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FILED

Date 3/16/11 By *Kelli Okuma*

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

11 In the Matter of the Accusation Against:
12
13 **JEREMY PAUL MORGAN**
Wizard Pest Control
14 **8754 Golf Drive**
Spring Valley, CA 91977
15 **Applicator License No. RA 49533**
16 Respondent.

Case No. 2011-46
ACCUSATION

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18 Complainant alleges:

19 **PARTIES**

20 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as
21 the Registrar and Executive Officer of the Structural Pest Control Board, Department of Pesticide
22 Regulation.

23 2. On or about December 11, 2008, the Structural Pest Control Board issued Applicator
24 License Number RA 49533 to Jeremy Paul Morgan (Respondent). The Applicator License was in
25 full force and effect at all times relevant to the charges brought herein and will expire on
26 December 11, 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 (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 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

6. 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.

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

8. Section 8649 of the Code 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.

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1 9. Section 8654 of the Code states:

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

17 10. Section 8655 of the Code states:

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

REGULATORY PROVISIONS

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

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

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

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

(1) Fiscal dishonesty

(2) Fraud

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(3) Theft

(4) Violations relating to the misuse of pesticides.

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

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(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.

(c) When considering a petition for reinstatement of a structural pest control license or company registration, the board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).

COSTS

13. Section 125.3 of the Code states, in pertinent part, that a Board 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.

CAUSE FOR DISCIPLINE

(December 17, 2010 Criminal Conviction for Felon/Drug Addict in Possession of a Firearm)

14. Respondent is subject to disciplinary action under sections 490 and 8649 of the Code in that Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of an applicator. The circumstances are as follows:

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1 a. On or about December 17, 2010, in a criminal proceeding entitled *People of the*
2 *State of California v. Jeremy Paul Morgan*, in San Joaquin County Superior Court, case number
3 SF116478A, Respondent was convicted on his plea of guilty of violating Penal Code section
4 12021, subdivision (a)(1), a second strike felon and addict in possession of a firearm. (See
5 *Disciplinary Considerations*, paragraph 15, below.)

6 b. As a result of the conviction, on or about December 17, 2010, Respondent was
7 sentenced to 120 days in the county jail, with credit for seven days, and five years conditional
8 probation. Respondent was further ordered not to own, possess or have custody or control of a
9 firearm, submit to a waiver his Fourth Amendment rights upon request of law enforcement, and
10 pay fees, fines, and restitution in the amount of \$1,465.

11 c. The facts that led to the conviction are that in or about the evening of December
12 10, 2010, the San Joaquin Sheriff's Department responded to a call of a burglary in process at a
13 Stockton residence. Upon arrival, the deputies spoke to the victim who stated that upon returning
14 to her residence, she confronted two unknown males attempting to load her boyfriend's gun safe
15 into the back of their SUV. One suspect, who was wearing a black hoodie sweatshirt, fled on
16 foot, while the driver fled in the SUV. The deputies contacted the registered owner of the SUV
17 using the license plate information provided by the victim. The SUV's owner reported that she
18 was visiting friends and her vehicle was taken by one of the suspects without her permission, and
19 later returned it with fresh damage. The following morning, December 11, 2010, deputies
20 converged on the residence where the suspect was reported living. As they approached the
21 residence, they observed Respondent and another male in the driveway. Respondent appeared to
22 be hiding something underneath the vehicle he was standing next to. A deputy discovered that
23 Respondent had concealed a loaded Smith and Wesson .38 Special inside a black hoodie
24 sweatshirt on the ground. When the deputy alerted his partners that he found a gun, Respondent
25 attempted to flee. A struggle ensued and the deputies were forced to deploy a canine and use
26 physical force to subdue Respondent. A small bag containing 18 additional rounds of
27 ammunition was inside the sweatshirt. Inside Respondent's pocket was a black holster.
28 Respondent's explanation was that he found the gun and the sweatshirt on the ground shortly

1 before the deputies arrived. Respondent confirmed he lived at the same residence as the other
2 suspect in the residential burglary. Respondent was found to have an active warrant on another
3 matter and was arrested.

4 **DISCIPLINARY CONSIDERATIONS**

5 **(June 20, 2005 Criminal Conviction for Carrying a Concealed Weapon & Drug Possession)**

6 15. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
7 to California Code of Regulations, title 16, section 1937.2, Complainant alleges:

8 a. On or about June 20, 2005, in a criminal proceeding entitled *People of the State of*
9 *California v. Jeremy Paul Morgan*, in San Joaquin County Superior Court, case number
10 SF096386A, Respondent was convicted on his plea of guilty of violating Penal Code section
11 12025, subdivision (a)(1), carrying a concealed weapon in a vehicle, a felony. Respondent also
12 pled guilty to violating Health and Safety Code section 11377, subdivision (a), possession of a
13 controlled substance, a felony. An additional count of carrying a loaded firearm, in violation of
14 Penal Code section 12031, subdivision (a)(1), was dismissed pursuant to a plea agreement.

15 b. As a result of the conviction on the weapon charge, on or about June 20, 2005,
16 Respondent was sentenced to three years conditional probation, and ordered to serve two days in
17 the county jail, with credit for two days. Respondent was further ordered not to own, possess or
18 have custody or control of a firearm, and submit to a waiver his Fourth Amendment rights as to
19 weapons upon request of law enforcement. As to the drug possession charge, the court deferred
20 entry of judgment for 18-36 months, pursuant to Penal Code section 1000, and Respondent was
21 ordered to enroll in and complete a drug diversion program, and pay fines, fees, and restitution in
22 the amount of \$500. Respondent failed to enroll in the drug treatment program by the deadline,
23 then he violated program rules by admitting use of cocaine and methamphetamine, refused to
24 submit to a biological sample, refused to attend outside support group meetings, and left the
25 program without testing and without permission. On or about January 10, 2006, Respondent's
26 probation granted on June 20, 2005, was revoked. Upon conviction for the drug possession, the
27 court sentenced Respondent to 120 days in the county jail, with credit for 23 days, and formal
28 probation for five years. Respondent was ordered to pay \$375 in fees, fines, and restitution, and

1 comply with the terms of felony probation, including the condition that he not commit the same
2 or similar offense, that he participate in a treatment program, abstain from the use of alcohol and
3 drugs, not own, possess or have custody or control of a firearm, submit to a waiver his Fourth
4 Amendment rights upon request of law enforcement, register as a narcotics offender, and submit
5 to drug testing as required.

6 **OTHER MATTERS**


7 16. Pursuant to section 8654 of the Code, if discipline is imposed on Applicator License
8 Number RA 49533 issued to Respondent, Jeremy Paul Morgan shall be prohibited from serving
9 as an officer, director, associate, partner, qualifying manager, or responsible managing employee
10 for any registered company during the time the discipline is imposed, and any registered company
11 which employs, elects, or associates Jeremy Paul Morgan shall be subject to disciplinary action.

12 **PRAYER**

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

- 15 1. Revoking or suspending Applicator License Number RA 49533, issued to Jeremy
16 Paul Morgan;
- 17 2. Ordering Jeremy Paul Morgan to pay the Structural Pest Control Board the reasonable
18 costs of the investigation and enforcement of this case, pursuant to Business and Professions
19 Code section 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.
- 21

22 DATED: 3/16/11

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24 KELLI OKUMA
25 Registrar/Executive Officer
26 Structural Pest Control Board
27 Department of Pesticide Regulation
28 State of California
Complainant

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