

FILED

Date

4/23/12

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

11 In the Matter of the Accusation Against:

Case No. 2012-51

12 **NOEL B. WOOD**
13 **9135 Chesapeake Drive**
14 **San Diego, CA 92123**

ACCUSATION

15 **Applicator's License No. RA 51100**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about January July 1, 2010, the Structural Pest Control Board issued
23 Applicator's License Number RA 51100, Branch 2 and 3, to Noel B. Wood (Respondent). The
24 Applicator's License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on July 1, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Structural Pest Control Board (Board), Department of Pesticide Regulation, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Section 8620 of the Business and Professions Code provides 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 or in lieu of a suspension may assess a civil penalty.

6. Section 8625 of the Code states:

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

STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering the suspension or revocation of a license under Section 490. Each

board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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1 8. Section 490 of the Code states:

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

11 (c) A conviction within the meaning of this section means a plea or verdict of
12 guilty or a conviction following a plea of nolo contendere. Any action that a board is
13 permitted to take following the establishment of a conviction may be taken when the
14 time for appeal has elapsed, or the judgment of conviction has been affirmed on
15 appeal, or when an order granting probation is made suspending the imposition of
16 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
17 the Penal Code.

18 (d) The Legislature hereby finds and declares that the application of this section
19 has been made unclear by the holding in *Petropoulos v. Department of Real Estate*
20 (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
21 number of statutes and regulations in question, resulting in potential harm to the
22 consumers of California from licensees who have been convicted of crimes.
23 Therefore, the Legislature finds and declares that this section establishes an
24 independent basis for a board to impose discipline upon a licensee, and that the
25 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session
26 do not constitute a change to, but rather are declaratory of, existing law.

27 9. Section 493 of the Code states:

28 Notwithstanding any other provision of law, in a proceeding conducted by a
board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

10. Section 8649 of the Code states:

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

1 11. Section 8655 of the Code states:

2 A plea or verdict of guilty or a conviction following a plea of nolo contendere
3 made to a charge substantially related to the qualifications, functions, and duties of a
4 structural pest control operator, field representative, applicator, or registered company
5 is deemed to be a conviction within the meaning of this article or Section 8568 of this
6 chapter. The board may order the license or registration suspended or revoked, or
7 may decline to issue a license, when the time for appeal has elapsed, or the judgment
8 of conviction has been affirmed on appeal or when an order granting probation is
9 made suspending the imposition of sentence, irrespective of a subsequent order under
10 the provisions of Section 1203.4 of the Penal Code allowing the individual or
11 registered company to withdraw a plea of guilty and to enter a plea of not guilty, or
12 setting aside the verdict of guilty, or dismissing the accusation, information or
13 indictment.

8 REGULATORY PROVISION

9 12. California Code of Regulations, title 16, section 1937.1 states:

10 For the purposes of denial, suspension or revocation of a license or company
11 registration pursuant to Division 1.5 (commencing with Section 475) of the code, a
12 crime or act shall be considered to be substantially related to the qualifications,
13 functions or duties of a licensee or registered company under Chapter 14 of Division
14 3 of the code if to a substantial degree it evidences present or potential unfitness of
15 such licensee or registered company to perform the functions authorized by the
16 license or company registration in a manner consistent with the public health, safety,
17 or welfare. Such crimes or acts shall include, but not be limited to, the following:

15 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

16 (b) Commission of any of the following in connection with the practice of
17 structural pest control:

18 (1) Fiscal dishonesty

19 (2) Fraud

20 (3) Theft

21 (4) Violations relating to the misuse of pesticides.

22 13. California Code of Regulations, title 16, section 1937.2 states:

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24 (b) When considering the suspension or revocation of a structural pest control
25 license or company registration on the grounds that the licensee or registered
26 company has been convicted of a crime, the board, in evaluating the rehabilitation of
27 such person or company and his or her or its present eligibility for a license or
28 company registration will consider the following:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

2 (4) Whether the licensee or registered company has complied with any terms of
3 parole, probation, restitution or any other sanctions lawfully imposed against the
4 licensee or registered company.

5 (5) If applicable, evidence of expungement proceedings pursuant to Section
6 1203.4 of the Penal Code.

7 (6) Evidence, if any of rehabilitation submitted by the licensee or registered
8 company.

9 (c) When considering a petition for reinstatement of a structural pest control
10 license or company registration, the board shall evaluate evidence of rehabilitation
11 submitted by the petitioner, considering those criteria specified in subsection (b).

12 COST RECOVERY

13 14. Section 125.3 of the Code provides that a Board may request the administrative law
14 judge to direct a licentiate found to have committed a violation or violations of the licensing act to
15 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

16 CAUSE FOR DISCIPLINE

17 **(October 25, 2011 Criminal Conviction for Burglary and Auto Theft in July/August 2010)**

18 15. Respondent is subject to disciplinary action under Code sections 490, and 8649 in that
19 Respondent was convicted of crimes that are substantially related to the qualifications, functions,
20 and duties of an applicator. The circumstances are as follows:

21 16. On October 25, 2011, in a criminal proceeding entitled *The People of the State of*
22 *California v. Noel Burton Wood, III*, in the Superior Court of California, County of San Diego,
23 Couth County Division, in Case Number CS242404, Respondent was convicted by his plea of
24 guilty to violating Penal Code section 450/460 (second degree burglary) and Vehicle Code
25 section 10851(a) (auto theft), felonies. The circumstances are as follows:

26 17. On or about July 28, 2010, Y.I. reported to the Chula Vista Police Department that
27 she had been the victim of a theft at her home by Respondent. Y.I. told detectives that she
28 became acquainted with Respondent while in high school and had attended a high school reunion
with Respondent. Y.I. told detectives that she had allowed Respondent to stay at her residence up
until approximately July 17, 2010, because Respondent was "down on his luck," but kicked
Respondent out for his drug usage and because of anger issues. Shortly thereafter, Y.I. talked to a

1 mutual friend of hers and Respondent (H.S.), who told Y.I. that Respondent had stolen a vehicle
2 which belonged to H.S. that H.S. kept at Y.I.'s residence. Y.I. told detectives that she never
3 thought to check her valuables after she kicked Respondent out, until she talked to H.S. about the
4 vehicle theft, and this prompted Y.I. to check her jewelry and found that several pieces of jewelry
5 were missing from her jewelry box. Y.I. told detectives that she did not know if Respondent had
6 taken the jewelry while he was staying there or if Respondent had keys to her residence and came
7 back later to take her property without her permission as she had not changed the locks up to that
8 point.

9 18. Victim H.S. reported to Chula Vista Police officers that Respondent took a vehicle
10 that belonged to H.S., which H.S. kept at Y.I.'s home. H.S. told officers that he believed
11 Respondent took the car keys from inside Y.I.'s home while Respondent was staying there. H.S.
12 told officers that when he questioned Respondent about the vehicle, that Respondent gave him the
13 run-around several times by telling H.S. where the vehicle was supposedly located, but that each
14 time H.S. went to that particular location, the vehicle was not there.

15 19. As a result of the conviction, on or about November 28, 2011, Respondent was placed
16 on three (3) years formal probation, and committed to the custody of the sheriff for 111 days, with
17 111 days credit for time served/good time credits. Respondent was also ordered to pay various
18 fines and fees and restitution to victim Y.I. in the amount of \$3,300.

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P R A Y E R


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

1. Revoking or suspending Applicator's License Number RA 51100, Branch 2 and 3, issued to Noel B. Wood;

2. Ordering Noel B. Wood to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 4/23/12


WILLIAM H. DOUGLAS
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

SD2012703141