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

In the Matter of the First Amended Accusation
Against:

Case No. 2011-72(i)

JOHN E. PENTON

DEFAULT DECISION AND ORDER

1100 Willow Street
Atwater, CA 95301
Applicator License No. RA50355, Br. 2 & 3

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about August 29, 2012, Complainant William H. Douglas, in his official capacity as the Interim Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed First Amended Accusation No. 2011-72(i) against John E. Penton (Respondent) before the Structural Pest Control Board. (First Amended Accusation attached as Exhibit A.)

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1 2. On or about September 25, 2009, the Structural Pest Control Board (Board) issued
2 Applicator License No. RA50355 to Respondent. The Applicator License was in full force and
3 effect at all times relevant to the charges brought in First Amended Accusation No. 2011-72(i)
4 and expired on September 25, 2012. While the license has now expired, this lapse in licensure,
5 pursuant to Business and Professions Code section 118(b), does not deprive the Board of its
6 authority to institute or continue this disciplinary proceeding.

7 3. On or about September 4, 2012, Respondent was served by First Class and Certified
8 Mail copies of the First Amended Accusation No. 2011-72(i), Statement to Respondent, Notice of
9 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
10 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and
11 Professions Code section 136, is required to be reported and maintained with the Board.
12 Respondent's address of record was and is:

13 1100 Willow Street
14 Atwater, CA 95301.

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

18 5. On or about September 23, 2012, the aforementioned Certified Mail documents were
19 returned by the U.S. Postal Service marked "Unclaimed."

20 6. The aforementioned First Class Mail documents were never returned.

21 7. Government Code section 11506 states, in pertinent part:

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

27 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
28 of the First Amended Accusation, and therefore waived his right to a hearing on the merits of
First Amended Accusation No. 2011-72(i).

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1 9. California Government Code section 11520 states, in pertinent part:

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

6 10. Pursuant to its authority under Government Code section 11520, the Board finds
7 Respondent is in default. The Board will take action without further hearing and, based on the
8 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
9 taking official notice of all the investigatory reports, exhibits and statements contained therein on
10 file at the Board's offices regarding the allegations contained in First Amended Accusation No.
11 2011-72(i), finds that the charges and allegations in First Amended Accusation No. 2011-72(i),
12 are separately and severally, found to be true and correct by clear and convincing evidence.

13 11. Taking official notice of its own internal records, pursuant to Business and
14 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
15 and Enforcement is \$777.50 as of May 17, 2013.

16 DETERMINATION OF ISSUES

17 1. Based on the foregoing findings of fact, Respondent John E. Penton has subjected his
18 Applicator License No. RA50355 to discipline.

19 2. The agency has jurisdiction to adjudicate this case by default.

20 3. The Structural Pest Control Board is authorized to revoke Respondent's Applicator
21 License based upon the following violations alleged in the First Amended Accusation which are
22 supported by the evidence contained in the Default Decision Evidence Packet in this case:

23 a. Business and Professions Code section 8651, in that in 2009 and 2010, Respondent
24 engaged in pest control work in a branch other than that for which he was licensed.

25 ORDER


26 IT IS SO ORDERED that Applicator License No. RA50355, heretofore issued to
27 Respondent John E. Penton, is revoked.

28 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

1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on August 22, 2013.

4 It is so ORDERED July 23, 2013

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8 FOR THE STRUCTURAL PEST CONTROL
9 BOARD
10 DEPARTMENT OF PESTICIDE REGULATION

11 11094449.DOC
12 SA2011101884

13 Attachment:
14 Exhibit A: First Amended Accusation

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