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8	BEFORE THE STRUCTURAL PEST CONTROL BOARD
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	
11	In the Matter of the Accusation Against: Case No. 2015–12
12	VICKY L. DAVIS P.O. Box 20903 A C C U S A T I O N
13	Bakersfield, CA 93390
14	Applicator License No. RA 52419, Br. 2 and 3
15	Respondent.
16	
17	Complainant alleges:
18	<u>PARTIES</u>
19	1. Susan Saylor ("Complainant") brings this Accusation solely in her official capacity as
20	the Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of
21	Consumer Affairs.
22	2. On or about August 16, 2011, the Board issued Applicator License No. RA 52419 in
23	Branches 2 and 3 to Vicky L. Davis ("Respondent"). The Applicator License was in full force and
24	effect at all times relevant to the charges brought herein, expired on August 16, 2014, and has not
25	been renewed.
26	<u>JURISDICTION</u>
27	This Assessment is a factor of the second of
	3. This Accusation is brought before the Board under the authority of the following laws.

4. Section 8620 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 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 490 states, in pertinent part:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- "(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

7. 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."

8. Section 8654 states:

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

9. Section 8655 states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is deemed to be a conviction within the meaning of this article or Section 8568 of this chapter. The board may order the license or registration suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the individual or registered company

to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment."

REGULATORY PROVISIONS

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

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

COST RECOVERY

11. Section 125.3 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.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

- 12. Respondent is subject to disciplinary action under section 480 and section 8649, in conjunction with California Code of Regulations, title 16, section 1937.1, in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed applicator, as follows:
- a. On or about March 11, 2014, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [petty theft], in the criminal proceeding entitled *The People of the State of California v. Vicky Louise Davis* (Super. Ct. San Bernardino County, 2014, No. MVI1304079). The Court sentenced Respondent to serve six days in San Bernardino County Jail and placed Respondent on probation for thirty-six (36) months.

b. The circumstances surrounding the conviction are that on or about December 3, 2013, Respondent entered a Kohl's Department Store in Victorville, CA. She took merchandise from the sales floor and removed the sales tags from the selected items before placing the merchandise in a plastic Kohl's bag. Respondent then walked out of the store without paying for the items. The store's loss prevention officer attempted to stop Respondent as she was leaving; however, Respondent refused to stop, got in her vehicle and attempted to flee the scene before being detained by officers from the San Bernardino County Sheriff's Department.

DISCIPLINARY CONSIDERATIONS

- 13. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges as follows:
- a. On or about September 20, 2004, Respondent was convicted of one misdemeanor count of violating Penal Code section 488 [petty theft] in the criminal proceeding entitled *The People of the State of California v. Vicky Louise Davis* (Super. Ct. Kern County, 2004, No. BM6625974A). The Court placed Respondent on probation for three (3) years.
- b. On or about June 23, 2011, Respondent submitted an application for Structural Pest Control Applicator Examination and License. On her application, Respondent certified under the penalty of perjury under the laws of the state of California to the truth and accuracy of all statements and representations made in the application. On the application Respondent was asked "Have you ever been convicted of a felony or of a misdemeanor other than minor traffic infractions?" Respondent answered "No" to this question, failing to disclose her September 20, 2004, conviction for violating Penal Code section 488. The Board requested an explanation for this failure on August 10, 2011, Respondent replied on August 13, 2011, and the Board issued Respondent a license on August 16, 2011.

OTHER MATTERS

14. Section 8620 provides, in pertinent part, that a respondent may request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made at the

Accusation