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

10 In the Matter of the Accusation Against:

Case No. 2011-2

11 **MARCO TULIO MARTINEZ**  
12 **5005 August Street, #3**  
13 **Los Angeles, CA 90008**  
14 **Registered Applicator License No. RA 50315**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

15 Respondent.

16  
17 **FINDINGS OF FACT**

18 1. On or about July 12, 2010, Complainant Kelli Okuma, in her official capacity as the  
19 Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide  
20 Regulation, filed Accusation No. 2011-2 against Marco Tulio Martinez (Respondent) before the  
21 Structural Pest Control Board.

22 2. On or about September 16, 2009, the Structural Pest Control Board (Board) issued  
23 Registered Applicator License No. RA 50315 to Respondent. The Registered Applicator License  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 September 16, 2012, unless renewed.

26 3. On or about July 21, 2010, Teresa Sutton, an employee of the Department of Justice,  
27 served by Certified and First Class Mail a copy of the Accusation No. 2011-2, Statement to  
28 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507:5,

1 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: **5005**  
2 **August Street, #3, Los Angeles, CA 90008.**

3 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

4 4. Service of the Accusation was effective as a matter of law under the provisions of  
5 Government Code section 11505, subdivision (c).

6 5. On or about July 26, 2010, the Domestic Return Receipt signed by Respondent was  
7 returned to the Department of Justice by the U.S. Postal Service.

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
16 2011-2.

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

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

21 9. Pursuant to its authority under Government Code section 11520, the Board finds  
22 Respondent is in default. The Board will take action without further hearing and, based on the  
23 evidence on file herein, finds that the allegations in Accusation No. 2011-2 are true.

24 10. The total cost for investigation and enforcement in connection with the Accusation  
25 are \$665.00 as of August 16, 2010.

#### 26 DETERMINATION OF ISSUES

27 1. Based on the foregoing findings of fact, Respondent Marco Tulio Martinez has  
28 subjected his Registered Applicator License No. RA 50315 to discipline.

2 A copy of the Accusation is attached.

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

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

a. Respondent is subject to disciplinary action pursuant to Code sections 8649 and 490, subdivision (a), in that on or about February 16, 2010, in the criminal proceeding titled *People v. Marco Tulio Martinez*, etc. (Super. Ct. Riverside County, 2010, Case No. RIM 10000797), Respondent pled nolo contendere to violating Penal Code section 490.5 (theft of retail merchandise, a misdemeanor), a crime substantially related to the qualifications, functions, and duties of a registered applicator. The circumstances of the crime are as follows: On or about December 29, 2009, Respondent shoplifted various merchandise from Stater Brothers grocery store located in Moreno Valley, California.

ORDER

IT IS SO ORDERED that Registered Applicator License No. RA 50315, heretofore issued to Respondent Marco Tulio Martinez, 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  
DEPARTMENT OF PESTICIDE REGULATION

50725600.DOCX  
DOJ docket number:LA2010501762

Attachment:

Exhibit A: Accusation No. 2011-2

Exhibit A  
Accusation No. 2011-2

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
4 State Bar No. 164015  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2520  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

**FILED**

Date 7/12/10 By Kelli Okuma

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

11 In the Matter of the Accusation Against:

Case No. 2011-2

12 MARCO T. MARTINEZ,  
a.k.a. MARCO TULIO MARTINEZ,  
13 a.k.a. MARCO TULIO MARTINEZ CRUZ,  
a.k.a. MARCO JULIO MARTINEZ  
14 5005 August Street, Unit #3  
Los Angeles, California 90008  
15 Registered Applicator's License No. RA 50315

ACCUSATION

16 Respondent.

17  
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 2. On or about September 16, 2009, the Board issued Registered Applicator's License  
24 Number RA 50315 in Branches 2 (general pest) and 3 (termite) to Marco T. Martinez, also known  
25 as Marco Tulio Martinez, Marco Tulio Martinez Cruz, and Marco Julio Martinez  
26 ("Respondent"). Respondent's registered applicator's license will expire on September 16, 2012,  
27 unless renewed.

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4. Code section 8654 states:

5. Code section 8649 states:

6. Code section 8655 states:

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1           7.     Code section 490, subdivision (a), states:

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

6                                     **COST RECOVERY**

7           8.     Code section 125.3 states, in pertinent part, that a Board may request the  
8                     administrative law judge to direct a licensee found to have committed a violation or violations  
9                     of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10                     enforcement of the case.

11                                     **CAUSE FOR DISCIPLINE**

12                                     **(Criminal Conviction)**

13           9.     Respondent is subject to disciplinary action pursuant to Code sections 8649 and 490,  
14                     subdivision (a), in that on or about February 16, 2010, in the criminal proceeding titled *People v.*  
15                     *Marco Tulio Martinez, etc.* (Super. Ct. Riverside County, 2010, Case No. RIM 10000797),  
16                     Respondent pled nolo contendere to violating Penal Code section 490.5 (theft of retail  
17                     merchandise, a misdemeanor), a crime substantially related to the qualifications, functions, and  
18                     duties of a registered applicator. The circumstances of the crime are as follows: On or about  
19                     December 29, 2009, Respondent shoplifted various merchandise from Stater Brothers grocery  
20                     store located in Moreno Valley, California.

21                                     **OTHER MATTERS**

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

27           11.    Pursuant to Code section 8654, if discipline is imposed on Registered Applicator's  
28                     License Number RA 50315, issued to Marco T. Martinez, also known as Marco Tulio Martinez,  
                      Marco Tulio Martinez Cruz, and Marco Julio Martinez (hereinafter "Marco T. Martinez"), Marco

1 T. Martinez shall be prohibited from serving as an officer, director, associate, partner, qualifying  
2 manager, or responsible managing employee for any registered company during the time the  
3 discipline is imposed, and any registered company which employs, elects, or associates Marco T.  
4 Martinez shall be subject to disciplinary action.

5 PRAYER

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


8 1. Revoking or suspending Registered Applicator's License Number RA 50315, issued  
9 to Marco T. Martinez, also known as Marco Tulio Martinez, Marco Tulio Martinez Cruz, and  
10 Marco Julio Martinez;

11 2. Prohibiting Marco T. Martinez, also known as Marco Tulio Martinez, Marco Tulio  
12 Martinez Cruz, and Marco Julio Martinez, from serving as an officer, director, associate, partner,  
13 qualifying manager or responsible managing employee of any registered company during the  
14 period that discipline is imposed on Registered Applicator's License Number RA 50315, issued  
15 to Marco T. Martinez, also known as Marco Tulio Martinez, Marco Tulio Martinez Cruz, and  
16 Marco Julio Martinez;

17 3. Ordering Marco T. Martinez, also known as Marco Tulio Martinez, Marco Tulio  
18 Martinez Cruz, and Marco Julio Martinez, to pay the Structural Pest Control Board the reasonable  
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
20 Code section 125.3;

21 4. Taking such other and further action as deemed necessary and proper.  
22

23 DATED: 2/12/10

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

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