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FILED

Date 7/16/13 By *Susan Saylor*

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2014-5

12 **SCOTT MICHAEL GUINN**
12436 Del Amo Boulevard
13 Lakewood, CA 90715

A C C U S A T I O N

14 Applicator License No. RA 52862

15 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about March 2, 2012, the Structural Pest Control Board (Board) issued
23 Applicator License No. RA 52862, in Branch 2 (general pest) and Branch 3 (termite) to Scott
24 Michael Guinn (Respondent). The Applicator License was in full force and effect at all times
25 relevant to the charges brought herein and will expire on March 2, 2015, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

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

6 5. Section 490 states, in pertinent part:

7 "(a) In addition to any other action that a board is permitted to take against a licensee, a
8 board may suspend or revoke a license on the ground that the licensee has been convicted of a
9 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
10 or profession for which the license was issued.

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

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

21 6. Section 8620 provides, in pertinent part, that the Board may suspend or revoke a
22 license when it finds that the holder, while a licensee or applicant, has committed any acts or
23 omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil
24 penalty.

25 7. Section 8625 states:

26 "The lapsing or suspension of a license or company registration by operation of law or by
27 order or decision of the board or a court of law, or the voluntary surrender of a license or
28 company registration shall not deprive the board of jurisdiction to proceed with any investigation

1 of or action or disciplinary proceeding against such licensee or company, or to render a decision
2 suspending or revoking such license or registration."

3 8. Section 8649 states:

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

7 9. Section 8654 states:

8 "Any individual who has been denied a license for any of the reasons specified in Section
9 8568, or who has had his or her license revoked, or whose license is under suspension, or who has
10 failed to renew his or her license while it was under suspension, or who has been a member,
11 officer, director, associate, qualifying manager, or responsible managing employee of any
12 partnership, corporation, firm, or association whose application for a company registration has
13 been denied for any of the reasons specified in Section 8568, or whose company registration has
14 been revoked as a result of disciplinary action, or whose company registration is under
15 suspension, and while acting as such member, officer, director, associate, qualifying manager, or
16 responsible managing employee had knowledge of or participated in any of the prohibited acts for
17 which the license or registration was denied, suspended or revoked, shall be prohibited from
18 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
19 employee of a registered company, and the employment, election or association of such person by
20 a registered company is a ground for disciplinary action."

21 10. Section 8655 states:

22 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
23 charge substantially related to the qualifications, functions, and duties of a structural pest control
24 operator, field representative, applicator, or registered company is deemed to be a conviction
25 within the meaning of this article or Section 8568 of this chapter. The board may order the license
26 or registration suspended or revoked, or may decline to issue a license, when the time for appeal
27 has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting
28 probation is made suspending the imposition of sentence, irrespective of a subsequent order under

1 the provisions of Section 1203.4 of the Penal Code allowing the individual or registered company
2 to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,
3 or dismissing the accusation, information or indictment."

4 REGULATORY PROVISIONS

5 11. California Code of Regulations, title 16, section 1937.1 states, in pertinent part:

6 "For the purposes of denial, suspension or revocation of a license or company registration
7 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
8 considered to be substantially related to the qualifications, functions or duties of a licensee or
9 registered company under Chapter 14 of Division 3 of the code if to a substantial degree it
10 evidences present or potential unfitness of such licensee or registered company to perform the
11 functions authorized by the license or company registration in a manner consistent with the public
12 health, safety, or welfare."

13 COST RECOVERY

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

18 CAUSE FOR DISCIPLINE

19 **(Conviction of a Substantially Related Crime)**

20 13. Respondent is subject to disciplinary action under sections 8649 and 490, in
21 conjunction with California Code of Regulations, title 16, section 1937.1, in that Respondent was
22 convicted of a crime substantially related to the qualifications, functions or duties of an
23 Applicator, in that on or about February 21, 2013, following a trial by jury, Respondent was
24 convicted of one misdemeanor count of violating Penal Code section 240 [assault] in a criminal
25 proceeding entitled *The People of the State of California v. Scott Michael Guinn* (Super. Ct.
26 Orange County, Case No. 11WF0097.) The circumstances surrounding the conviction are that on
27 or about March 17, 2010, Respondent approached a customer at a local bar who he believed to be
28 a member of a competing biker club, identified himself as a member of the Orange County Hells

1 Angels, and proceeded to assault the victim, who sustained certain injuries. Respondent was
2 subsequently arrested and charged with violating Penal Code section 245, subdivision (a)(1)
3 [aggravated assault] and Penal Code section 186.22, subdivision (a) [street terrorism]. As a result
4 of the conviction, the Court sentenced Respondent to serve 90 days in Orange County Jail and
5 placed him on 3 years formal probation, with terms and conditions.

6 **OTHER MATTERS**

7 14. Section 8620, provides, in pertinent part, that a Respondent may request that a civil
8 penalty of not more than \$5,000 be assess in lieu of an actual suspension of 1 to 19 days, or not
9 more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made at the
10 time of hearing and must be noted in the proposed decision. The proposed decision shall not
11 provide that a civil penalty shall be imposed in lieu of a suspension.

12 15. Pursuant to section 8654, if discipline is imposed on Applicator's License No. RA
13 52862, issued to Respondent, Respondent shall be prohibited from serving as an officer, director,
14 associate, partner, qualifying manager, or responsible managing employee for any registered
15 company, and any registered company which employees, elects, or associates Respondent shall be
16 subject to disciplinary action.

17 **PRAYER**

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

20 1. Revoking or suspending Applicator License No. RA 52862, issued to Scott Michael
21 Guinn;

22 2. Ordering Scott Michael Guinn to pay the Board the reasonable costs of the
23 investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 7/18/13



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

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