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

In the Matter of the Accusation Against:

**MICHAEL T. RINCON
4920 East Ashlan Avenue
Fresno, California 93726
Applicator License No. RA 50757**

Respondent.

Case No. 2013-38

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 15, 2013, Complainant Susan Saylor, in her official capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Accusation No. 2013-38 against Michael T. Rincon (Respondent) before the Structural Pest Control Board. (Accusation attached as Exhibit A.)
2. On or about March 26, 2010, the Structural Pest Control Board (Board) issued Applicator License No. RA 50757 to Respondent. The Applicator License was in full force and effect at all times relevant to the charges brought in Accusation No. 2013-38 and expired on

1 March 26, 2013. This lapse in licensure, however, pursuant to Business and Professions Code
2 sections 118(b) and Business & Professions Code section 8625 does not deprive the Board of its
3 authority to institute or continue this disciplinary proceeding.

4 3. On or about March 21, 2013, Respondent was served by Certified Mail and United
5 States First Class Mail with copies of the Accusation No. 2013-38, Statement to Respondent,
6 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
7 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business
8 and Professions Code section 136, is required to be reported and maintained with the Board.
9 Respondent's address of record was and is: Michael T. Rincon, 4920 East Ashlan Avenue
10 Fresno, California 93726.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 5. On or about April 2, 2013, the aforementioned documents mailed to respondent by
15 Certified Mail were returned by the U.S. Postal Service marked "Insufficient Address." The
16 United States First Class Mail mailed to Respondent and containing said documents has not been
17 returned by the United States Postal Service.

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

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

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2-
26 13-38.

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

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

1 9. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
4 as well as taking official notice of all the investigatory reports, exhibits and statements contained
5 therein on file at the Board's offices regarding the allegations contained in Accusation No. 2013-
6 38, finds that the charges and allegations in Accusation No. 2013-38, are separately and severally,
7 found to be true and correct by clear and convincing evidence.

8 10. Taking official notice of its own internal records, pursuant to Business and
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
10 and Enforcement is \$1,112.50 as of April 22, 2013.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent Michael T. Rincon has subjected
13 his Applicator License No. RA 50757 to discipline.

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

15 3. The Structural Pest Control Board is authorized to revoke Respondent's Applicator
16 License based upon the following violations alleged in the Accusation which are supported by the
17 evidence contained in the Default Decision Evidence Packet in this case: Business & Professions
18 Code section 8649 by Respondent's conviction in September 2012 for assault with a deadly
19 weapon of force likely to produce great bodily injury, and grand theft involving another person,
20 each felonies.


21 ORDER

22 IT IS SO ORDERED that Applicator License No. RA 50757, heretofore issued to
23 Respondent Michael T. Rincon, is revoked.

24 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
25 written motion requesting that the Decision be vacated and stating the grounds relied within seven
26 (7) days after service of the Decision on Respondent. The agency, in its discretion, may vacate
27 the Decision and grant a hearing on a showing of good cause, as defined in the statute.
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1 This Decision shall become effective on June 13, 2013.

2 It is so ORDERED May 14, 2013

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6 FOR THE STRUCTURAL PEST CONTROL
7 BOARD
8 DEPARTMENT OF PESTICIDE REGULATION

9 Attachment:
10 Exhibit A: Accusation

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