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FILED

Date 3/10/11 By *Kelli Okuma*

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

11 In the Matter of the Accusation Against:

Case No. 2011-42

12 **BARRY RONALD HERRON**

13 **1386 Linhere Street**
14 **Carpinteria, CA 93013**

A C C U S A T I O N

15 **Applicator's License No. RA 50560, Branches 2**
16 **and 3**

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 **Applicator's License**

23 2. On or about December 28, 2009, the Board issued Applicator's License Number RA
24 50560 in Branches 2 and 3 to Barry Ronald Herron ("Respondent"). The applicator's license was
25 in full force and effect at all times relevant to the charges brought herein and will expire on
26 December 28, 2012, unless renewed.

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JURISDICTION AND RELEVANT STATUTES

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3. This Accusation is brought before the Board under the authority of the following laws:

4. Section 8620 of the Business and Professions Code ("Code") and Code section 8623 provide, 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.

5. Code Section 8620 also provides that the Board may assess a civil penalty in lieu of a suspension:

In addition to its authority to suspend or revoke a license, the board may assess a civil penalty as follows:

(a) Upon the conclusion of a hearing held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, if the proposed decision of the hearing officer is that the licensee is guilty of or has committed any one of the acts or omissions constituting grounds for disciplinary action, the proposed decision shall provide for the imposition of a suspension or for the revocation of the license. In this case, the board may impose the suspension or revocation. The board may also, in lieu of a suspension, assess a civil penalty. The licensee may express a preference for a form of discipline, but the board shall not be bound by any expression of preference.

If a licensee elects to stipulate to a disciplinary action prior to an administrative hearing, the board may impose a civil penalty, in accordance with this section, in lieu of suspension. If a proposed stipulation is rejected by the board, it is null and void and does not constitute an admission of any violation charged.

(b) The civil penalty shall not be more than five thousand dollars (\$5,000) for an actual suspension of one to 19 days.

(c) The civil penalty shall not be more than ten thousand dollars (\$10,000) for an actual suspension of 20 to 45 days.

(d) If a licensee is assessed the civil penalty in lieu of an actual suspension, the penalty shall be paid before the effective date of the decision.

(e) If the civil penalty is not paid before the effective date of the suspension, the license shall be suspended until the penalty is paid or until the actual suspension is served.

No civil penalty shall be assessed in lieu of any suspension which exceeds 45 days. With the exception of the proceedings on suspensions undertaken or on fines levied pursuant to Section 8617, the proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

1 In any order of suspension or revocation, the board may authorize the completion
2 of any contract or work contracted for under terms and conditions set forth in the
3 order.

4 6. Code section 8625 grants the Board jurisdiction over lapsed, suspended, or
5 surrendered licenses:

6 The lapsing or suspension of a license or company registration by
7 operation of law or by order or decision of the board or a court of law, or the
8 voluntary surrender of a license or company registration shall not deprive the board of
9 jurisdiction to proceed with any investigation of or action or disciplinary proceeding
10 against such licensee or company, or to render a decision suspending or revoking
11 such license or registration.

12 7. Code section 8649 provides that substantially related convictions are grounds for
13 discipline:

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

18 8. Code section 490 provides in relevant part an independent basis for discipline for
19 substantially related convictions:

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

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

30 (c) A conviction within the meaning of this section means a plea or
31 verdict of guilty or a conviction following a plea of nolo contendere. An action that a
32 board is permitted to take following the establishment of a conviction may be taken
33 when the time for appeal has elapsed, or the judgment of conviction has been
34 affirmed on appeal, or when an order granting probation is made suspending the
35 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
36 Penal Code.

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COST RECOVERY

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9. Code section 125.3 provides 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.

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FIRST CAUSE FOR DISCIPLINE

(Business and Professions Code Section 8649 - Substantially Related Criminal Conviction)

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10. Respondent's license is subject to disciplinary action under Code section 8649 because Respondent pled no contest to and was convicted of a violation of Health and Safety Code section 11358 (cultivating marijuana), a felony, on June 8, 2010 in Santa Barbara Superior Court in the matter entitled *People vs. Barry Ronald Herron*, Case No. 1331850.

11. The circumstances of the Respondent's conviction for marijuana cultivation are as follows:

- a. On or about March 22, 2010, Respondent posted a Craigslist advertisement offering to sell marijuana clippings (also known as "clones"). The ad included his first initial, indicated he lived in Carpinteria, and listed his cell phone number.
- b. After contacting Respondent, Sheriff's officers arranged a meeting in Montecito, where Respondent was working as an exterminator. Respondent drove his work truck to the meeting during working hours. He was arrested after he sold marijuana clones to an undercover officer. The officers then discovered two glass pipes used to smoke methamphetamine and an operable digital scale in his truck.
- c. After arresting him, Sheriff's officers executed a search warrant at his house, where he lived with his wife and three children. There they found marijuana plants growing in plain view in the back yard and other marijuana plants in the garage.

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1 12. Respondent's conduct is substantially related to the qualifications, functions, and
2 duties of a licensed applicator, because during working hours he sold marijuana he cultivated and
3 used work equipment to do so.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Business and Professions Code Section 490 - Substantially Related Criminal Conviction)**

6 13. By committing the acts alleged in paragraphs 10 through 12 above, realleged herein
7 and incorporated as though set forth in full, Respondent's license is subject to disciplinary action
8 under Code section 490 because Respondent's conviction for a violation of Health and Safety
9 Code section 11358 is substantially related to the qualifications, functions, and duties of a
10 licensed applicator, because during work hours he sold marijuana he cultivated and used work
11 equipment to do so.

12 **OTHER MATTERS**

13 14. Pursuant to Code section 8654, if discipline is imposed on Applicator's License
14 Number RA 50560, issued to Respondent, then Barry Ronald Herron, shall be prohibited from
15 serving as an officer, director, associate, partner or responsible managing employee of a Board
16 licensee, and any licensee which employs, elects, or associates him shall be subject to disciplinary
17 action.

18 **PRAYER**

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

21 1. Revoking or suspending Applicator's License Number RA 50560, issued to Barry
22 Ronald Herron;

23 2. Ordering Barry Ronald Herron to pay the Structural Pest Control Board the
24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
25 Professions Code section 125.3; and,

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

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DATED: 3/10/11

Kelli Okuma

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

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