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

In the Matter of the Accusation Against:

Case No. 2010-89

**FRANCISCO JAVIER RUBALCABA
456 South Wellington Road
Orange, CA 92869
Registered Applicator's License No. RA
50075**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about June 30, 2010, Complainant Kelli Okuma, in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Accusation No. 2010-89 against Francisco Javier Rubalcaba (Respondent) before the Structural Pest Control Board. (Accusation attached as Exhibit A.)

2. On or about July 2, 2009, the Structural Pest Control Board (Board) issued Registered Applicator's License No. RA 50075 to Respondent. The Registered Applicator's License was in full force and effect at all times relevant to the charges brought herein and will expire on July 2, 2012, unless renewed.

3. On or about July 9, 2010, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2010-89, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 136
2 and/or agency specific statute or regulation, is required to be reported and maintained with the
3 Board, which was and is: 456 South Wellington Road Orange, CA 92869.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
6 124.

7 5. On or about July 12, 2010, a person signed the Domestic Return Receipt for certified
8 mail, PS Form 3811, on behalf of Respondent."

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

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
17 2010-89.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 2010-89, finds
28 that the charges and allegations in Accusation No. 2010-89, are separately and severally, found to
be true and correct by clear and convincing evidence.

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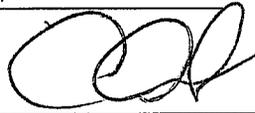
ORDER

IT IS SO ORDERED that Registered Applicator's License No. RA 50075, heretofore issued to Respondent Francisco Javier Rubalcaba, 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 November 20, 2010.

It is so ORDERED October 21, 2010



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

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Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Attorneys for Complainant

FILED

Date 4/30/10 By *Kelli Okuma*

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

In the Matter of the Accusation Against:
**FRANCISCO JAVIER RUBALCABA
aka FRANK JAVIER RUBALCABA
456 South Wellington Road
Orange, CA 92869**
**Registered Applicator's
License No. RA 50075, Branches 2 and 3**

Respondent.

Case No. 2010-89
A C C U S A T I O N

Complainant alleges:

PARTIES

1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation.
2. On or about July 2, 2009, the Structural Pest Control Board issued Registered Applicator's License Number RA 50075, Branches 2 and 3, to Francisco Javier Rubalcaba, aka Frank Javier Rubalcaba (Respondent). The Registered Applicator's License was in full force and effect at all times relevant to the charges brought herein and will expire on July 2, 2012, 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 118 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Section 8620 of the Business and Professions Code provides 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.

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 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

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

7 “(d) The Legislature hereby finds and declares that the application of this section has been
8 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
9 554, and that the holding in that case has placed a significant number of statutes and regulations
10 in question, resulting in potential harm to the consumers of California from licensees who have
11 been convicted of crimes. Therefore, the Legislature finds and declares that this section
12 establishes an independent basis for a board to impose discipline upon a licensee, and that the
13 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not
14 constitute a change to, but rather are declaratory of, existing law.”

15 8. Section 493 of the Code states:

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

25 “As used in this section, “license” includes “certificate,” “permit,” “authority,” and
26 “registration.””

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1 “(1) Fiscal dishonesty

2 “(2) Fraud

3 “(3) Theft

4 “(4) Violations relating to the misuse of pesticides.”

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

6 “(a) When considering the denial of a structural pest control license or company registration
7 under Section 480 of the Business and Professions Code, the board, in evaluating the
8 rehabilitation of the applicant and his or her or its present eligibility for a license or company
9 registration will consider the following criteria:

10 “(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for
11 denial.

12 “(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
13 consideration as grounds for denial which also could be considered as grounds for denial under
14 Section 480 of the Business and Professions Code.

15 “(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in
16 subdivision (1) or (2).

17 “(4) The extent to which the applicant has complied with any terms of parole, probation,
18 restitution, or any other sanctions lawfully imposed against the applicant.

19 “(5) Evidence, if any, of rehabilitation submitted by the applicant.

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

24 “(1) Nature and severity of the act(s) or offense(s).

25 “(2) Total criminal record.

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

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1 had been deposited at Schools First Federal Credit Union. Janine S. also reported that the
2 company immediately recognized the name "Frank Rubalcaba" as that of a former employee who
3 quit his employment with the company on or about November 10, 2008. Janine S. further
4 reported that during Respondent's employment as a field representative, he had possession of the
5 company's business checkbook, which included check #556. Janine S. additionally reported that
6 during Respondent's employment with DonRay Company, that Respondent had permission from
7 the company to use these checks for official business only. On or about December 15, 2009,
8 Santa Ana Police Department detectives interviewed Respondent. On the same date, Respondent
9 was arrested and booked for grand theft.

10 c. As a result of the conviction on January 12, 2010, Respondent was placed on three
11 years informal probation and ordered to serve 120 days in the Orange County Jail. The county
12 jail time was reduced to 30 days, with 90 days stayed pending completion of probation with no
13 new law violations. Respondent was allowed by the Court to complete 30 days CalTrans service
14 in lieu of 30 days in the county jail.

15 PRAYER

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

- 18 1. Revoking or suspending Registered Applicator's License Number RA 50075,
19 Branches 2 and 3, issued to Francisco Javier Rubalcaba, aka Frank Javier Rubalcaba;
- 20 2. Ordering Francisco Javier Rubalcaba, aka Frank Javier Rubalcaba to pay the
21 Structural Pest Control Board the reasonable costs of the investigation and enforcement of this
22 case, pursuant to Business and Professions Code section 125.3;

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

DATED: 6/30/10

Kelli Okuma

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

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