

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

In the Matter of the Accusation Against:

Case No. 2009-45

**BEST CHOICE TERMITE CONTROL,
DANIEL A. RODRIGUEZ, QUALIFYING
MANAGER/OWNER
7660 Pivot Street
Downey, CA 90241**

-and-

**818 West Lambert Road, Suite C
La Habra, CA 90631**

-and-

**P.O. Box 604
Downey, CA 90241
Company Registration No. PR 4924**

and

**DANIEL A. RODRIGUEZ
7660 Pivot Street
Downey, CA 90241
Operator's License No. OPR 11174**

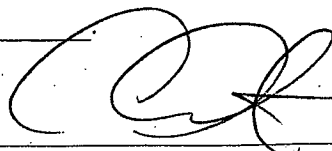
Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

This Decision shall become effective on March 5, 2010.

It is so ORDERED February 3, 2010



FOR THE STRUCTURAL PEST CONTROL
BOARD
DEPARTMENT OF PESTICIDE REGULATION

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RENE JUDKIEWICZ
Deputy Attorney General
4 State Bar No. 141773
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2537
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. 2009-45

11 **BEST CHOICE TERMITE CONTROL,**
12 **DANIEL A. RODRIGUEZ, QUALIFYING**
13 **MANAGER/OWNER**
14 **7660 Pivot Street**
Downey, CA 90241

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **-and-**

16 **818 West Lambert Road, Suite C**
La Habra, CA 90631

17 **-and-**

18 **P.O. Box 604**
Downey, CA 90241
19 **Company Registration No. PR 4924**

20 **and**

21 **DANIEL A. RODRIGUEZ**
22 **7660 Pivot Street**
Downey, CA 90241
23 **Operator's License No. OPR 11174**

24 Respondents.

25
26 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
27 entitled proceedings that the following matters are true:

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1 Respondent during probation, the Board shall have continuing jurisdiction until the matter is final,
2 and the period of probation shall be extended until the matter is final.

3 7. **Random Inspections.** Respondent Rodriguez shall reimburse the Board for random
4 inspections by Board specialists during the period of probation not to exceed \$125 per inspection.

5 8. **Prohibited from Serving as Officer, Director, Associate, Partner or Qualifying**
6 **Manager Except for Service in Own Company.** Respondent is prohibited from serving as an
7 officer, director, associate, partner, qualifying manager or branch office manager of any
8 registered company except Respondent's own company, X Terminator Termite Control, company
9 registration No. 5525, during the period that discipline is imposed on Operator's License No. OPR
10 11174.

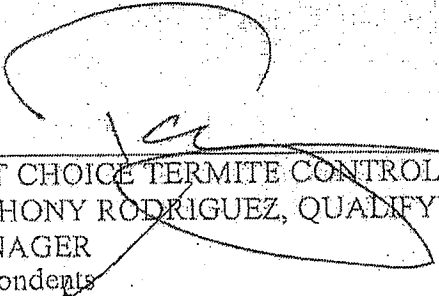
11 9. **Cost Recovery.** Pursuant to Business and Professions Code section 125.3,
12 Respondent Rodriguez shall pay to the Board its enforcement and investigative costs in the
13 amount of \$4,306.00, which may be paid in monthly installment payments and which is to be paid
14 in full by three months prior to the end of the probationary period.

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16 ACCEPTANCE

17 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
18 stipulation and the effect it will have on my Operator's License, and Company Registration. I
19 enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
20 intelligently, and agree to be bound by the Decision and Order of the Structural Pest Control
21 Board.

22
23 DATED: _____

11/24/2009


24 BEST CHOICE TERMITE CONTROL; DANIEL
25 ANTHONY RODRIGUEZ, QUALIFYING
26 MANAGER
27 Respondents
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Structural Pest Control Board of the Department of Pesticide Regulation.

Dated: 12/2/09

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General


RENE JUDKIEWICZ
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2009-45

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2520
Facsimile: (213) 897-2804
6

FILED

Date 2/25/09 By *Kelli Okuma*

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:
12 BEST CHOICE TERMITE CONTROL
DANIEL A. RODRIGUEZ, QM/OWNER
13 7660 Pivot Street
Downey, CA 90241
14 -and-
818 West Lambert Road, Suite C
15 La Habra, CA 90631
-and-
16 P.O. Box 604
Downey, CA 90241
17 Company Registration Certificate No. PR 4924
18 and
19 DANIEL A. RODRIGUEZ
7660 Pivot Street
20 Downey, CA 90241
Operator's License No. OPR 11174
21
22 Respondents.

Case No. 2009-45

ACCUSATION

23 Complainant alleges:

24 **PARTIES**

25 1. Kelli Okuma ("Complainant") brings this Accusation solely in her official
26 capacity as the Registrar/Executive Officer of the Structural Pest Control Board ("Board"),
27 Department of Consumer Affairs.

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5. Code 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.

6. Code section 118, subdivision (b), states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

7. Code section 8624 states, in pertinent part:

.....

If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration.

The performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who, at the time the act or omission occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm, association, or registered company whether or not he or she had knowledge of, or participated in, the prohibited act or omission.

8. Code 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

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1 an officer, director, associate, partner, qualifying manager, or responsible
2 managing employee of a registered company, and the employment, election or
3 association of such person by a registered company is a ground for disciplinary
4 action.

5 **STATUTORY PROVISIONS**

6 9. Code section 8610, subdivision (a), states:

7 Every company that engages in the practice of structural pest control, as a
8 sole proprietorship, partnership, corporation, or other organization or any
9 combination thereof, shall be registered with the Structural Pest Control Board. . .

10 10. Code section 8550, subdivision (e), states:

11 It is unlawful for any firm, sole proprietorship, partnership, corporation,
12 association, or other organization or combination thereof to engage or offer to
13 engage in the practice of structural pest control, unless registered in accordance
14 with Article 6 (commencing with Section 8610).

15 11. Code section 8552 states:

16 It is unlawful for any person to advertise or represent in any manner that
17 any pest control work in whole or in part, has been done upon any structure,
18 unless the work has been performed by a company registered under this chapter.

19 12. Code section 8641 states:

20 Failure to comply with the provisions of this chapter, or any rule or
21 regulation adopted by the board, or the furnishing of a report of inspection
22 without the making of a bona fide inspection of the premises for wood-destroying
23 pests or organisms, or furnishing a notice of work completed prior to the
24 completion of the work specified in the contract, is a ground for disciplinary
25 action.

26 13. Code section 8642 states that "[t]he commission of any grossly negligent
27 or fraudulent act by the licensee as a pest control operator, field representative, or applicator or
28 by a registered company is a ground for disciplinary action."

13. Code section 8644 states:

Fraud or misrepresentation, after inspection, by any licensee or registered
company engaged in pest control work of any infestation or infection of
wood-destroying pests or organisms found in property or structures, or respecting
any conditions of the structure that would ordinarily subject structures to attack
by wood-destroying pests or organisms, whether or not a report was made
pursuant to Sections 8516 and 8517 of this code, is a ground for disciplinary
action.

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Cost Recovery

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15. Code 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.

6439 VINEYARD AVENUE, ALTA LOMA, CA

16. On or about January 26, 2008¹, Respondent Rodriguez, the qualifying manager/owner of Respondent Best Choice, inspected the property located at 6439 Vineyard Avenue, Alta Loma, California (hereinafter "property" or "6439 Vineyard Avenue property"), at the request of "Mari" (no further information was provided). Respondent Rodriguez issued a complete Wood Destroying Pests and Organisms ("WDO") Inspection Report, which included findings of drywood termite infestations, drywood termite damage, dryrot damage, moisture damage, subterranean termites, an earth-to-wood contact, and fungus. Respondent Rodriguez recommended fumigation, replacement of damaged areas, others to correct, breaking the earth-to-wood contact, and application of a fungicide.

17. On or about January 30, 2008, Respondent Rodriguez issued a Standard Notice of Work Completed and Not Completed certifying that the property was free of evidence of active infestations or infection in visible and accessible areas.

18. On February 6, 2008, escrow closed and Robert Mourad ("Mourad") became the owner of the property based, in part, on the inspection report of January 26, 2008.

19. On February 29, 2008, the Board received a complaint from Mourad, stating that on February 6, 2008, while performing repair work to a patio post, Respondent Rodriguez had caused the entire patio to collapse resulting in damage to the patio, waterfall, patio furniture, dog run, electrical, and drywall of the home. Further, Mourad stated that he had discovered Respondent Best Choice did not have an active license.

1. On December 11, 2007, Respondent Best Choice's registration was canceled and Respondent Rodriguez disassociated as the qualifying manager, as set forth in paragraphs two and four above.

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20. On April 14, 2008, Board Specialist Steve Winfrey ("Winfrey") inspected the property.

21. On April 16, 2008, Winfrey issued a Report of Findings ("ROF") identifying certain violations of the Code which he found during his inspection. That day, the Board sent a notice to Respondent Rodriguez directing him to bring the property into compliance by correcting the items described in the ROF and to submit a WDO Inspection Report and Standard Notice of Work Completed and Not Completed to the Board within 30 calendar days from receipt of the notice.

22. On May 12, 2008, the Board's notice was returned by the U.S. postal service as undeliverable. Winfrey contacted Respondent Rodriguez by phone and faxed him a copy of the Board's notice. Respondent Rodriguez acknowledged receipt of the Board's notice by fax from Winfrey. Respondent Rodriguez stated to Winfrey that he would attempt to comply with the ROF by performing another inspection and any corrective work using his current company registration, The X-Terminator Termite Control. However, Mourad would not allow Respondent Rodriguez to return to the property.

FIRST CAUSE FOR DISCIPLINE

(Engaging in the Practice of Structural Pest Control While Not Registered)

23. Respondents Best Choice and Rodriguez are subject to disciplinary action pursuant to Code section 8641 in that they failed to comply with Code sections 8550, subdivision (e), and 8610, subdivision (a), by engaging in the practice of structural pest control while Respondent Best Choice was not registered, as follows:

a. On or about January 26, 2008, Respondent Rodriguez issued a WDO on behalf of Respondent Best Choice for the for the 6439 Vineyard Avenue property.

b. On or about January 30, 2008, Respondent Rodriguez issued a Standard Notice of Work Completed and Not Completed on behalf of Respondent Best Choice for the 6439 Vineyard Avenue property.

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2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Aiding or Abetting an Unregistered Company)**

4 24. Respondent Rodriguez is subject to disciplinary action pursuant to Code
5 section 8639 in that he aided or abetted, combined or conspired with, allowed his license to be
6 used by, or acted as agent or partner or associate of Respondent Best Choice, an unregistered
7 company, with the intent to evade the provisions of the Structural Pest Control Operators Law.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Misrepresentation After Inspection)**

10 25. Respondent Rodriguez is subject to disciplinary action pursuant to Code
11 section 8644 in that, while licensed as a pest control operator, he made false representations on
12 the WDO and Standard Notice of Work Completed and Not Completed for the 6439 Vineyard
13 Avenue property, as set forth in paragraph 23 above.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Advertising by Unregistered Company)**

16 26. Respondent Rodriguez is subject to disciplinary action pursuant to Code
17 section 8641 in that he failed to comply with Code Section 8552 by representing that pest control
18 work had been done upon the 6439 Vineyard Avenue property, as set forth in paragraph 23
19 above, when Respondent Best Choice was not a registered company.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Fraudulent Acts)**

22 27. Respondent Rodriguez is subject to disciplinary action pursuant to Code
23 section 8642 in that, while licensed as a pest control operator, he committed fraudulent acts, as
24 set forth in paragraphs 23, 24, 25, and 26 above.

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2 OTHER MATTERS

3 28. Code section 8620 provides, in pertinent part, that a respondent may
4 request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of
5 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request
6 must be made at the time of the hearing and must be noted in the proposed decision. The
7 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

8 29. Pursuant to Code section 8624, if Operator's License Number OPR 11174,
9 issued to Respondent Daniel Anthony Rodriguez, is suspended or revoked, the Board may
10 suspend or revoke Company Registration Certificate Number PR 4924, issued to Best Choice
11 Termite Control, with Daniel Anthony Rodriguez as qualifying manager.

12 30. Pursuant to Code section 8624, the causes for discipline established as to
13 Respondent Best Choice Termite Control likewise constitute causes for discipline against
14 Respondent Daniel Anthony Rodriguez, regardless of whether Daniel Anthony Rodriguez had
15 knowledge of or participated in the acts or omissions which constitute causes for discipline
16 against Respondent Best Choice Termite Control.

17 31. Pursuant to Code section 8654, if discipline is imposed on Operator's
18 License Number OPR 11174, issued to Respondent Daniel Anthony Rodriguez, Daniel Anthony
19 Rodriguez shall be prohibited from serving as an officer, director, associate, partner, qualifying
20 manager, or responsible managing employee for any registered company, including Company
21 Registration Certificate Number 5525 issued to The X-Terminator Termite Control, during the
22 time the discipline is imposed, and any registered company which employs, elects, or associates
23 Daniel Anthony Rodriguez shall be subject to disciplinary action.

24 32. Government Code section 11519, subdivision (d), provides, in pertinent
25 part, that the Board may require restitution of damages suffered as a condition of probation in the
26 event probation is ordered.

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2 P R A Y E R

3 WHEREFORE, Complainant requests that a hearing be held on the matters herein
4 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

5 1. Revoking or suspending Company Registration Certificate Number
6 PR 4924, issued to Best Choice Termite Control;

7 2. Revoking or suspending Operator's License Number OPR 11174, issued to
8 Daniel Anthony Rodriguez;


9 3. Prohibiting Daniel Anthony Rodriguez from serving as an officer,
10 director, associate, partner, qualifying manager or responsible managing employee of any
11 registered company during the period that discipline is imposed on Operator's License Number
12 OPR 11174, issued to Daniel Anthony Rodriguez;

13 4. Ordering restitution of all damages according to proof suffered by Robert
14 Mourad as a condition of probation in the event probation is ordered;

15 5. Ordering Respondents Best Choice Termite Control and Daniel Anthony
16 Rodriguez to pay the Structural Pest Control Board the reasonable costs of the investigation and
17 enforcement of this case, pursuant to Business and Professions Code section 125.3; and

18 6. Taking such other and further action as deemed necessary and proper.

19
20 DATED: 2/25/09

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22 
23 KELLI OKUMA
24 Registrar/Executive Officer
25 Structural Pest Control Board
26 Department of Consumer Affairs
27 State of California
28 Complainant

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