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6 **BEFORE THE**
7 **STRUCTURAL PEST CONTROL BOARD**
8 **DEPARTMENT OF PESTICIDE REGULATION**
9 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

10 **KERRY ANN DURKEE**
11 **aka KERRY ANN JENSEN**

12 1241 Drake Drive
13 Simi Valley, CA 93065

14 Registered Applicator License No. RA 49008, Br. 2 & 3

15 Respondent.

Case No. 2010-65

16 **DEFAULT DECISION AND**
17 **ORDER**

[Gov. Code, §11520]

18 FINDINGS OF FACT

19 1. On or about March 2, 2010, Complainant Kelli Okuma, in her official capacity as the
20 Registrar/Executive Officer of the Structural Pest Control Board (Board), filed Accusation No.
21 2010-65 against Kerry Ann Durkee, aka Kerry Ann Jensen (Respondent) before the Board.

22 2. On or about July 7, 2008, the Board issued Registered Applicator License No. RA
23 49008 to Respondent. The Registered Applicator License was suspended on April 5, 2009,
24 pursuant to Family Code section 17529(e)(1)(A), and is still currently suspended. A copy of the
25 license certification history is attached as Exhibit 1 and incorporated herein by reference.

26 3. On or about March 17, 2010, Thurman Peden, an employee of the Department of
27 Justice, served by Certified Mail and First Class Mail a copy of the Statement to Respondent;
28 Accusation in Case No. 2010-65; Request for Discovery; Notice of Defense; and Government
Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
which was and is:

1 1241 Drake Drive
2 Simi Valley, CA 93065.

3 4. Thereafter, on or about April 8, 2010, in good faith, Ms. Peden served copies of the
4 same documents referenced in paragraph 3 above by Certified Mail and First Class Mail to
5 another known address for Respondent:

6 2990 Rosette Street
7 Simi Valley, CA 93065

8 A copy of the Accusation and documents in connection with service thereof are attached as
9 exhibit 2, and 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. Business and Professions Code (hereinafter Code) section 118 states, in pertinent
13 part:

14 (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
15 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
16 order of a court of law, or its surrender without the written consent of the board, shall not, during
17 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
18 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
19 provided by law or to enter an order suspending or revoking the license or otherwise taking
20 disciplinary action against the license on any such ground.

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

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

25 8. Respondent failed to file a Notice of Defense within 15 days after service upon her of
26 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2010-
27 65.

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

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

6 10. Pursuant to its authority under Government Code section 11520, the Board finds
7 Respondent is in default. The Board will take action without further hearing and, based on the
8 evidence on file herein, finds that the allegations in Accusation No. 2010-65 are true.

9 11. The total investigation and enforcement costs incurred by the Board in connection
10 with the Accusation are \$5,574.50 as of August 18, 2010. A copy of the Certification of
11 Prosecution Costs is attached as Exhibit 3 and incorporated herein.

12 DETERMINATION OF ISSUES

13 1. Based on the foregoing findings of fact, Respondent Kerry Ann Durkee has subjected
14 her Registered Applicator License No. RA 49008 to discipline.

15 2. A copy of the Accusation is attached as Exhibit 2.

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

17 4. The Board is authorized to revoke Respondent's Registered Applicator License based
18 upon the following violations alleged in the Accusation:

19 a. Pursuant to Business and Professions Code section 8649, in that Respondent
20 was convicted of the following crimes, all of which are substantially related to the qualifications,
21 functions, or duties of the profession of a registered applicator:

22 1. On or about August 10, 2004, in the case titled *People v. Kerry Ann*
23 *Durkee*, (Super. Ct. San Bernardino County, 2004/2009, Case No. FMB006896), Respondent was
24 convicted by the Court on her plea of guilty of violating Health and Safety Code section 11379
25 (transportation of a controlled substance), a felony. On or about September 16, 2004, Respondent
26 received a suspended sentence and judgment on the conviction was withheld, in lieu of
27 Respondent being placed on four (4) years probation. As a condition of probation, the Court also
28 required Respondent to participate in and complete an appropriate drug treatment program, as per
Proposition 36. However, Respondent violated the terms of her probation when, on or about

1 September 19, 2008, in the case titled *People v. Kerry Ann Durkee*, (Super. Ct. Ventura County,
2 2008, Case No. 20088031873) she was convicted by the Court on her plea of guilty of violating
3 Health and Safety Code section 11377(a) (possession of a controlled substance, to wit:
4 methamphetamine), a felony. As a result thereof, on or about May 7, 2009, Respondent's
5 probation was revoked and she was sentenced to serve four (4) years and eight (8) months in state
6 prison, with credit for time served. A copy of the certified record in connection with this
7 conviction are attached as Exhibit 4 and incorporated herein by reference.

8 2. On or about September 19, 2008, in the case titled *People v. Kerry Ann*
9 *Durkee*, (Super. Ct. Ventura County, 2008, Case No. 20088031873), Respondent was convicted
10 by the Court on her plea of guilty of violating Health and Safety Code section 11377(a)
11 (possession of a controlled substance, to wit: methamphetamine), a felony. A copy of the
12 certified record in connection with this conviction are attached as Exhibit 5 and incorporated
13 herein by reference.

14 3. On or about September 17, 2008, in the case titled *People v. Kerry Ann*
15 *Durkee*, (Super. Ct. Ventura County, 2008, Case No. 2008009990), Respondent was convicted by
16 the Court on her plea of guilty of violating Penal Code section 484(a) (petty theft, to wit: cable
17 box access card), a misdemeanor. A copy of the certified record in connection with this
18 conviction are attached as Exhibit 6 and incorporated herein by reference.

19 4. On or about September 17, 2008, in the case titled *People v. Kerry Ann*
20 *Durkee*, (Super. Ct. Ventura County, 2008, Case No. 2008030463), Respondent was convicted by
21 the Court on her plea of guilty of violating Penal Code section 496(a) (receiving stolen property,
22 to wit: laptop computer), a misdemeanor. A copy of the certified record in connection with this
23 conviction are attached as Exhibit 7 and incorporated herein by reference.

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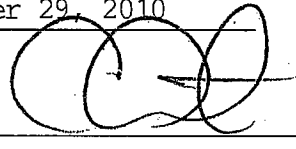
5. On or about September 17, 2008, in the case titled *People v. Kerry Ann Durkee*, (Super. Ct. Ventura County, 2008, Case No. 2008024478), Respondent was convicted by the Court on her plea of guilty of violating Health and Safety Code section 11375(b)(2) (possession of a controlled substance, to wit: Xanax), a misdemeanor. A copy of the certified record in connection with this conviction are attached as Exhibit 8 and incorporated herein by reference.

ORDER

IT IS SO ORDERED that Registered Applicator License No. RA 49008, heretofore issued to Respondent Kerry Ann Durkee, aka Kerry Ann Jensen, 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 October 29, 2010.

It is so ORDERED September 29, 2010


FOR THE STRUCTURAL PEST CONTROL BOARD

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KEVIN J. RIGLEY
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4 State Bar No. 131800
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5 Los Angeles, CA 90013
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Attorneys for Complainant

FILED

Date 3/2/10 By *Kelli Okuma*

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. 2010-65

12 **KERRY ANN DURKEE**
aka **KERRY ANN JENSEN**
13 1241 Drake Drive
14 Simi Valley, California 93065

ACCUSATION

15 Registered Applicator's License No. RA 49008, Br. 2 and 3

16 Respondent.

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18 Kelli Okuma (Complainant) alleges:

19 **PARTIES**

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

22 2. On or about July 7, 2008, the Board issued Registered Applicator's License
23 Number RA 49008 (license) in Branches 2 and 3 to Kerry Ann Durkee, also known as Kerry Ann
24 Jensen (Respondent). On or about April 5, 2009, the license was suspended, pursuant to Family
25 Code section 17520(e)(1)(A).

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JURISDICTION

3. Business and Professions Code ("Code") section 8620 provides, in pertinent part, 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.

4. Code section 8625 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

5. Code section 8649 states:

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.

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

7. Respondent is subject to discipline under Code section 8649, in that she was convicted of the following crimes that are substantially related to the qualifications, functions or duties of the profession of a registered applicator:

a. On or about August 10, 2004, in the case titled *People v. Kerry Ann Durkee*, (Super. Ct. San Bernardino County, 2004/2009, Case No. FMB006896), Respondent was convicted by the Court on her plea of guilty of violating Health and Safety Code section 11379

1 (transportation of a controlled substance), a felony. On or about September 16, 2004,
2 Respondent received a suspended sentence and judgment on the conviction was withheld, in lieu
3 of Respondent being placed on four (4) years probation. As a condition of probation, the Court
4 also required Respondent to participate in and complete an appropriate drug treatment program,
5 as per Proposition 36. However, Respondent violated the terms of her probation when, on or
6 about September 19, 2008, in the case titled *People v. Kerry Ann Durkee*, (Super. Ct. Ventura
7 County, 2008, Case No. 20088031873) she was convicted by the Court on her plea of guilty of
8 violating Health and Safety Code section 11377(a) (possession of a controlled substance, to wit:
9 methamphetamine), a felony. As a result thereof, on or about May 7, 2009, Respondent's
10 probation was revoked and she was sentenced to serve four (4) years and eight (8) months in
11 state prison, with credit for time served.

12 b. On or about September 19, 2008, in the case titled *People v. Kerry Ann Durkee*,
13 (Super. Ct. Ventura County, 2008, Case No. 20088031873), Respondent was convicted by the
14 Court on her plea of guilty of violating Health and Safety Code section 11377(a) (possession of a
15 controlled substance, to wit: methamphetamine), a felony.

16 c. On or about September 17, 2008, in the case titled *People v. Kerry Ann Durkee*,
17 (Super. Ct. Ventura County, 2008, Case No. 2008009990), Respondent was convicted by the
18 Court on her plea of guilty of violating Penal Code section 484(a) (petty theft, to wit: cable box
19 access card), a misdemeanor.

20 d. On or about September 17, 2008, in the case titled *People v. Kerry Ann Durkee*,
21 (Super. Ct. Ventura County, 2008, Case No. 2008030463), Respondent was convicted by the
22 Court on her plea of guilty of violating Penal Code section 496(a) (receiving stolen property, to
23 wit: laptop computer), a misdemeanor.

24 e. On or about September 17, 2008, in the case titled *People v. Kerry Ann Durkee*,
25 (Super. Ct. Ventura County, 2008, Case No. 2008024478), Respondent was convicted by the
26 Court on her plea of guilty of violating Health and Safety Code section 11375(b)(2) (possession
27 of a controlled substance, to wit: Xanax), a misdemeanor.

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OTHER MATTERS

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

7 9. Pursuant to Code section 8654, if discipline is imposed on Registered
8 Applicator's License Number RA 49008 issued to Respondent, then Respondent shall be
9 prohibited from serving as an officer, director, associate, partner or responsible managing
10 employee of a licensee, and any licensee which employs, elects, or associates Respondent shall
11 be subject to disciplinary action.

PRAYER

12
13 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
14 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

- 15 1. Revoking or suspending Registered Applicator's License Number RA 49008,
16 issued to Respondent;
- 17 2. Revoking or suspending any other license issued to Respondent;
- 18 3. Prohibiting Respondent from serving as an officer, director, associate, partner,
19 qualifying manager or responsible managing employee of any registered company during the
20 period that discipline is imposed on Registered Applicator's License Number RA 49008, issued
21 to Respondent.
- 22 4. Ordering Respondent to pay the Structural Pest Control Board the reasonable
23 costs of the investigation and enforcement of this case, pursuant to Business and Professions
24 Code section 125.3; and,

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

DATED: 3/2/10

Kelli Okuma
KELLI OKUMA
Registrar
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant