

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHAEL ANGELO LUGO,
1746-F South Victoria Avenue, Unit #361
Ventura, CA 93003

Field Representative's License No. FR 16118,
Branches 2 and 3

Respondent.

Case No.: 2016-16


OAH No.: 2015100543

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Structural Pest Control Board, Department of Consumer Affairs, as its Decision in the above-entitled matter.

The Decision shall become effective on May 19, 2016.

IT IS SO ORDERED April 19, 2016.



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PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on February 11, 2016, in Los Angeles. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Vinodhini R. Keller, Deputy Attorney General, represented Susan Saylor (complainant).

Michael Angelo Lugo (respondent) was present and represented himself.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity as the Registrar/ Executive Officer of the Structural Pest Control Board (Board), which is within the California Department of Consumer Affairs (Department). Respondent submitted a Notice of Defense, which contained a request for the hearing that ensued. (Ex. 1.)

2. On April 6, 1988, the Board issued Field Representative's License No. FR 16118 in Branch 3 (termite) to Respondent. On June 13, 1991, the license was upgraded to include Branches 2 (general pest) and 3. The license was in full force and effect at all times relevant and, as of the hearing, was scheduled to expire on June 30, 2017. (Ex. 2.)

Respondent's Continuing Education Certification

3. On or about July 30, 2014, respondent submitted a license renewal application to the Board, wherein he certified under penalty of perjury that he successfully completed all required continuing education coursework during his last renewal period. (Ex. 4.) Specifically, Respondent signed the renewal application, which provided, in pertinent part:

Continuing Education Certification — I have completed “20” hours of continuing education required for renewal of my license. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

4. Respondent filled in “20” for the number of hours, signed his name below the certification, and dated his signature “7/30/14.” (Ex. 4.)

5. By a letter dated November 3, 2014, respondent was notified he had been selected for a continuing education (CE) audit by the Board. Respondent was informed he needed to submit to the Board copies of his certificates of completion verifying the CE hours he completed for the renewal period July 1, 2011, through June 30, 2014. Respondent was given 14 days to respond to the Board’s request or risk disciplinary action being taken against his license. (Ex. 5.) Respondent failed to provide the Board with any certificates of completion of CE requirements for the renewal period indicated.

6. On November 19, 2014, the Board received a letter from respondent indicating he had not completed his CE requirements. He apologized for making “a horrible oversight,” and requested the Board “allow me to turn in my hours by the end of the week.” (Ex. 6.)

7. On March 3, 2015, Board staff left respondent a voice-mail requesting any CE certificates he had. Respondent returned the call, but indicated he was taking his father to the hospital that day and did not have access to his records. He mentioned having taken some classes through the “Pest Web” in 2014. The Board staff member, who had access to Pest Web’s rosters for 2013-2014, was unable to locate respondent on any training roster for 2014. The Board staff member sent respondent a letter advising him the matter was being referred for disciplinary action. (Ex. 7.)

8. On March 12, 2015, Board staff left respondent a second voice-mail advising him his CE audit would undergo administrative review on March 27, 2015, unless he submitted additional information; and that his name could not be located on the Pest Web training roster for either 2013 or 2014. No response was received from respondent. (Ex. 7.)

9. On March 26, 2015, Board staff left respondent a third voice-mail summarizing the events described above and advising him his CE audit would undergo administrative review unless he contacted Board staff. No response was received. (Ex. 7.)

10. On March 27, 2015, respondent's CE audit was submitted for administrative review. Complainant reviewed the information above. Complainant concluded revocation of respondent's license was warranted, because he had completed none of his required 20 hours of CE; had provided materially false information about his CE to the Board on his license renewal application; and had failed to provide the Board with any relevant information after three requests from Board staff concerning the situation. (Ex. 7.)

Respondent's Evidence

11. Respondent does not deny any of the above events. In his testimony, he provided a heart-felt and credible explanation. When he submitted his renewal application, respondent thought he had done some hours of CE, but he knew he had not completed the required 20 hours. His plan at the time was to submit the renewal application and thereafter do the required CE by the end of September 2014. He never followed through on that plan. Respondent admits now that he "made a horrible mistake." He appeared extremely contrite and remorseful during the hearing. However, he had no explanation for his failure to cooperate with Board staff in March 2015 when he was solicited on three separate occasions to provide any evidence of completed CE hours.

12. Respondent has been licensed for almost 30 years and has no record of prior discipline by the Board.

13. Respondent submitted character reference letters from his mentor in the pest control industry, Mr. John Cordero (ex. A), and from a real estate broker for whom he has done pest control work, Mr. David Tapie (ex. B). Both of those individuals describe respondent as professional, a skilled technician, and a good person.

Costs

14. The Board incurred reasonable costs in the amount of \$2,290.00 investigating and prosecuting this case.

15. Respondent is currently in financial distress. He is a single parent providing support for two children who live with him and a grandchild. Respondent's business is small and has not done well lately, and he is only a minority partner in it. If his license is revoked, his ability to pay the Board's costs will be greatly reduced, as will his ability to provide for himself and his family.

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LEGAL CONCLUSIONS

1. *First Alleged Cause for Discipline* (Failure to Provide Proof of Continuing Education). Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 8641 and 8593, in conjunction with California Code of Regulations, title 16, section 1950, subdivision (a), in that respondent failed to provide the Board with verifiable documentation to demonstrate he completed all of the courses of continuing education required as a condition of license renewal. (Factual Findings 3-5.)

2. *Second Alleged Cause for Discipline* (Misrepresentation of Material Fact). Respondent is subject to disciplinary action pursuant to Business and Professions Code section 8637, in that on or about July 30, 2014, respondent misrepresented to the Board that he had completed 20 hours of continuing education coursework in his license renewal application when, in fact, he had completed none. (Factual Findings 3-11.)

3. A. *Disposition*. Reference is made to the Board's *Manual of Disciplinary Guidelines*, effective November 2010 (Guidelines). Although the Guidelines recommend a range of possible discipline for respondent's failure to complete his continuing education hours, the Guidelines suggest revocation is the only remedy for his misrepresentation to the Board on his renewal application. The Guidelines are not mandatory, but they certainly signal the severity of respondent's misconduct and place the burden on him to show the public would still be protected with discipline less than revocation.

B. In this case, respondent has not provided a satisfactory explanation for his actions. He is lauded for his candor with the Board in quickly admitting he had made a misrepresentation on his renewal application and in accepting full responsibility for his actions during the hearing. What is troubling is respondent's complete failure to do anything whatsoever to cure his CE deficiency. This is despite the fact he had planned on completing his CE a few months after submitting his renewal application and after receiving three separate contacts from Board staff almost imploring him to provide any morsel of evidence indicating he had done any CE. Even after the Accusation was filed and served, respondent has not demonstrated any attempt to complete any CE before the hearing.

C. It is not lost on the ALJ that respondent has had an otherwise unblemished record with the Board after almost 30 years of licensure. Respondent has impressed others with his professionalism, craftsmanship and kindness. However, respondent's willingness to make a material misrepresentation on a document he submitted to the Board is obviously concerning, because licensees in this field are often required to make various important certifications that can have significant consequences for the parties in the involved transaction. Based on his inability to complete any CE since 2011, it is also unlikely respondent would be able to comply with the various conditions and requirements that would come with a probationary license. Thus, discipline less than revocation would essentially delay the inevitable. The order below is therefore warranted to protect the public. (Factual Findings 1-13.)

4. *Other Disciplinary Considerations.* Business and Professions Code section 8654 provides that if discipline is imposed on respondent's license, he shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company while his license remains revoked; and that any registered company which employs, elects, or associates respondent under said circumstances shall be subject to disciplinary action. In this case, since respondent's license will be revoked, he is subject to the prohibition of section 8654.

5. *Costs.* Business and Professions Code section 125.3 states, in pertinent part, that a board may request an ALJ hearing a matter to direct a licentiate found to have committed a violation of its licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement. In this case, respondent violated rules and regulations applicable to structural pest control licensees and the Board's reasonable costs incurred in investigating and prosecuting this case were \$2,290.00. (Factual Finding 14.) However, case law indicates a cost award may be reduced or adjusted should the licensee be financially unable to make later payments. (*Zuckerman vs. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) In this case, respondent is in financial distress. Revocation of his license will render him unable to pay a cost award. (Factual Finding 15.) Therefore, he should not be responsible for such costs unless and until his license is reinstated by the Board. At that time, he should be responsible for the costs in this case as a condition precedent to reinstatement.

ORDER

Field Representative's License No. FR 16118, issued to respondent Michael Angelo Lugo, is revoked.

Respondent Michael Angelo Lugo is prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of any registered company during the period that discipline is imposed on Field Representative License No. FR 16118.

Respondent Michael Angelo Lugo is ordered to pay the Board its reasonable costs of the investigation and enforcement of this case in the amount of \$2,290.00, but only when, and if, his license is reinstated by the Board.

DATED: February 19, 2016

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ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings