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FILED

Date 2/28/11 By Kelli Okuma

7
8 BEFORE THE
STRUCTURAL PEST CONTROL BOARD
9 DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation Against:

Case No. 2011-38

12 LUIS DIEGO ESPARZA
2171 Portola Road, Suite A
13 Ventura, CA 93003
Field Representative's License No. FR 45461,
14 Branch 2
Registered Applicator License No. RA 49801,
15 Branch 3

ACCUSATION

16 Respondent.

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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/Executive Officer of the Structural Pest Control Board ("Board"), Department of
22 Pesticide Regulation.

23 Field Representatives License

24 2. On or about April 27, 2010, the Board issued Field Representative's License Number
25 FR 45461 in Branch 2 to Luis Diego Esparza ("Respondent"). The field representative's license
26 was in full force and effect at all times relevant to the charges brought herein and will expire on
27 June 30, 2012, unless renewed.

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1 **Registered Applicator License**

2 3. On or about April 13, 2009, the Board issued Registered Applicator License Number
3 RA 49801, in Branches 2 and 3 to Respondent. On April 27, 2010, the registered applicator
4 license was downgraded to Branch 3 due to the issuance of Field Representative's License
5 Number FR 45461, in Branch 2. The registered applicator license was in full force and effect at
6 all times relevant to the charges brought herein and will expire on April 12, 2012, unless renewed.

7 **STATUTORY PROVISIONS**

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

12 5. Code section 8625 states:

13 The lapsing or suspension of a license or company registration by
14 operation of law or by order or decision of the board or a court of law, or the
15 voluntary surrender of a license or company registration shall not deprive the board of
16 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.

17 6. Code section 8649 states:

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

21 **COST RECOVERY**

22 7. Code section 125.3 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.

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1 CAUSE FOR DISCIPLINE

2 (Criminal Conviction)

3 8. Respondent's licenses are subject to disciplinary action under Code sections 8620 and
4 8649, in that on November 5, 2010, in the Superior Court, County of Ventura, California, in the
5 matter entitled *People vs. Luis Diego Esparza*, Case No. 2010035021 M A, Respondent was
6 convicted by the Court following his plea of guilty to a violation of Penal Code section 487,
7 subdivision (a) (grand theft by embezzlement), a misdemeanor. The circumstances of the crime
8 are that between May 25, 2010, and September 30, 2010, after leaving the employ of Terminix,
9 Respondent unlawfully took money and personal property belonging to Terminix exceeding \$400
10 by using the company gas card on numerous occasions for his own personal use. Such conduct is
11 substantially related to the qualifications, functions, and duties of a licensed field representative
12 and applicator.

13 OTHER MATTERS

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

19 10. Pursuant to Code section 8654, if discipline is imposed on Field Representative's
20 License Number 45461, issued to Luis Diego Esparza and Registered Applicator's License
21 Number RA 49801, issued to Luis Diego Esparza, then Luis Diego Esparza, shall be prohibited
22 from serving as an officer, director, associate, partner or responsible managing employee of a
23 licensee, and any licensee which employs, elects, or associates him shall be subject to disciplinary
24 action.

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PRAYER

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

1. Revoking or suspending Field Representative's License Number FR 45461, issued to Luis Diego Esparza;
2. Revoking or suspending Registered Applicator License Number RA 49801, issued to Luis Diego Esparza;
3. Ordering Luis Diego Esparza to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
4. Taking such other and further action as deemed necessary and proper.

DATED: 2/28/11


KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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