

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

In the Matter of the Petition for
Reinstatement of Revoked Field
Representative's License of:

ADRIAN TEJEDA,

Field Representative's License No.
FR 18275,

Petitioner.

OAH No. 2010040319

DECISION

On April 21, 2010, a quorum of the Structural Pest Control Board (Board) heard this matter in Sacramento, California. Administrative Law Judge JoAnn Irwin Eshelman, Office of Administrative Hearings, State of California, presided at the hearing.

Deputy Attorney General Rene Judkiewicz represented the Office of the Attorney General, State of California.

Petitioner Adrian Tejeda (petitioner) appeared on his own behalf.

Oral and documentary evidence were received. The matter was submitted on April 21, 2010.

FACTUAL FINDINGS

1. On March 2, 1990, the Structural Pest Control Board (Board) issued Field Representative License No. FR 18275 (License) in Branch 3 to petitioner Adrian Romero Tejeda.¹ On June 30, 1992, petitioner's License was cancelled from the Board's files.

¹ The Board also issued petitioner a Registered Applicator's License No. RA 5274 on October 23, 1996. Three years later, on October 23, 1999, that license was cancelled from the Board's files. This Petition for Reinstatement does not concern the Registered Applicator's License.

2. Effective April 2, 1993, the Board revoked petitioner's License following an administrative hearing in Case No. 91-81, at which petitioner failed to appear. The Board also revoked probation and the company registration of petitioner's then-employer, Ray's Exterminating Company, dba Less Pests, Inc. (Ray's), and the probation and operator's license of another Ray's employee, Raymond D. O'Halloran.

3. The Board's Order was based on findings that petitioner had violated Business and Professions Code sections 8641 and 8646, and California Code of Regulations, title 16, section 1983, on October 10, 1991; by negligently handling the poisonous exterminating agent PT 270 Dursban while applying a treatment for termites at 2000 Baja, Newport Beach, California. Petitioner wore one glove and no goggles while treating the property. The spray rig tank did not have a label identifying the pesticide being used. The PT 270 Dursban was spilled out onto the street, gutter and curb. The pesticide storage area on petitioner's truck was unlocked because the lock was broken. Petitioner left pesticides unattended while he was inside treating the residence for termites.

4. On January 27, 2010, petitioner filed a petition for reinstatement with the Board. This is petitioner's first request for reinstatement of his field representative license.

5. At hearing, petitioner explained that, after his license was revoked, he was convicted of being under the influence of a controlled substance on November 16, 2003. The court referred him to a drug diversion program which he successfully completed on March 20, 2004. Petitioner reported that he began using cocaine in early 2000; he did not have a "coke problem" in the early 1990s when he was working for termite companies. He attended Narcotics Anonymous meetings for several years but stopped attending two years ago. Petitioner has been "clean and sober" since November 17, 2003. He believes he hit rock bottom 16 years ago and has been trying to get his life back together since then.

6. Petitioner accepts "full responsibility" for the events that led to his license revocation. His rig was faulty and leaked, and the company truck he used had a broken lock. Petitioner did not have a driver's license at that time and knew that the individual who drove the truck checked it. Petitioner did not check his truck the morning of the violation, but believes that he should have. Petitioner stated that it was a "nightmare" to work for Ray's. He had to buy his own safety equipment because the company did not give him enough gear and his out-of-pocket expenses were not reimbursed. The checks written by the company "bounced." At the time of the violation, petitioner knew the importance of proper protective equipment and the importance of protecting himself and the public.

7. Since his license was revoked, petitioner has learned that he must follow the regulations and safety rules because they are "there for a reason." He wants to eventually get his applicator's license but feels the first step is to be reinstated as a field representative. He is willing to undertake additional training, to take the licensing exam again, and do "whatever it takes" to get reinstated. Petitioner feels ashamed to have to tell others that his license was revoked, particularly since he has friends and family in the pest control business.

8. Petitioner's current employer, Scott Robinson, of Taurus Termite Inc. (Taurus) in Brea, California, appeared at the hearing as a character witness. Mr. Robinson has known petitioner for 35 years and has tried to help him through his recent difficulties. Mr. Robinson believes that petitioner has "turned his life around" and has done a good job as a father because his three daughters are in college. Petitioner has worked for Taurus doing repairs for the past three years and is a "great employee." Mr. Robinson is comfortable with petitioner and trusts him in clients' homes. Mr. Robinson traveled from southern California to the hearing because he wants petitioner to get his applicator's or field representative license.

9. Petitioner's testimony was credible evidence of changes he has made, particularly as reinforced by the testimony of his employer, Scott Robinson. Petitioner and Mr. Robinson have a close relationship which apparently provides the support that petitioner needs to maintain the changes he has made in his life. Petitioner has shown that there is no danger to the public if he is reinstated as a field representative. However, because petitioner has been away from the pest control business for several years, and is not aware of the current laws and regulations, he will need to take eight hours of continuing education in addition to the 16 required for renewal of his license.

LEGAL CONCLUSIONS

1. Government Code section 11522 addresses license reinstatement petitions and provides:

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefore, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

2. California Code of Regulations, title 16, section 1937.2, includes the criteria for reinstatement, and reads in pertinent part:

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(b) When considering the suspension or revocation of a structural pest control license or company registration on the grounds that the licensee or registered company has been convicted of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or its present eligibility for a license or company registration will consider the following:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee or registered company has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or registered company.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any of rehabilitation submitted by the licensee or registered company.

(c) When considering a petition for reinstatement of a structural pest control license or company registration, the board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).²
(Emphasis added.)

3. Petitioner bears the burden of establishing that he is now fit to engage in the structural pest activities for which he seeks a license. The Board has evaluated the evidence submitted by petitioner in the context of the criteria for reinstatement recited above. It has been nearly 17 years since the violation which led to revocation of petitioner's License. Petitioner has demonstrated sufficient rehabilitation so that it would not be contrary to the public interest to reinstate his License on a probationary basis. Cause exists for reinstatement of petitioner's License subject to the terms and conditions set forth below.

² The Board has developed more extensive guidelines for reinstatement petitions which are provided to petitioners.

ORDER

The Petition for Reinstatement of Revoked Field Representative License No. FR 18275 in Branch 3, and licensing rights, filed by petitioner Adrian Romero Tejada is GRANTED, provided that petitioner is placed on probation for three years subject to the following terms and conditions:

1. Obey All Laws: Petitioner shall obey all laws and rules relating to the practice of structural pest control.
2. Continuing Education: By the end of the probationary period, petitioner shall complete eight hours of continuing education (in addition to the 16 required for license renewal) concerning the laws and regulations of the structural pest control industry. Petitioner shall provide proof to the Board that he has satisfied this condition.
3. Quarterly Reports: Petitioner shall file quarterly reports with the Board during the period of probation.
4. Tolling of Probation: Should petitioner leave California to reside outside this state, petitioner must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.
5. Notice to Employers: Petitioner shall notify all present and prospective employers of the decision in this matter and the terms and conditions of his license probation.

Within 30 days of the effective date of this decision, and within 15 days of petitioner undertaking new employment, petitioner shall cause his employer to report to the board in writing acknowledging the employer has read the decision in this matter.

6. Completion of Probation: Upon successful completion of probation, petitioner's license will be fully restored.
7. Violation of Probation: Should petitioner violate probation in any respect, the board, after giving petitioner notice and an opportunity to be heard, may revoke probation and suspend or revoke petitioner's license. If a petition to revoke probation is filed against petitioner during probation, the board shall have

continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

DECISION

This Decision is hereby adopted by the Structural Pest Control Board.

This Decision shall become effective on July 9, 2010

IT IS SO ORDERED.

DATED: June 9, 2010



CRIS ARZATE
President
Structural Pest Control Board