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

In the Matter of the Accusation Against:

Case No. 2012-16

NATHAN M. BARROS
24323 Jackson Street #739
Murrieta, CA 92564

DEFAULT DECISION AND ORDER

Applicator License No. RA 51191

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about October 3, 2011, Complainant William H. Douglas, in his official capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Accusation No. 2012-16 against Nathan M. Barros (Respondent) before the Structural Pest Control Board. (Accusation attached as Exhibit A.)

2. On or about July 28, 2010, the Structural Pest Control Board (Board) issued Applicator License No. RA 51191 to Respondent. The Applicator License was in full force and effect at all times relevant to the charges brought in Accusation No. 2012-16 and will expire on July 28, 2013, unless renewed.

3. On or about January 19, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2012-16, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 136, is required to be reported and maintained with the Board, which was and is:

1 24323 Jackson Street #739
2 Murrieta, CA 92564

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
5 124.

6 5. On or about February 3, 2012, the aforementioned documents were returned by the
7 U.S. Postal Service marked "Not Deliverable as Addressed - Unable to Forward." The address on
8 the documents was the same as the address on file with the Board. Respondent failed to maintain
9 an updated address with the Board and the Board has made attempts to serve the Respondent at
10 the address on file. Respondent has not made himself available for service and therefore, has not
11 availed himself of his right to file a notice of defense and appear at hearing.

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

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

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
20 2012-16.

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

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

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 2012-16, finds

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1 that the charges and allegations in Accusation No. 2012-16, are separately and severally, found to
2 be true and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$522.50 as of November 28, 2011.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Nathan M. Barros has subjected
8 his Applicator License No. RA 51191 to discipline.

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

10 3. The Structural Pest Control Board is authorized to revoke Respondent's Applicator
11 License based upon the following violation alleged in the Accusation which is supported by the
12 Default Decision Investigatory Evidence Packet in this case:

13 Respondent's license is subject to disciplinary action under sections 490 and 8649 of the
14 Code in that on or about May 4, 2011, in a criminal proceeding entitled *People of the State of*
15 *California v. Nathan Mitchell Barros*, in Riverside County Superior Court, case number
16 SWF1100532, Respondent was convicted on his plea of guilty of violating Penal Code section
17 246, discharging a firearm at an occupied building, a felony, a crime substantially related to the
18 qualifications, functions, and duties of an applicator.

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ORDER

IT IS SO ORDERED that Applicator License No. RA 51191, heretofore issued to Respondent Nathan M. Barros, is revoked.

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

This Decision shall become effective on March 10, 2012.

It is so ORDERED February 9, 2012


FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

DOJ Matter ID:SD2011801104

Attachment:
Exhibit A: Accusation

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Attorney General of California
2 LINDA K. SCHNEIDER
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3 State Bar No. 101336
AMANDA DODDS
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Attorneys for Complainant

FILED

Date 10/3/11 By William H. Douglas

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

12 In the Matter of the Accusation Against:

Case No. 2012-16

13 **NATHAN M. BARROS**
24323 Jackson Avenue #739
14 Murrieta, CA 92564

A C C U S A T I O N

15 **Applicator License No. RA 51191**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about July 28, 2010, the Structural Pest Control Board issued Applicator
24 License Number RA 51191 to Nathan M. Barros (Respondent). The Applicator License was in
25 full force and effect at all times relevant to the charges brought herein and will expire on July 28,
26 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 8620 of the Code provides, 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 or in lieu of a suspension may assess a civil penalty.

5. 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

6. 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 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.

7. Section 490 of the Code states, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime.

8. 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.

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1 9. 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.

14 **REGULATORY PROVISIONS**

15 10. California Code of Regulations, title 16, section 1937.1 states:

16 For the purposes of denial, suspension or revocation of a license or company
17 registration pursuant to Division 1.5 (commencing with Section 475) of the code, a
18 crime or act shall be considered to be substantially related to the qualifications,
19 functions or duties of a licensee or registered company under Chapter 14 of Division
20 3 of the code if to a substantial degree it evidences present or potential unfitness of
21 such licensee or registered company to perform the functions authorized by the
22 license or company registration in a manner consistent with the public health, safety,
23 or welfare. Such crimes or acts shall include, but not be limited to, the following:

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

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

- 27 (1) Fiscal dishonesty
- 28 (2) Fraud
- (3) Theft
- (4) Violations relating to the misuse of pesticides.

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

.....

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

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

1 (2) Total criminal record.

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

3 (4) Whether the licensee or registered company has complied with any terms of
4 parole, probation, restitution or any other sanctions lawfully imposed against the
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
license or company registration, the board shall evaluate evidence of rehabilitation
submitted by the petitioner, considering those criteria specified in subsection (b).

10 COSTS

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

15 CAUSE FOR DISCIPLINE

16 (May 4, 2011 Criminal Conviction for Discharging a Firearm 17 into a Restaurant on January 1, 2011)

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

21 a. On or about May 4, 2011, in a criminal proceeding entitled *People of the State of*
22 *California v. Nathan Mitchell Barros*, in Riverside County Superior Court, case number
23 SWF1100532, Respondent was convicted on his plea of guilty of violating Penal Code section
24 246, discharging a firearm at an occupied building, a felony.

25 b. As a result of the conviction, on or about June 24, 2011, Respondent was
26 sentenced to the upper term of seven years in state prison, suspended. Respondent was granted
27 formal probation for 60 months and he was ordered to serve 180 days in the custody of the
28 Riverside County Sheriff (with 60 days "straight time" imposed), and credit for two days.

1 Respondent was further ordered to abstain from alcoholic beverages and not frequent places
2 where it is sold, to attend Anger Management classes followed by 52 Alcoholics Anonymous
3 meetings or an approved alternative program, to enroll in and complete a substance abuse
4 treatment program, to pay fees, fines, and restitution in the amount of \$5,593.45 plus the cost of
5 probation, and to comply with felony probation terms (Fourth Amendment waiver, lifetime ban
6 on the possession of a firearm/deadly weapon/ammunition, and a ban on associating with known
7 gang members or felons).

8 c. The facts that led to the conviction are that on or about 3:45 a.m. on New Year's
9 Day, January 1, 2011, the Murrieta Police Department was dispatched to a report of a gunshot
10 fired at a Denny's restaurant. Upon arrival, the officers discovered the suspects had fled. In a
11 subsequent investigation, it was learned that Respondent and his wife, along with a group of
12 friends, had spent New Year's Eve at a casino on the Pechanga Indian Reservation. Respondent
13 became angry when he could not get his wife, who was intoxicated, to leave the party; he left
14 without her. Respondent's wife and her friends went to a Denney's restaurant. Respondent
15 arrived later with a friend and they sat in Respondent's vehicle in the restaurant's parking lot.
16 Respondent's wife refused to leave Denney's, so Respondent's friend went inside to coax her to
17 leave. When she refused, Respondent fired a round into the restaurant, which was occupied by
18 approximately 24 customers, plus employees. The round shattered the window. Respondent's
19 wife fled with Respondent in his vehicle. Respondent was arrested at his residence on January
20 27, 2011.

21 OTHER MATTERS

22 14. Pursuant to section 8654 of the Code, if discipline is imposed on Applicator License
23 Number RA 51191 issued to Respondent, Nathan M. Barros shall be prohibited from serving as
24 an officer, director, associate, partner, qualifying manager, or responsible managing employee for
25 any registered company during the time the discipline is imposed, and any registered company
26 which employs, elects, or associates Nathan M. Barros shall be subject to disciplinary action.

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PRAYER

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 License Number RA 51191, issued to Nathan M. Barros;
2. Ordering Nathan M. Barros 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: 10/3/11


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

SD2011801104