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FILED

Date 5/20/11

By William H. Douglas

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

12 In the Matter of the Accusation Against:

Case No. 2011-62

13 **GARRY HUGH DICKINSON**
14 **Terminix International Company, Inc.**
15 **4850 Pacific Highway**
San Diego, CA 92110

ACCUSATION

16 **Applicator License No. RA 49293**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. William H. Douglas (Complainant) brings this Accusation solely in his official
22 capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board,
23 Department of Pesticide Regulation.

24 2. On or about September 19, 2008, the Structural Pest Control Board issued Applicator
25 License Number RA 49293 to Garry Hugh Dickinson (Respondent). The Applicator License will
26 expire on September 19, 2011, unless renewed.

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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 unless otherwise indicated.

4. Section 8620 of the Code 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.

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

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 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

1 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
2 revoke a license when it finds that the licensee has been convicted of a crime.

3 9. Section 8649 of the Code states:

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

7 10. Section 8655 of the Code states:

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

18 11. Section 493 of the Code states:

19 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
20 the department pursuant to law to deny an application for a license or to suspend or revoke a
21 license or otherwise take disciplinary action against a person who holds a license, upon the
22 ground that the applicant or the licensee has been convicted of a crime substantially related to the
23 qualifications, functions, and duties of the licensee in question, the record of conviction of the
24 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
25 and the board may inquire into the circumstances surrounding the commission of the crime in
26 order to fix the degree of discipline or to determine if the conviction is substantially related to the
27 qualifications, functions, and duties of the licensee in question.

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1 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
2 'registration.'"

3 REGULATORY PROVISIONS

4 12. California Code of Regulations, title 16, section 1937.1 states:

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

12 "(a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

13 "(b) Commission of any of the following in connection with the practice of structural pest
14 control:

15 "(1) Fiscal dishonesty

16 "(2) Fraud

17 "(3) Theft

18 "(4) Violations relating to the misuse of pesticides."

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

20 "....

21 "(b) When considering the suspension or revocation of a structural pest control license or
22 company registration on the grounds that the licensee or registered company has been convicted
23 of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or
24 its present eligibility for a license or company registration will consider the following:

25 "(1) Nature and severity of the act(s) or offense(s).

26 "(2) Total criminal record.

27 "(3) The time that has elapsed since commission of the act(s) or offense(s).

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1 enforcement officers. He was further ordered to stay away from the Target Store on Sports Arena
2 Boulevard in San Diego.

3 18. The facts that led to the conviction are that July 24, 2010, at roughly 12:40 p.m. an
4 officer with the San Diego Police Department responded to a call regarding a theft suspect that a
5 security officer was holding at the Target Store at 3245 Sports Arena Boulevard in San Diego.
6 The officer spoke with the security guard who was holding the suspect, Respondent, for
7 shoplifting. The security guard told the officer there were several recent incidents of theft
8 involving Respondent at Target. The security guard discovered these incidents upon reviewing
9 surveillance footage to identify shortages in the cosmetics area. The police officer saw some of
10 the footage with the security guard. The footage covered three days, July 22-July 24, 2010.

11 19. On July 22, 2010, Respondent entered Target at roughly 12:17 p.m. and exchanged 3
12 DVD movies, which he had previously collected while he was in the store and for which he never
13 paid, for a Target Gift Card at Guest Services. Then, he walked from Guest Services to the
14 cosmetic aisle, placed 5 cosmetic items in a red bag, and went to a register. He used the gift card
15 to buy a Visa debit card. He left the store without paying for the concealed cosmetic items.
16 Afterwards, he returned for a second time. He selected three more DVD movies and a floor rug.
17 Respondent left the store with the DVDs and rug without paying for them. He then returned a
18 third time that day and selected a folding table, a wall clock, and a lamp. He left the store without
19 paying for these items.

20 20. On July 23, 2010, Respondent entered Target at roughly 2 p.m., selected an item from
21 the cosmetic section, placed it under his arm, and left without paying for it.

22 21. On July 24, 2010, Respondent entered Target at roughly 1:24 p.m. and selected a
23 barbeque grill. He walked to the doors at the entrance but the security guard stopped him.

24 22. Respondent admitted to the police officer after being informed of his *Miranda* rights
25 the following: he found a way to take merchandise from Target and return it without a receipt, for
26 store credit. On the 22nd, he went into Target to buy a barbeque grill for his birthday. He did not
27 have any money. He walked to the cosmetics section to get Olay products for his girlfriend. He
28 took 5 Olay products and left without paying because he had no money. He also wanted to get

1 store credit by taking DVDs, figuring he had done it before without getting caught. He admitted
2 seeing the registers and making no attempt to pay for the Olay products. He put the products in
3 his vehicle and then went back into the store to get a table and other merchandise to return. He
4 admitted he took DVDs on that same day and returned them in exchange for Visa gift cards,
5 which he used for gas. On the 23rd, he took another Olay cosmetic product. Whenever he had
6 his red bag with him, he put the items he selected in it. He waited near the exit to exchange the
7 Olay product. He noticed a Target employee who refused to exchange any items from him, so he
8 waited until this employee was relieved by another employee to exchange the Olay product, but
9 Respondent left because this employee never left. On the 24th, he entered Target without any
10 money. He wanted to take the barbeque grill.

11 23. Respondent consented to a search of his residence. The officer found the items
12 Respondent took from Target inside of the residence.

13 **PRAYER**

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

- 16 1. Revoking or suspending Applicator License Number RA 49293, issued to Garry
17 Hugh Dickinson;
- 18 2. Ordering Garry Hugh Dickinson to pay the Structural Pest Control Board the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3; and
- 21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 5/20/11

William H. Douglas
WILLIAM H. DOUGLAS
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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