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**FILED**

Date 8/22/14 By Susan Saylor

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. 2015-7

12 **ANDRE B. THOMAS**  
13 **21063 Cabot Boulevard, Suite #6**  
**Hayward, CA 94545**

**ACCUSATION**

14 **Applicator License No. RA 52658, Branch 2 & 3**

15 Respondent.

17 Complainant alleges:

18 PARTIES

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

22 2. On or about November 7, 2011, the Board issued Applicator License Number RA  
23 52658, Branch 2 and 3, to Andre B. Thomas (Respondent). The Applicator License will expire on  
24 November 7, 2014, unless renewed.

25 JURISDICTION

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

1           4.     Code section 8620 provides, in pertinent part, that the Board may suspend or revoke a  
2 license when it finds that the holder, while a licensee or applicant, has committed any acts or  
3 omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil  
4 penalty.

5           5.     Code section 8625 states:

6                     The lapsing or suspension of a license or company registration by  
7 operation of law or by order or decision of the board or a court of law, or the  
8 voluntary surrender of a license or company registration shall not deprive the board of  
9 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.

10                                     STATUTORY & REGULATORY PROVISIONS

11           6.     Code section 490 states:

12                     (a) In addition to any other action that a board is permitted to take against  
13 a licensee, a board may suspend or revoke a license on the ground that the licensee has  
14 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.

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

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

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

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7. Code section 493 states:

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.

8. 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.

9. Code 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.

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 . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee or registered company . . . 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 . . .

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1 COST RECOVERY

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

6 CAUSE FOR DISCIPLINE

7 **(Substantially Related Crime)**

8 12. Respondent is subject to disciplinary action pursuant to Code sections 490 and 8649  
9 for conviction of a crime substantially related to the qualifications, functions, and duties of a  
10 licensed applicator. The circumstances are as follows:

11 13. On or about September 26, 2013, in Santa Clara County Superior Court, case number  
12 C1350245, Respondent was convicted of having violated Penal Code section 647.6 (a)(1)  
13 (annoy/molest a child). Imposition of sentence was suspended and Respondent was placed on  
14 court probation for three years, ordered to served 90 days in jail, stay away from the minor victim,  
15 register as a sex offender pursuant to Penal Code section 290, and pay fines and fees.

16 OTHER MATTERS

17 14. Code section 8620 (a) provides, in pertinent part, that if at the conclusion of a hearing  
18 the Respondent is found to have committed any of the acts or admissions constituting grounds for  
19 discipline, the proposed decision shall provide for the suspension or revocation of the license.  
20 The Respondent may express a preference for the form of discipline but the Board shall not be  
21 bound by such expression or preference. The Board may impose either or may impose a civil  
22 penalty in lieu of a suspension pursuant to Code section 8620, subdivisions (b), (c), (d) and (e).

23 15. Pursuant to Code section 8654, if discipline is imposed on Applicator License  
24 Number RA 52658, Branch 2 and 3, issued to Respondent Andre B. Thomas, he shall be  
25 prohibited from serving as an officer, director, associate, partner, qualifying manager, or  
26 responsible managing employee for any registered company during the time the discipline is  
27 imposed, and any registered company which employs, elects, or associates him shall be subject  
28 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 52658, Branch 2 and 3, issued to Andre B. Thomas;
2. Ordering Andre B. Thomas 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. Prohibiting Andre B. Thomas from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, pursuant to Business and Professions Code section 8654;
4. Taking such other and further action as deemed necessary and proper.

DATED: 8/22/14

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

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