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Structural Pest Control Commission

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Lisa Gervase
Executive Director

COMMISSION MEETING
FRIDAY, February 9, 2007, 9:00 A.M.
MINUTES

I. Call to order (9:02 a.m.), Commissioner roll call

Commissioners Present: Patrick Black, Dan DeVere, Debra Runbeck,
Paul Baker, Dave Burns, Dave O'Neal

Commissioners Absent: Bert Putterman

Staff Present: Lisa Gervase; Vince Craig; Mike Francis;
Robert Tolton; Magdalena Vazquez; Vicky
Kamm; Melissa Cornelius, Assistant Attorney
General

II. Call to the public

Ken Frederick from Arizona Pest Professional Association (AzPPO) spoke to remind everyone of AzPPO's Rules Committee. He thanked Ms. Gervase for her time and input during their meeting a few weeks ago. Mr. Frederick vowed to continue to work with SPCC staff regarding the promulgation of a new rules packet. He invited any of today's meeting attendees to participate on the committee.

III. Communication with Commissioners

No communications were reported.

IV. Summary of Current Commission Events, Activities, Notices

None

V. Consent Agenda

A. Applications for New Business License and Activating Qualifying Party License.

| <u>Business</u> | <u>Qualifying Party</u> |
|------------------------------------|------------------------------------|
| 1. Anthem Golf, LLC | William P. Rupert III (“B3”, “B5”) |
| 2. Accu-Spec Home Inspections, LLC | Steven P. Schnexeider (“B8”) |
| 3. Nationwide Pest Management | Steven Glotzer (“B1”, “B2”, “B8”) |

Pulled by Commissioner Baker for clarification regarding the name change. Ms. Gervase reported that the matter was on last month’s agenda and was tabled because the name requested last month was too similar to an existing business name. The name choice was then changed and placed on this agenda.

MOTION: *To approve the application for new business license for in the B2 and B8 categories, by Commissioner Baker. Seconded by Commissioner DeVere.*

VOTE: *6 - 0 Motion carried.*

| | |
|------------------------------------|------------------------------|
| 4. Southwest Environmental Testing | Thomas M. Van Duinen (“B1”) |
| 5. Franklin Pest Control | Bryan L. Franklin (“B1”) |
| 6. Naturescape, LLC | Jack D. Walters (“B3”, “B5”) |

Pulled by Commissioner Burns for concern regarding Mr. Walters having an active QP for another company. Mr. Walters was present. Mr. Tolton reported that Mr. Walters had disassociated his QP license from the other company this morning.

MOTION: *To approve the application for new business license in the B3 and B5 categories, by Commissioner Burns. Seconded by Commissioner O’Neal.*

VOTE: *6 - 0 Motion carried.*

B. Applications to activate Qualifying Party for Existing Business License

| <u>Qualifying Party</u> | <u>Business</u> |
|-------------------------|---------------------------------|
| 1. Cynthia Aloe | Desert Pest Control, LLC (“B8”) |

Pulled by Commissioner DeVere for clarification regarding whether this company has more than one QP. Ms. Aloe was present. She reported that she is the owner of the business. Mr. Tolton reported that she was only activating her QP for the B8 category today; but has hired other QPs in relevant categories while she was working on obtaining her QP license in all of the desired categories.

MOTION: *To approve the QP application, by Commissioner DeVere. Seconded by Commissioner Black.*

VOTE: 6 - 0 *Motion carried.*

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|-----------------------|---|
| 2. Rafael D. Silva | Sun City Pest Control ("B1"), ("B2") & ("B8") |
| 3. Michael T. Connors | American Golf Corporation ("B3") |

Pulled by Commissioner Burns for clarification on records management. Mr. Connors appeared and explained that American Golf Corp owns 11 courses in Arizona. Currently, the Applicators keep their records at the particular facility where they work. Mr. Connors reported that he personally conducts a records audit at each of the facilities two to three times per year. Additionally, he visits each facility weekly and reviews the records. Henceforth, he will also keep copies of the records at the business address.

MOTION: *To approve the QP application, by Commissioner Black. Seconded by Commissioner O'Neal.*

VOTE: 6 – 0 *Motion carried.*

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|----------------------------|--|
| 4. Patrick J. Mott | North Country Pest Management ("B1", "B2", "B8") |
| 5. Anthony R. Petkoff | Atomic Pest Control ("B1") |
| 6. Norman F. Nipperus | Norm's Bug and Bee Control ("B1") |
| 7. Brooks E. Crandell | Crandell Pest Control ("B1") |
| 8. Jesse R. L. Pierce, Jr. | Valley East Pest Control, Inc. ("B1") |

C. Applications for Qualifying Party License

- | | |
|--------------------|--------|
| 1. Luis R. Molinar | ("B1") |
| 2. Jeffrey K. Lunt | ("B1") |

- | | | |
|-----|--------------------|--------------------|
| 3. | Clint A. Pyle | ("B3") |
| 4. | Teresa M. Kitchens | ("B1") |
| 5. | Joseph R. Wright | ("B5") |
| 6. | McGary A. Bays | ("B2", "B8") |
| 7. | Paul J. Heihn | ("B3") |
| 8. | Charles R. Murdock | ("B1") |
| 9. | Michael D. Dobson | ("B2") |
| 10. | Scott A.P. Ford | ("B1") |
| 11. | Thomas A. Lintgen | ("B3", "B5", "B9") |
| 12. | Kelcey G. Loveland | ("B1") |
| 13. | James R. Potts | ("B3") |

Pulled by Commissioner Burns for clarification on which categories Mr. Potts is applying for. Mr. Potts appeared and explained that his intent was to apply for categories "B3" and "B5", but his former employer did not complete the experience verification in time for today's agenda. He will reapply for the "B5" category at a later date.

MOTION: *To approve the QP application, by Commissioner Burns.
Seconded by Commissioner Black.*

VOTE: *6 – 0 Motion carried.*

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|-----|----------------|--------|
| 14. | Henry Espinoza | ("B1") |
|-----|----------------|--------|

D. Business License Name Change Requests

None

End of Consent Agenda

MOTION: *To accept the Consent Agenda with the exception of the items pulled for discussion (A3, A6, B1, B3, C13), by Commissioner O'Neal.
Seconded by Commissioner DeVere.*

VOTE: 6 – 0 Motion carried.

VI. Applications not on Consent Agenda

A. Request for Temporary Qualifying Party License Renewals

None

B. Applications to activate Qualifying Party for New or Existing Business License

None

C. Applications for Qualifying Party License

None

D. Business License Name Change Requests

None

VII. Complaints

A. Bob's Bug Biz (BL) Robert Deutsch (QP) – Case 2006 - 022

No appearances. Ms. Gervase explained that Mr. Deutsch was present at last month's meeting, and all TARFs have been submitted.

MOTION: *To accept the proposed resolution regarding the Business License, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings; further, to dismiss the case against the QP license, by Commissioner Black.
Seconded by Commissioner Baker.*

VOTE: 6 – 0 Motion carried.

B. No Problem Pest & Termite Control (BL) / Donald Jay Waller (APP/QP) – Case No. 2006 – 037

No appearances.

MOTION: *To accept the proposed resolution regarding the Business License, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings; further, to dismiss the case against the QP license and Applicator license, by Commissioner Black.
Seconded by Commissioner DeVere.*

VOTE: 6 – 0 *Motion carried.*

C. A Bee C Beekeepers & Exterminators (BL) / Nikola Potkonjak (APP) – Case 2006 – 035

No appearances. Commissioner Burns expressed concern that Mr. Potkonjak had financial gains from being a QP for another company while still doing work for this company, and asked Mr. Craig if this was the case. Mr. Craig explained that the other company's original owner and QP had died, and that Mr. Potkonjak had stepped in as QP for the business in order to help the widow. Commissioner Burns asked Mr. Craig the status of the business insurance for A Bee C Beekeepers. Mr. Craig indicated that the insurance was still intact at the time of the work that Mr. Potkonjak performed under this company while his QP was active for another company.

MOTION: *To accept the proposed resolution, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner DeVere.
Seconded by Commissioner Black.*

VOTE: 5 – 1 *Motion carried. (Commissioner Burns opposed).*

D. John Reding (APP) – Case 2006 - 050

No appearances. Mr. Craig explained that Mr. Reding lives in Prescott, and had requested the Settlement Conference be held via telephone due to the distance, and it is likely that this is the reason Mr. Reding is not appearing today.

MOTION: *To accept the proposed resolution, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Black.
Seconded by Commissioner DeVere.*

DISCUSSION:

Commissioner Burns said since the same individual completed the home inspection and WDIIR, he wondered whether it is still a violation to not note something required on the WDIIR if it's noted on the home inspection report. He feels that this is a trend in the industry, and that the home inspection can be added as an addendum to the WDIIR. Commissioner Black was of the opinion that in this case, the document was not an addendum; it was the home inspection report. He gave his opinion that these two documents should be separate and it is a violation to not note something required on the WDIIR. Commissioner Runbeck agreed it is a violation.

Mr. Craig explained that the SPCC does not have jurisdiction over the home inspection report, but does have jurisdiction over the WDIIR, which in this case, was not completed.

VOTE: 5 - 1 Motion carried. (Commissioner Burns opposed).

E. Johnny Camilo (APP) – Case No. 2006-063

Mr. Camilo was present. He advised the Commission that he acknowledges he had made a mistake, has ceased any Pest Control activity. He stated that he believed that he had an arrangement with the previous owner (Bugsy) to service the 14 clients in question. These services occurred November 4-14, 2006. Mr. Camilo further stated that a language barrier might have prevented him from fully understanding the terms of his "arrangement" with Bugsy.

Commissioner Burns asked if Mr. Camilo had paid any royalties to the business. Mr. Camilo reported that he had not.

Mr. Craig advised the Commission that Mr. Camilo had asked for an extension in order to pay the fine over a period of six months.

MOTION: To modify the proposed resolution by decreasing the fine to \$300, to be paid over a period of three months, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Baker.
Seconded by Commissioner Black.

DISCUSSION:

Mr. Nathan Watters, owner of Cummings Pest Control requested an opportunity to speak. Mr. Watters stated that Mr. Camilo displayed a blatant disregard for the law, and should not be allowed to continue to participate in the Pest Control Industry. He believes Mr. Camilo stole his customers with full knowledge of what he was doing.

Commissioner Burns agreed with Mr. Watters. He suggested that the matter be sent back to settlement conference, and that Mr. Camilo reimburse Mr. Watters for the revenue obtained from the customers. Commissioner Burns indicated he would entertain a reduced fine should the licensee surrender his license. Ms. Cornelius advised the Commission that reimbursement would be a civil matter, and that the Commission consider returning the matter to staff to work out a revised settlement agreement consistent with previous Commission actions.

Commissioner Baker withdrew his motion. Commissioner Black withdrew the Second.

MOTION: To modify the proposed resolution by increasing the period of time for payment of the original fine to six months and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner DeVere. Seconded by Commissioner Baker.

VOTE 2 – 4 Motion fails (Commissioner Runbeck- Yes, Commissioner DeVere- Yes, Commissioner Black- No, Commissioner Baker- No, Commissioner Burns- No, Commissioner O’Neal- No).

Commissioner Baker suggested that it would be best to send the matter back to staff for an additional settlement conference to discuss all disciplinary options. Commissioner Burns stated that if the Respondent was willing to surrender his license, he would accept a reduced civil penalty. Ms. Cornelius asked if the Commission would consider some period of suspension. She clarified that the Commission is the complainant, not Cummings Pest. But, Cummings interests are protected by the Commission’s actions. Also, the Respondent is entitled to due process.

Ms. Cornelius reminded the Commission that the licensee should be aware that he would not be able to reapply for five years if he surrendered his license. She suggested that the Commission could send the matter back to staff to ensure that the licensee has an opportunity to consider his options, and to ensure that any additional terms of settlement are consistent with the Commission’s previous actions.

MOTION: To return the matter to staff for settlement conference, to modify the resolution based on stated factors and rationale, by Commissioner O’Neal. Seconded by Commissioner Black.

DISCUSSION:

Commissioner Black said that if Cummings is made whole and the Respondent has some suspension, he would agree to a resolution without a license revocation.

Commissioner Burns agreed. Commissioner Runbeck clarified that the Commission has no authority to order restitution, but if he voluntarily pays Cummings, that would be a mitigating factor.

VOTE 6 – 0 Motion carried.

F. Cherokee Exterminating (BL) / George Bryce (QP) / David Piper (APP) - Case 2006-030

Scott Richardson appeared for his client, David Piper. Mr. Craig reported that the settlement conference had been successfully held. Mr. Richardson reported that his client agreed to the terms of the settlement conference.

MOTION: To accept the proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Black.
Seconded by Commissioner DeVere.

VOTE: 6 - 0 Motion carried

VIII. Requests for Review or Rehearing of Pervious Commission Decisions.

None

IX. Review or Rehearing of Previous Commission Decisions

None

X. Consideration of Suspension of Business, Qualifying Party and/or Applicator Licenses for Non-payment of Civil Penalties and/or Nonpayment of Renewal Fees [Possible Dismissal of Cases without prejudice, if applicable].

(Break from 10:00 a.m. to 10:10 a.m.)

A. Kenneth R. Rael Qualifying Party License No. 1284 (“B1”, “B2”, “B8”)

No appearances. Ms. Gervase stated Mr. Rael has not paid the civil penalty that was ordered against his Applicator License, and that license has been suspended. Mr. Rael still has his Qualifying Party License, but did not pay the fees to renew that license.

MOTION: To suspend Kenneth R. Rael’s Qualifying Party License for non-payment of renewal fees, by Commissioner Burns.

Seconded by Commissioner O'Neal.

VOTE: 6 - 0 *Motion carried.*

- B. Zachariah A. Blankenship Qualifying Party License No. 8349 ("B2", "B8") and Applicator License No. 990023 ("B1", "B2", "B8")

No appearances. Ms. Gervase reported that Mr. Blankenship had previously entered into a consent agreement whereby he had agreed to pay civil penalties. To date, the civil penalties remain unpaid. She asked that the Commission Suspend Mr. Blankenship's Qualifying Party and Applicator Licenses for nonpayment of civil penalties.

MOTION: *To suspend Zachariah A. Blankenship's Qualifying Party License and Applicator License for non-payment of civil penalties, by Commissioner O'Neal. Seconded by Commissioner Burns.*

VOTE: 6 - 0 *Motion carried.*

XI. Consideration of lifting Suspension of Business, Qualifying Party and/or Applicator Licenses.

None

XII. Recommended Decisions and Orders of the Office of Administrative Hearings Administrative Law Judges.

None

XIII. Settlement Proposals [not part of Complaints agenda item].

None

XIV. Consideration of Informal Settlement Conference proposed resolutions [for license Denial Applicants].

None

XV. Reporting by Licensee on Probation.

- A. Joseph D. Wilkerson, Applicator License No. 060328 – Case No. 2006-003.

Mr. Wilkerson was present to report his compliance with criminal probation, employment, status, and rehabilitation status. Mr. Wilkerson was granted a license

pursuant to a consent agreement in February 2006. Ms. Gervase reported that Mr. Wilkerson is compliant with the terms of his probation.

XVI. Applicants with Criminal Convictions.

A. Joshua D. Underwood

Joshua Underwood was present with his supervisor, Jesse Wilson with Sierra Pest Control. Mr. Wilson reported that Mr. Underwood shows great potential as a Pest Control Professional. Mr. Underwood stated that he was 20 years old at the time of the incident, and has not had any problems since.

MOTION: *To approve, by Commissioner Baker.
Seconded by Commissioner Black.*

VOTE: *6 - 0 Motion carried.*

B. David W. Sakievich

Mr. Sakievich was present with his supervisor, Eric Olson of Preventive Pest Control. Mr. Sakievich reported that he had completed his probation, and was released 8 to 12 months early.

MOTION: *To approve, by Commissioner Black.
Seconded by Commissioner O'Neal.*

VOTE: *6 - 0 Motion carried.*

C. Richard A. Insalaco

Mr. Insalaco was present with his supervisor, Billy Brandon of Taylor-Marana Water Control District. Mr. Brandon reported that he employs Mr. Insalaco to spray weeds in the right-of-ways. He also reported that Mr. Insalaco was an excellent employee, and he hoped to have him for a long time.

MOTION: *To approve, by Commissioner DeVere.
Seconded by Commissioner Black.*

VOTE: *6 - 0 Motion carried.*

D. William H. Pierce

Mr. Pierce was present with his supervisor Chris form Critter Gitter Pest Control. Chris reported that Mr. Pierce was an excellent employee, and he hoped that he would stay with the company for a long time.

MOTION: To approve, by Commissioner Black.
Seconded by Commissioner O'Neal.

VOTE: 6 - 0 Motion carried.

E. Richard M. Tyrell

Mr. Tyrell was present with his supervisor Kevin Etheridge from Contractors Termite and Pest Control. Mr. Etheridge reported that Mr. Tyrell was an excellent employee.

MOTION: To approve, by Commissioner O'Neal.
Seconded by Commissioner Black.

VOTE: 6 - 0 Motion carried.

XVII. Commission Updates and Reports; Miscellaneous Action Items.

- A. University Termite and Pest Control, Inc. (BL) / Richard Rupkey, II (QP) – Case No. 2005-069 – Commission's consideration of regulatory compliance consultant.

Mr. Scott Richardson appeared for his clients, University and Richard Rupkey, II. Mr. Richardson stated that he had supplied the Commission with the names of three potential consultants, in priority order. In response to Commission questions, Mr. Richardson said that his clients had no concern about a competitor or supplier getting involved in their business, nor concern about Mr. Root being long distance (from New Mexico).

MOTION: To approve Mr. Jack Root as the consultant, by Commissioner Black.
Seconded by Commissioner Baker.

VOTE: 6-0 Motion carried.

- B. None
- C. None
- D. Complaint Status Log
- E. Computer Based Testing "CBT" Status and Statistics.

Mr. Francis stated the reports for both C and D are in the materials.

- F. Expenditure Report.

Ms. Gervase stated the report is in the materials.

G. Expenditure Report

Ms. Gervase stated the materials were on page 504 of the Commissions materials. Commissioner Baker asked where the reserve fund was held. Ms. Gervase reported that the Treasure's Office manages the reserve fund. It functions as a savings account for the agency.

H. Case Status Report

Reported every other month, last reported at the 1/12/07 meeting.

I. Commission Training

Commissioner Runbeck suggested that the matter be tabled, as this training addresses questions brought up by Commissioner Putterman, who is absent.

XVIII. Approval of Minutes and Continuing Education Programs

A. January 12, 2007 (regular session) Minutes.

MOTION: To approve the January 12, 2007 Minutes, by
Commissioner DeVere.
Seconded by Commissioner Baker.

VOTE: 5-0-1 Motion carried
(Commissioner Black abstained)

B. Continuing Education Program Applicants.

MOTION: Approve the Continuing Education Program Applicants, by
Commissioner DeVere.
Seconded by Commissioner Baker.

VOTE: 6 - 0 Motion carried.

XVIII. Scheduling of future meetings/agenda items

Current Proposed dates

March 8, 2007
April 12, 2007
May 11, 2007
June 8, 2007
July 13, 2007

August 10, 2007
September 14, 2007
October 12, 2007
November 9, 2007

XIX. Adjournment – 10:55 a.m.

MOTION: *To adjourn by Commissioner Black.
Seconded by Commissioner DeVere.*

VOTE: *6 – 0 Motion carried.*