action
6 under sections 490 and 8649 of the Code in that he was convicted of crimes substantially related
7 to the qualifications, functions or duties of an applicator, in that on or about January 6, 2009, in
8 the Superior Court of California, County of Monterey, Salinas Division, Case No. SS082899B,
9 entitled *The People of the State of California vs. Gary Evangelista*, Respondent was convicted by
10 his plea of guilty of violating Health and Safety Code section 11350(a) (possess narcotic
11 controlled substance), a felony, and of violating Penal Code section 459 (commercial burglary,
12 second degree), a misdemeanor. Pursuant to his conviction of violating Health and Safety Code
13 section 11350(a), the case was continued to determine Respondent's eligibility for a Deferred
14 Entry of Judgment (DEJ). On or about February 24, 2009, the Deferred Entry of Judgment
15 proceedings were terminated for his failure to enroll in an approved program and appear in court,
16 and the criminal proceedings were reinstated. On that same date, a bench warrant was issued
17 against Respondent for failing to appear for Proof of Enrollment into DEJ.

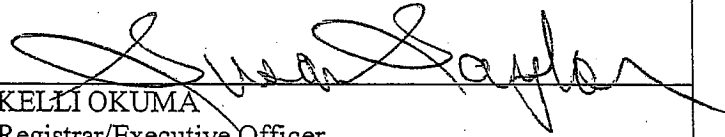
18 14. The factual circumstances surrounding the convictions in Case No. SS082899B are
19 that on or about December 3, 2008, in Salinas, California, Respondent, while under the influence
20 of heroin, and accompanied by co-defendant and co-habitant Kara Dodge, conspired to obtain
21 Target receipts to use them to make fraudulent returns in order to obtain cash to buy more heroin
22 from a dealer. Once inside the Target store, Dodge went into the electronics department, pulled a
23 receipt out of her purse and began to select various items to put in her shopping cart. Thereafter,
24 Dodge removed a Target plastic bag from within her purse and proceeded to conceal the
25 merchandise inside the bag. Once at the front lanes, Dodge met up with Respondent and gave
26 him the Target bag that contained the items she had selected. Thereafter, incident to his arrest,
27 Respondent's blue bag and its back pouch were searched. Paraphernalia used for ingesting heroin
28 and a small cotton ball containing a usable amount of heroin inside of it were found. After being

1 arrested, Respondent admitted that he was going to be withdrawing from heroin and would need
2 medicine to assist him in his withdrawal from heroin.

3 PRAYER

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

- 6 1. Revoking or suspending Registered Applicator's License Number RA 48987,
7 Branches 2 & 3, issued to Gary Evangelista (Respondent);
8 2. Ordering Respondent to pay the Structural Pest Control Board the reasonable costs of
9 the investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3, and;
11 3. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED: 5/14/09 
15 KELLI OKUMA
16 Registrar/Executive Officer
17 Structural Pest Control Board
18 Department of Consumer Affairs
19 State of California
20 Complainant

21
22 SF2009403632
23 CSR: 05/11/09
24 accusation.rtf