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FILED

Date 3/15/13 By *Susan Saylor*

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

11 In the Matter of the Accusation Against:

Case No. 2013-38

12 **MICHAEL T. RINCON**
13 4920 East Ashlan Avenue
Fresno, California 93726

A C C U S A T I O N

14 Applicator License No. RA 50757

15 Respondent.

17 Susan Saylor ("Complainant") alleges:

18 **PARTIES**

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

22 **Registered Applicator's License**

23 2. On or about March 26, 2010, the Board issued Applicator License Number RA 50757
24 to Michael T. Rincon (Respondent). The Applicator License was in full force and effect at all
25 times relevant to the charges brought herein and will expire on March 26, 2013, unless renewed.

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1 **JURISDICTION**

2 3. Business and Professions Code (“Code”) section 8620 provides, in pertinent part, that
3 the Board may suspend or revoke a license when it finds that the holder, while a licensee or
4 applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu
5 of a suspension may assess a civil penalty.

6 4. Code section 8625 states:

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

13 **STATUTORY PROVISIONS**

14 5. Code section 8649 states:

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

19 6. Code section 8654 states:

20 Any individual who has been denied a license for any of the reasons specified
21 in Section 8568, or who has had his or her license revoked, or whose license is under
22 suspension, or who has failed to renew his or her license while it was under
23 suspension, or who has been a member, officer, director, associate, qualifying
24 manager, or responsible managing employee of any partnership, corporation, firm, or
25 association whose application for a company registration has been denied for any of
26 the reasons specified in Section 8568, or whose company registration has been
27 revoked as a result of disciplinary action, or whose company registration is under
28 suspension, and while acting as such member, officer, director, associate, qualifying
manager, or responsible managing employee had knowledge of or participated in any
of the prohibited acts for which the license or registration was denied, suspended or
revoked, shall be prohibited from serving as an officer, director, associate, partner,
qualifying manager, or responsible managing employee of a registered company, and
the employment, election or association of such person by a registered company is a
ground for disciplinary action.

COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the 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, with failure of the licentiate to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **CAUSE FOR DISCIPLINE**

4 **(Conviction of Crimes)**

5 8. Respondent is subject to discipline under Code section 8649, in that on or about
6 September 6, 2012, in the case entitled, *People v. Michael Thomas Rincon, et al*, (Fresno County
7 Superior Court (2012), Case No. F11905861), Respondent was convicted by the Court on his plea
8 of nolo contendere of violating Penal Code section 245, subdivision (a)(1) (assault with a deadly
9 weapon of force likely to produce great bodily injury), and section 487, subdivision (c) (grand
10 theft involving another person), felonies and crimes that are substantially related to the
11 qualifications, functions, or duties of an applicator. The circumstances of the crime are that on or
12 about September 25, 2011, Respondent, accompanied by three individuals, entered the premises
13 of another, physically assaulted an occupant of the premises with a chair, and then removed from
14 the premises firearms belonging to that individual.

15 **OTHER MATTERS**

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

21 10. Pursuant to Code section 8654, if discipline is imposed on Registered Applicator's
22 License Number RA 50757, issued to Respondent, then Respondent shall be prohibited from
23 serving as an officer, director, associate, partner or responsible managing employee of a licensee,
24 and any licensee which employs, elects, or associates Respondent shall be subject to disciplinary
25 action.

26 **PRAYER**

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

1 1. Revoking or suspending Registered Applicator's License Number RA 50757, issued
2 to Michael T. Rincon;

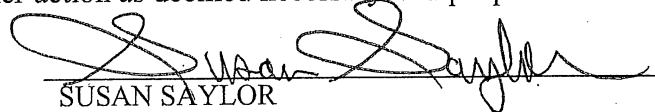
3 2. Revoking or suspending any other license issued to Michael T. Rincon;

4 3. Prohibiting Michael T. Rincon from serving as an officer, director, associate, partner,
5 qualifying manager, or responsible managing employee of any registered company during the
6 period that discipline is imposed on Registered Applicator's License Number RA 50757, issued
7 to Michael T. Rincon;

8 4. Ordering Michael T. Rincon to pay the Structural Pest Control Board the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3; and,

11 5. Taking such other and further action as deemed necessary and proper.

12 DATED: 3/15/13



SUSAN SAYLOR
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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