

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES,

Petitioner,

vs.

Case No. 15-4461

ELITE INSPECTORS, LLC, d/b/a  
ELITE INSPECTORS.COM; TAMER  
KEKEC; AND STEPHEN FRANCO,

Respondents.

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RECOMMENDED ORDER

A duly-noticed final hearing was conducted in this case before Suzanne Van Wyk, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on December 17, 2015, by video teleconference at sites in Jacksonville and Tallahassee, Florida.

APPEARANCES

For Petitioner: David W. Young, Esquire  
Department of Agriculture  
and Consumer Services  
Mayo Building, Suite 520  
407 South Calhoun Street  
Tallahassee, Florida 32399-0800

For Respondent: Howard J. Hochman, Esquire  
Law Offices of Howard J. Hochman  
Suite 210  
7695 Southwest 104th Street  
Miami, Florida 33156

STATEMENT OF THE ISSUES

Whether Respondent, Elite Inspectors, LLC, d/b/a EliteInspectors.com, engaged in the unlicensed practice of pest control, in violation of sections 482.071, 482.161, and 482.165, Florida Statutes (2015)<sup>1/</sup>; whether Respondents, Tamer Kekec and Stephen Franco, engaged in pest control services in violation of sections 482.071, 482.165, and 482.191; and, if so, what penalties should be imposed against Respondents.

PRELIMINARY STATEMENT

On July 13, 2015, Petitioner filed a Third Amended Administrative Complaint against Respondents and other persons, charging them with violating several provisions of chapter 482, Florida Statutes. Respondents timely requested a disputed fact hearing, which was forwarded to the Division of Administrative Hearings on August 12, 2015, for assignment of an Administrative Law Judge. The final hearing was scheduled for October 30, 2015, but was later rescheduled to December 17, 2015.

During discovery, Petitioner voluntarily dismissed charges against certain other persons, and the case proceeded on a Fourth Amended Complaint filed October 20, 2015, naming the Respondents herein. Specifically, in Counts 1, 2, and 3, Petitioner charged Respondent, Elite Inspectors, LLC, d/b/a EliteInspectors.com, of conducting pest control, and advertising pest control services without a license, in violation of

sections 482.161, 482.165, and 482.071; and in Counts 4 through 7, Respondents, Tamer Kekec and Stephen Franco, with violating sections 482.091, 482.165, 482.071, and 482.191, for conducting pest control services without a license.

The final hearing commenced as scheduled on December 17, 2015, via video teleconference at sites in Tallahassee and Jacksonville, Florida. Petitioner presented the testimony of Respondent Tamer Kekec, and introduced Petitioner's Exhibits P1 through P11. Respondent presented the testimony of Mr. Kekec and William Miles, and introduced Respondents' Exhibits R9 and R10. Respondent proffered Exhibit R2. The parties' Joint Exhibit J1 was admitted in evidence.

The record was held open for five days following the hearing for Respondents to submit late-filed exhibits. Respondents timely filed Exhibits R11 and R12. The parties requested, and were granted, leave to file proposed recommended orders 30 days from the date the transcript was filed.

A one-volume Transcript of the proceedings was filed on January 15, 2016. On February 15, 2016, the undersigned granted Respondents' request for a two-day extension of time to file a proposed recommended order, which was unopposed. The parties timely filed Proposed Recommended Orders, which were considered in preparing this Recommended Order.

## FINDINGS OF FACT

### The Parties

1. Petitioner, Department of Agriculture and Consumer Services (Petitioner or Department), is the state agency charged with administering the Structural Pest Control Act, chapter 482, Florida Statutes (the Act).

2. Respondent, Elite Inspectors, LLC, d/b/a EliteInspectors.com (Elite), is a Florida Limited Liability Company, whose principal place of business is 9951 Atlantic Avenue in Jacksonville, Florida. Elite is a residential structural inspection company offering home inspections in northeast Florida and southeast Georgia. Elite has never been licensed by the Department to engage in the business of pest control, pursuant to section 482.071.

3. Respondents, Tamar Kekec and Stephen Franco (the Individual Respondents), are the managers, and only members, of Elite, which was formed in 2004.

### Pest Control Activities

4. Petitioner is authorized to issue licenses to qualified businesses to engage in the business of pest control in this state. See § 482.071(1), Fla. Stat. Petitioner is likewise authorized to issue employee identification cards to persons employed by licensees to perform pest control services. See § 482.091, Fla. Stat.

5. It is unlawful for any person, partnership, firm, corporation, or other business entity to engage in the unlicensed practice of pest control as that term is defined in section 482.021(22). See § 482.165(1), Fla. Stat.

6. "Pest control" is broadly defined in section 482.021(22) to include:

(b) The identification of or inspection for infestations or infections in, on, or under a structure, lawn, or ornamental;

\* \* \*

(e) The advertisement of, the solicitation of, or the acceptance of remuneration for any work described in this subsection, but does not include the solicitation of a bid from a licensee to be incorporated in an overall bid by an unlicensed primary contractor to supply services to another.

Thus, both the conduct of wood-destroying organism (WDO) inspections, and advertising for the conduct of WDO inspections, are "pest control" activities regulated by the Act.

7. Section 482.191(1) makes unlawful the advertisement of pest control services except as authorized under chapter 482. Absent limited circumstances not applicable here, persons or entities engaging in such advertisement must be licensed by Petitioner to practice pest control.

8. Petitioner is further authorized to take disciplinary action against licensees and identification cardholders, pursuant to section 482.161, and to issue fines against persons

who engage in the unlicensed practice of pest control, pursuant to section 482.165.

WDO Inspections by Elite Prior to April 10, 2014

9. Between January 3 and April 10, 2014, Elite, through its member Mr. Franco, performed 99 WDO inspections, in addition to residential structural inspections, for its customers.

During that timeframe, Elite billed its customers \$6,850.00 for WDO inspections performed by Mr. Franco.

10. During that same timeframe, Mr. Kekec performed 49 WDO inspections, in addition to residential structural inspections for Elite customers, billing them a total of \$6,290.00.

11. All customer payments for WDO inspections conducted by the Individual Respondents were deposited into Elite's business banking account with BBVA Compass Bank.

DL and the Individual Respondents

12. Florida Quality Services, Inc., d/b/a DL (DL), is a Florida corporation licensed to engage in the business of pest control, and whose business address is 7008 Bayard Road, Ft. Pierce, Florida.

13. William R. Miles is DL's president and holds a pest control operator's certificate, pursuant to section 482.111. In the language of the licensing statute, Mr. Miles is the Certified Operator in Charge (COIC) at DL.

14. Every employee who performs pest control for a licensee must have an identification card. See § 482.091(1)(a), Fla. Stat. On April 5, 2014, Mr. Miles applied to Respondent for pest control employee identification cards for Respondents Kekec and Franco.

15. In the application, Mr. Miles stated that the Individual Respondents would begin conducting WDO inspections for DL on April 22, 2014.

16. The Individual Respondents signed a portion of the application certifying that they were not "currently employed by any other pest control licensee." They also certified that they were previously employed by another unnamed licensee with a termination date of April 21, 2014.

17. Mr. Kekec was "employed" by a number of pest control companies concurrent with his operation and management of Elite, including FK Pest Control from January to March 2014, DL Pest Control from June 2011 to December 2013, CS Pest Control from April 2009 to May 2011, TI Pest Control for an unspecified period, and A1 Pest Control from May 2005 to October 2006. Curiously, all these companies had the same business address as DL--7008 Bayard Road, Ft. Pierce, Florida.<sup>2/</sup>

18. The Individual Respondents were issued pest control employee-identification cards by the Department on April 10, 2014, identifying them as employees of DL.

19. In August 2014, DL applied to renew its license for the 2014-2015 license year, listing the Individual Respondents as employees to be issued identification cards as WDO inspectors for DL.

DL and Respondent Elite

20. Following issuance of employee-identification cards to the Individual Respondents, Elite continued to conduct WDO inspections, as well as residential inspections, for its clients, and bill those clients for WDO inspections. All payments received by Elite from its customers for whom it conducted WDO inspections were deposited into Elite's business bank account.

21. Between January 3 and December 31, 2014, Elite conducted over 300 WDO inspections for its customers, billing them in excess of \$48,000 for said inspections.

22. Elite continued to conduct WDO inspections for its customers, bill its customers for those WDO inspections, and accept payment for those WDO inspections, in 2015 as it had in 2014.

23. Elite obtained customers through its website, and through referrals from both previous customers and real estate agents. Elite's customers scheduled their home and WDO inspections directly with Elite through Mr. Kekec or Mr. Franco. Elite set the price per inspection based upon the



size, age, and the type of construction of the customer's property. Elite provided the ladders, flashlights, screwdrivers, extension probes, and, with the exception of a short period in 2015, the vehicle, used by the Individual Respondents to conduct WDO inspections. When Elite did not provide the vehicle for a brief period in 2015, Elite used a vehicle personally owned by Mr. Kekec.

24. Elite also paid the fuel cost to travel to and from inspections of customer properties, which is Elite's only operating expense.

25. After issuance of employee-identification cards to the Individual Respondents, Elite entered into an arrangement with DL by which Elite would pay DL \$38 for each WDO inspection conducted by the Individual Respondents. In turn, DL paid the Individual Respondents \$10 for each WDO inspection they conducted.

26. For the 2014 tax year, DL paid Mr. Kekec \$1,160 and issued him a W-2 wage and tax statement. That same year, DL paid Mr. Franco \$1,130 and issued him a W-2 wage and tax statement.

27. For each WDO inspection conducted, the Individual Respondents prepared and signed a WDO inspection report on a form required by the state. Each inspection report listed DL as

the inspection company. Each report was reviewed by Mr. Miles after-the-fact in his office in Ft. Pierce.

28. Mr. Miles testified that he provided constructive criticism via email once a month to his WDO inspectors regarding completion of the reports. However, if an inspector had completed inspection reports for three consecutive months, Mr. Miles suspended monthly review of their reports and only conducted "spot checks."

29. Respondents introduced no document to evince review and criticism of any report completed by either Mr. Kekec or Mr. Franco.

30. Whether DL provided ongoing training in WDO inspections to the Individual Respondents was a contested issue at hearing. Respondents attempted to introduce a composite exhibit consisting of two manuals, two posters of termites, and a "flip-book" produced by University of Florida.

31. When asked whether DL provided the manuals to Mr. Kekec, he testified, "[W]ell, the last version of the manuals, I believe it was provided in 2013, but I think there was four or five different versions of it. It's been updated over the years." The evidence was not clear whether DL provided the manuals to the Individual Respondents or they were obtained by other means. Even if the manuals were provided by DL to the Individual Respondents, there is insufficient evidence

to find that DL provided any ongoing relevant training to the Individual Respondents.

32. The parties stipulated that the Individual Respondents met the training requirements to qualify to be identification cardholders.

33. The only equipment issued to the Individual Respondents by DL for their use in conducting WDO inspections was a magnifying glass.

#### Elite Website

34. During all times relevant hereto, Elite maintained a website whose address was [www.eliteinspectors.com](http://www.eliteinspectors.com). Elite noted "WDO Inspections" as one of its services and areas of expertise. Under "About Us" on its website, Elite stated, "In addition to home inspections, we do . . . wood destroying organism (termite) inspections (performed by DL employees)."

35. With regard to WDO inspections, the website included the following:

Our inspectors are State Certified WDO inspectors with several years of experience and meet all of the Florida continuing education requirements. We perform the WDO inspection while performing the home inspection so one additional step can be eliminated, which saves time and money.

WDO inspections are performed by DL employees.

36. In the "Inspector Biographies" section, the website reported that Mr. Franco was a "Certified Pest Operator-Termite" and that Mr. Kekec was "a licensed WDO inspector under DL pest services."

37. At final hearing, Mr. Kekec was unable to identify any reason why Elite would want to identify Mr. Franco to its customers as a licensed pest control operator.

38. The website did not identify what DL was or its relationship with either Elite or its managers, Mr. Franco and Mr. Kekec.

#### CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has jurisdiction over the parties to, and subject matter of, this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

40. The statutes which Respondents are alleged to have violated are penal in nature, and, therefore, must be strictly construed, with ambiguities resolved in favor of the licensee. Lester v. Dep't of Prof'l & Occ. Reg., 348 So. 2d 923, 925 (Fla. 1st DCA 1977). For Petitioner to sanction Respondents, it must prove the charges specifically alleged in the administrative complaint by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292, 294 (Fla. 1987); Cottrill v. Dep't

of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Kinney v. Dep't of State, 501 So. 2d 129, 133 (Fla. 5th DCA 1987).

41. Florida courts have described clear and convincing evidence as follows:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994); Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

Count 1

42. Petitioner has charged Respondent Elite with violating sections 482.071(1) and 482.165(1), by operating a pest control business without a license.

43. Section 482.071(1) provides that "[i]t is unlawful for any person to operate a pest control business that is not licensed by the department." Section 482.165(1) provides that "[i]t is unlawful for any person . . . or . . . business entity not licensed by the department to practice pest control."

44. Petitioner proved that Elite engaged in the business of pest control when it provided WDO inspections to its

customers in 2014 and 2015 and billed the customers for those services. Elite was not licensed by the Department to practice pest control during either 2014 or 2015.

45. Thus, Petitioner proved that Respondent Elite violated 482.071(1) and 482.165(1).

Count 2

46. Petitioner has charged Respondent Elite with violating section 482.165(1) by advertising pest control services without a license.

47. Section 482.021(22) defines the practice of "pest control" to include "the advertisement of, the solicitation of, or the acceptance of remuneration for any work described in this section[.]" Section 482.165(1) makes it unlawful for any business to practice pest control without a license.

48. At all times relevant hereto, Elite advertised on its website that it offered WDO inspection services, and that WDO inspections was an area of expertise for the company. Further, Elite advertised, "[W]e perform the WDO inspection while performing the home inspection so an additional step can be eliminated, which saves time and money."

49. While the website mentioned that WDO inspections are "performed by DL employees," the website did not identify or describe DL or its relationship with Elite.

50. Petitioner proved that Elite violated 482.165(1) by advertising its WDO inspection services without a license to engage in the business of pest control.

Count 3

51. Petitioner next charges Elite with violating section 482.161(1) by engaging in misleading advertising by implying that Elite was licensed to conduct WDO inspections.

52. Section 482.161 provides, in pertinent part, that the "department may issue a written warning or impose a fine against . . . any . . . person . . . upon any of the following grounds: . . . (h) Fraudulent or misleading advertising relative to pest control or advertising in an unauthorized category of pest control.

53. Elite's website advertised "we perform the WDO inspection while performing the home inspection so an additional step can be eliminated, which saves time and money," and that Mr. Franco was a "certified pest operator" and that Mr. Kekec was a "licensed WDO inspector." The implication that Elite is licensed to conduct WDO inspections is inherent in the language. Customers could easily conclude that Elite is both licensed to conduct WDO inspections and conducts those inspections with its own certified employees. While the website mentioned that Mr. Kekec's license is "under DL pest services" and that WDO inspections were performed "by DL employees," that

information serves only to muddle, rather than clarify, the matter. The website does not identify who or what DL is, who its employees are, or its relationship to Elite.

54. Petitioner proved that Elite engaged in fraudulent or misleading advertising in violation of 482.161.

Counts 4 and 6

55. Petitioner next charges the Individual Respondents with violations of sections 482.091(2)(a) and 482.191(1) by unlawfully holding pest control identification cards identifying them as employees of DL when, in fact, they were independent contractors thereto.

56. Section 482.091 (2)(a) provides as follows:

An identification cardholder must be an employee of the licensee and work under the direction and supervision of the licensee's certified operator in charge and shall not be an independent contractor. An identification cardholder shall operate only out of, and for customers assigned from, the licensee's licensed business location. An identification cardholder shall not perform any pest control independently of and without the knowledge of the licensee and the licensee's certified operator in charge and shall perform pest control only for the licensee's customers.

57. Neither Mr. Franco nor Mr. Kekec operated out of, or for customers assigned from, DL's business location in Ft. Pierce, Florida. Instead, the Individual Respondents operated out of Elite's business location in Jacksonville,



Florida. They did not take customers assigned from DL, but rather serviced Elite customers who were directed to them either from Elite's website, its prior customers, or real estate agents. Both of the Individual Respondents performed pest control services without the knowledge or involvement of either DL or its COIC, Mr. Miles. DL played no role in scheduling WDO inspections for Elite customers, and Mr. Miles had no knowledge of the clients for whom the Individual Respondents conducted WDO inspections until he reviewed, after the fact, inspection reports completed and executed by Mr. Franco and Mr. Kekec.

58. The "arrangement" between DL and Elite, by which Elite paid DL \$38 for each WDO inspection performed by the Individual Respondents, was nothing more than a sham arrangement to give the appearance of a client relationship between the two entities.

59. Petitioner proved that the Individual Respondents obtained and utilized their employee-identification cards in a manner contrary to the statutory requirement of 482.091(2)(a).

60. Section 482.191(1) provides that it is unlawful to "solicit, practice, perform, or advertise in pest control except as provided by this chapter." Subsection (1) is a precursor to the imposition of a misdemeanor penalty for a violation of the

Act. The undersigned has no authority to make conclusions regarding this section of the statute.

Counts 5 and 7

61. Finally, Petitioner charges the Individual Respondents with violating 482.165(1), 482.071(1), and 482.191(1), by performing pest control as independent contractors without a pest control business license.

62. Both 482.165(1) and 482.071(1) make it unlawful for any person or business entity to operate a pest control business without a license from the Department. The issue underlying this charge is whether the Individual Respondents operated a pest control business during the relevant timeframe.

Respondents maintain that the Individual Respondents were employees of DL, rather than independent contractors thereto. As evidence of the employer-employee relationship, Respondents offered that DL paid the Individual Respondents \$10 for each WDO inspection they conducted, and issued a W-2 wage and tax statement on their behalf.

63. Section 482.091(2)(a) provides that “[a]n identification cardholder must be an employee of the licensee and work under the direction and supervision of the licensee’s certified operator in charge and shall not be an independent contractor.”

64. Section 482.021(13) defines "[i]ndependent contractor" as follows:

(13) 'Independent contractor' means an entity separate from the licensee that:

(a) Receives moneys from a customer which are deposited in a bank account other than that of the licensee;

(b) Owns or supplies its own service vehicle, equipment, and pesticides;

(c) Maintains a business operation, office, or support staff independent of the licensee's direct control;

(d) Pays its own operating expenses such as fuel, equipment, pesticides, and materials; or

(e) Pays its own workers' compensation as an independent contractor.

65. Elite is a separate legal entity from DL. The Individual Respondents received moneys from Elite customers for conducting WDO inspections, which moneys were deposited into Elite's business banking account. That account was separate from DL's (the licensee's) bank account. Elite, not DL, provided the vehicles and equipment, with the exception of a magnifying glass, used by the Individual Respondents to conduct WDO inspections. Elite, through its managers, the Individual Respondents, maintained an office in Jacksonville separate from DL's office in Ft. Pierce, and scheduled WDO inspections personally, outside of DL's business operations. Elite, through

its managers, paid its own fuel costs to conduct WDO inspections, which was, admittedly, its only operating expense.

66. The fact that DL supplied the Individual Respondents with a magnifying glass to perform WDO inspections does not preclude the conclusion that the Individual Respondents operated as independent contractors for DL. The facts that DL paid a meager \$10 to the Individual Respondents for each WDO inspection performed, and supplied a minor piece of equipment for their use, support an inference that the Respondents attempted to circumvent the regulatory structure.

67. The Individual Respondents' sustaining business operation was conducting WDO inspections for Elite clients, a business for which it billed its clients over \$48,000 in 2014 alone, and for which it did not have a license from the Department. The evidence supports the conclusion that the Individual Respondents were independent contractors to DL.

68. Petitioner proved that the Individual Respondents violated 482.065(1) and 482.071(1) by operating a pest control business without a license.

69. In counts 5 and 7, Petitioner again charged the Individual Respondents with violating 482.191, a statute imposing criminal sanctions over which the undersigned has no

jurisdiction. Thus, the undersigned declines to draw any conclusion relative to that statutory section.

Sanctions

70. Section 482.161(7) authorizes Petitioner to impose administrative fines for violations of chapter 482. That statute provides:

(7) The department, pursuant to chapter 120, in addition to or in lieu of any other remedy provided by state or local law, may impose an administrative fine, in an amount not exceeding \$5,000, for the violation of any of the provisions of this chapter or of the rules adopted pursuant to this chapter. In determining the amount of fine to be levied for a violation, the following factors shall be considered:

(a) The severity of the violation, including the probability that the death, or serious harm to the health or safety, of any person will result or has resulted; the severity of the actual or potential harm; and the extent to which the provisions of this chapter or of the rules adopted pursuant to this chapter were violated;

(b) Any actions taken by the licensee or certified operator in charge, or limited certificateholder, to correct the violation or to remedy complaints;

(c) Any previous violations of this chapter or of the rules adopted pursuant to this chapter; and

(d) The cost to the department of investigating the violation.

71. Florida Administrative Code Rule 5E-14.149, entitled "Enforcement and Penalties," authorizes Petitioner to impose

penalties for violations of chapter 482, and sets forth the factors Petitioner must consider in determining the penalty. Subsection (1) of the rule also authorizes Petitioner to impose penalties under section 482.161, in lieu of the rule.

72. Subsection (3) of the rule provides in pertinent part: "(3) Category of Violations. Minor violations are all violations other than those classified as major violations. Major violations are violations where: . . . (g) [t]he licensee, certificate holder, permit holder or applicator performs or causes fraudulent or misleading advertising relative to pest control . . . (k) An individual or business performs pest control without holding a valid license from the Department."

73. Subsection (8) of the rule provides:

(8) Fines. For repeat non-major violations, multiple violations including at least one major violation, and all major violations, including those violators who do not respond to an administrative complaint, the Department will impose an administrative fine not to exceed \$5,000 per violation plus any other penalty allowed by law including suspension or revocation. When imposing a fine, the Department will consider the degree and extent of harm, or potential harm, that was or could have been caused by the violation, the cost of rectifying the damage minus the actions taken by the licensee or certified operator or applicator to correct the violation or remedy complaints, whether the violation was committed willfully, the compliance record of the violator, and the costs to the

Department of investigating the violation. The Department will use the attached Fine Guide to assist it in determining the appropriate amount of the fine.

74. Subsection (14) of the rule provides:

(14) Fine Guide. FINE GUIDE =  $A(B+C+D+E+F)G$ . This guide shall apply for each violation for which a fine is imposed. The maximum fine is \$5,000 per violation. The terms and values used in the fine guide calculation shall be:

A = Degree & Extent of Harm - Human, animal and environmental hazards occur as a result of pesticide misuse or mismanagement of another pest control method:

1 Human, animal or environmental harm not identified

5 Death of animals or injury to humans or animals requiring hospitalization, or serious harm to an ecological system, or contamination of water or soil requiring corrective action or monitoring to protect human health or the environment

7 Human death

B = Toxicity of the pesticide for which a pesticide misuse or violation, of label directions which could result in human or animal hazards:

0 No pesticide involved in complaint

1 Category III or IV - Signal Word "Caution"

2 Category II - Signal Word "Warning"

3 Category I - Signal Word "Danger"

C = Estimated cost of rectifying the damage to consumer minus any mitigation provided by the violator

1 Unknown or under \$1,000

2 Over \$1,000 and under \$5,000

3 Over \$5,000 and under \$10,000

4 Over \$10,000

D = Whether the violation was committed deliberately

1 No evidence violation was committed deliberately

5 Evidence violation was committed deliberately  
E = Compliance record of the violator  
0 No prior violations  
1 One prior violation for a dissimilar violation  
2 Two or more prior violations dissimilar to current violation  
3 One prior violation for a similar violation  
4 Two or more prior violations for similar violations  
F = Investigative Costs  
0 Routine investigation or Payment of all investigative costs  
2 Violation documented as a result of more than one inspection or requiring investigation by multiple inspectors, or by department personnel outside of the division of Agricultural Environmental Services  
G = Entity Category  
500 Business licensee responsible for violation, or person operating a pest control business without a valid business license  
250 Certified Operator or Special Identification Cardholder responsible for violation  
100 All others  
Compliance record. The compliance record is established by prior disciplined violations, within the three (3) years preceding the date of the current violation, of Chapter 482, F.S., or of Chapter 5E-14, F.A.C., or of federal or other Florida law addressing pest control or pesticide use or disposal. Violations will be considered final on acceptance of the applicable penalty, or the date of final agency action or the conclusion of any appeals thereof.

75. The evidence did not reveal any human, animal, or environmental harm as a result of the violations. No pesticides



were involved in the violations. Petitioner presented no evidence of prior violations.

76. The estimated cost of rectifying the damage to the consumer would be over \$48,000, the amount unlawfully charged and collected by Respondents from Elite customers in 2014 alone. Respondents offered no evidence of mitigation and their activities were deliberate. Petitioner presented no evidence of investigative costs.

77. Using the rule formula, Respondents, Elite, Kekec, and Franco, should each be fined \$4,500<sup>3/</sup> for engaging in the business of pest control without a license, in violation of 482.065(1) and 482.071(1). Respondent Elite could additionally be fined for the separate violation of 482.161(1)(h) (fraudulent advertising), but the Petitioner did not establish the cost of rectifying damage to the consumer.<sup>4/</sup>

78. Section 482.161 authorizes Petitioner to suspend or revoke an employee-identification card for "violation of any provision of this chapter." Petitioner seeks to revoke the Individual Respondents' employee-identification cards for engaging in the unlicensed practice of pest control in violation of 482.071(1) and 482.165(1). Pursuant to 482.161, revocation is effective for three years, after which application may be made for reinstatement.

79. The Individual Respondents conducted WDO inspections before they were issued identification cards as "employees of DL" and continued the activities willfully thereafter. They participated in a business "arrangement" which allowed them to be paid twice for each and every inspection, once by the Elite customer, and once as an "employee of DL." Having each been engaged in the pest control business in some capacity since 2005, both Individual Respondents were well aware of the requirement to be supervised by the COIC, and skirted that requirement by creating an appearance of supervision in the form of after-the-fact reviews of their work.

80. The undersigned concludes that it is highly likely the Individual Respondents will continue to engage in the unlicensed practice of pest control in the future, as long as they can obtain identification cards from some licensee willing to participate in a similar arrangement. Revocation of their identification cards will prevent the unlicensed practice for at least three years.

#### RECOMMENDATION

Based on the foregoing, it is hereby RECOMMENDED that the Department of Agriculture and Consumer Services enter a final order finding:

1. Respondents, Elite Inspectors, LLC, d/b/a EliteInspectors.com, Tamer Kekec, and Stephen Franco, violated

sections 482.071(1) and 482.165(1), by engaging in the business of pest control in 2014 and 2015 without a license from the Department, and impose an administrative fine of \$4,500 against the Respondents, jointly;

2. Respondent, Elite Inspectors, LLC, d/b/a EliteInspectors.com violated section 482.161(1)(h), by engaging in misleading advertising relating to pest control, and issue a warning letter thereto; and,

3. Respondents, Tamer Kekec and Stephen Franco, violated section 482.091(2)(a), by conducting WDO inspections in 2014 and 2015 as independent contractors to DL, and revoking the Individual Respondents' identification cards, pursuant to section 482.161.

DONE AND ENTERED this 22nd day of March, 2016, in Tallahassee, Leon County, Florida.



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SUZANNE VAN WYK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of March, 2016.

ENDNOTES

1/ Unless otherwise noted herein, all references to the Florida Statutes are to the 2015 version. While some of the actions giving rise to the charges occurred in 2014, there was no substantive change to the relevant statutes between 2014 and 2015.

2/ Mr. Kekec was unable to identify the business address for A1 Pest Control.

3/ The mathematical formula is  $1(0+4+5+0+0) \times \$500 = \$4,500$ .

4/ Petitioner seeks only a warning letter for this violation.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.