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8	BEFORE THE
9	STRUCTURAL PEST CONTROL BOARD DEPARTMENT OF PESTICIDE REGULATION
10	STATE OF CALIFORNIA
11	In the Matter of the Accusation/Petition to Case No. 2013-46
12	Revoke Probation Against,
13	NAPOLEON DOWTHARD1555 Yosemite Avenue, #46ACCUSATION AND PETITION TO
14	San Francisco, CA 94124 REVOKE PROBATION
15	Applicator License No. RA 51779, Branches 2 and 3
16	Respondent.
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18	Complainant alleges:
19	PARTIES
20	1. Susan Saylor (Complainant) brings this Accusation and Petition to Revoke Probation
21	solely in her official capacity as the Interim Registrar/Executive Officer of the Structural Pest
22	Control Board, Department of Pesticide Regulation.
23	2. On or about February 24, 2011, the Structural Pest Control Board issued probationary
24	Applicator License Number RA 51779, Branches 2 and 3, to Napoleon Dowthard (Respondent).
25	The Applicator License was in effect at all times relevant to the charges brought in this
26	Accusation and will expire on February 24, 2014, unless renewed.
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	ACCUSATION/PETITION TO REVOKE PROBATION

3. In a disciplinary action entitled "In the Matter of Statement of Issues Against Napoleon Dowthard, Jr.," Case No. 2011-6, the Structural Pest Control Board, issued a decision, effective February 24, 2011, in which Respondent's Applicator License was revoked. However, the revocation was stayed and Respondent's Applicator License was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

8 4. This Accusation and Petition to Revoke Probation is brought before the Structural
9 Pest Control Board (Board), Department of Pesticide Regulation, under the authority of the
10 following laws. All section references are to the Business and Professions Code unless otherwise
11 indicated.

5. Code section 118, subdivision (b), states that the suspension, expiration, surrender, or
cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
action during the period within which the license may be renewed, restored, reissued or
reinstated.

6. Code section 8620 states in 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.

7. Section 8625 of the Code states: "[t]he 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."

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8. California Code of Regulations, title 16, section 1937.12 states, in part:

"(a) Whenever a proposed decision places a licensee or registered company on probation as
a condition of staying a revocation or staying all or any portion of a suspension, the order
granting such probation shall include at least the following conditions:

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"(1) That the licensee or registered company shall file quarterly reports with the board during the period of probation;

"(2) Such other terms and conditions as may be appropriate in light of the number and nature of the violations proven

"(b) Nothing in this regulation shall deprive the board of its authority to modify or delete any term or condition of probation contained in a proposed decision submitted by an administrative law judge."

STATUTORY PROVISIONS

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9. Code section 490 provides, in part, that the Board may suspend or revoke a license
10 when it finds that the licensee has been convicted of a crime substantially related to the
11 qualifications, functions, or duties of the business or profession for which the license was issued.
12. 10. Code section 8649 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."

16 11. Code section 8654 provides, in part, that any individual who has had his license 17 revoked or suspended, or who has failed to renew his license while it was suspended, shall be 18 prohibited from serving as an officer, director, associate, partner, qualifying manager, or 19 responsible managing employee of a registered company, and the employment, election or 20 association of such person by a registered company is a ground for disciplinary action.

COST RECOVERY

12. Section 125.3 of the Code states, 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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ACCUSATION/PETITION TO REVOKE PROBATION

1	FIRST CAUSE FOR DISCIPLINARY ACTION
2	(Substantially Related Conviction) (Bus. & Prof. Code §§ 8649 and 490)
3	13. Respondent has subjected his Applicator License to disciplinary action under Code
4	sections 8649 and 490, in that he was convicted of a crime substantially related to the
5	qualifications, functions, or duties of an applicator. Specifically, on or about April 28, 2011, in
6	the Superior Court of California, County of San Mateo, Case No. SC073302A, entitled The
7	People of the State of California v. Napoleon Dowthard, Respondent was convicted of violating
8	Penal Code section 496, subdivision (a) (receive/etc known stolen property), a felony. The
9	imposition of sentence was suspended, and Respondent was placed on probation for 36 months on
10	terms and conditions, which included, but were not limited to, the following: serve 90 days in jail,
11	and do not obtain or possess any firearms.
12	FIRST CAUSE TO REVOKE PROBATION
13	(Quarterly Reports)
14	14. At all times after the effective date of Respondent's Probation Condition 2 stated:
15	"Quarterly Reports: Respondent shall file quarterly reports with the Board during the
16	period of probation."
17	15. Respondent's probation is subject to revocation because he failed to comply with
18	Probation Condition 2 by not submitting Quarterly Reports. Specifically, Respondent last filed a
19	Quarterly Report on or about November 24, 2011, and subsequently missed filing Quarterly
20	Reports, which were due on February 24, 2012, May 24, 2012, August 24, 2012, and November
21	24, 2012. Further, on or about July 11, 2012, the Board sent Respondent a letter at his address of
22	record and his mailing address informing him of his failure to meet Probation Condition 2.
23	Specifically, as of July 11, 2012, Respondent had failed to file Quarterly Reports due on February
24	24, 2012, and May 24, 2012. The letter sent via certified mail was addressed to Respondent's
25	mailing address of 920 Myrtle Street, Oakland, CA 94607, and was returned by the United States
26	Postal Service as "undeliverable." On or about this time, a Board representative made several
27	attempts to contact Respondent by telephone and found Respondent's telephone to be
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1	disconnected, or with a message that was followed by a busy signal that said "NSS 02, call cannot
1	be completed."
2	SECOND CAUSE TO REVOKE PROBATION
3	(Notice to Employers)
4	16. At all times after the effective date of Respondent's Probation Condition 4 stated:
5	"Notice to Employers: Respondent shall notify all present and prospective employers
6	of the decision in case No. 2011-6 and the terms, conditions and restrictions imposed on
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8	respondent by said decision. "Within 30 days of the effective date of this decision, and within 15 days of responden
9	undertaking new employment, respondent shall cause his employer to report to the Board in
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11	writing acknowledging the employer has read the decision in case No. 2011-6."
12	17. Respondent's probation is subject to revocation because he failed to comply with
13	Probation Condition 4. Specifically, within 30 days of the decision's effective date or thereafter,
14	Respondent failed to have his present employer, Pestec ¹ , report to the Board in writing that the
15	employer has read the decision.
16	OTHER MATTERS
17	18. Under Code section 8654, if Applicator License No. RA 51779, issued to Respondent
18	is revoked or suspended, Napoleon Dowthard shall be prohibited from serving as an officer,
19	director, associate, partner or responsible managing employee of a licensee, and any registered
20	company which employs, elects, or associates Napoleon Dowthard shall be subject to disciplinary
21	action.
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27 28	¹ On April 4, 2011, Respondent told a Board representative that he had been working for Pestec for about one year.
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	ACCUSATION/PETITION TO REVOKE PROBATION

1	PRAYER
2	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3	and that following the hearing, the Structural Pest Control Board issue a decision:
4	1. Revoking the probation that was granted by the Structural Pest Control Board in Case
5	No. 2011-6 and imposing the disciplinary order that was stayed thereby revoking Applicator
6	License No. RA 51779, issued to Napoleon Dowthard;
7	2. Revoking or suspending Applicator License No. RA 51779, issued to Napoleon
8	Dowthard;
9	3. Prohibiting Napoleon Dowthard from serving as an officer, director, associate,
10	partner or responsible managing employee of any registered company;
11	4. Ordering Napoleon Dowthard to pay the Structural Pest Control Board the reasonable
12	costs of the investigation and enforcement of this case, pursuant to Business and Professions
13	Code section 125.3; and
14	5. Taking such other and further action as deemed necessary and proper.
15	DATED: 5/17/13 SUDAN SUMMA
16	SUSANSAYLOR Interim Registrar/Executive Officer
17	Structural Pest Control Board Department of Pesticide Regulation
18	State of California Complainant
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