

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

In the Matter of the Petition for  
Reinstatement of Revoked License of:

OAH No. 2012031009

BRYAN W. SCOBEEY,

Petitioner.

**DECISION**

This matter was heard on April 25, 2012, before a quorum of the Structural Pest Control Board (board), Curtis Good, President, presiding, in Sacramento, California. Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, sat with the board.

Langston M. Edwards, Deputy Attorney General, represented the Department of Justice, Office of the Attorney General, and appeared pursuant to Government Code section 11522.

Bryan W. Scobey (petitioner) represented himself.

**FACTUAL FINDINGS**

*License and Disciplinary History*

1. On September 22, 1998, the board issued Applicator License No. RA 10473 in Branch 2 to petitioner. On January 14, 1999, the board issued Field Representative's License No. FR 30367 in Branch 2 to petitioner.

2. Petitioner's license was revoked by the board effective February 23, 2011, pursuant to a Stipulated Surrender of License and Order in Case No. 2010-77 (Stipulated Surrender), which was signed by petitioner on December 1, 2010. Disciplinary action was taken against petitioner pursuant to Business and Professions Code sections 8642 and 8650 for fraudulent conduct and deviating from the name or address given in the license, and pursuant to Business and Professions Code sections 8649 and 490 for conviction of a crime

substantially related to the qualifications, functions, or duties of a board licensee. In particular, it was found that, between January 13 and January 21, 2010, while employed by Hitman Termite and Pest Control (Hitman), petitioner took a truck and equipment belonging to Hitman, drove from the Sonoma/Santa Rosa area to Yreka, and sold equipment belonging to Hitman to a third party, while indicating his name on the bill of sale as "Bryan Smith." Petitioner then gave the truck belonging to Hitman to another third party in exchange for a ride to Reno, Nevada.

The order revoking petitioner's license required him to pay the board \$3,315 for the reasonable costs of investigation and enforcement of the case, prior to the issuance of a new or reinstated license.

#### *Petitioner's Criminal Conviction*

3. In the Stipulated Surrender, petitioner admitted that, on February 26, 2010, in the Superior Court of California, County of Sonoma, petitioner was convicted, upon his plea of guilty, of violating Penal Code section 10851, subdivision (a), theft and unlawful driving or taking of a vehicle, a felony. Petitioner was placed on formal probation for three years upon terms and conditions which included the following: serve 90 days in county jail, with 40 days credit for time served; participate/complete programs of assistance/counseling as directed by the probation department and not leave the programs without prior written consent of the probation department; not contact the victim John Merritt directly or indirectly; stay out of places where alcoholic beverages are the primary item of sale (bars and liquor stores); submit to random chemical tests as directed by the probation department, and pay \$60 for each test; not possess or use any alcohol; not possess or use any controlled substance; not possess any weapons; obey all laws; submit to warrantless search and seizure of person, property, personal business, vehicle, or residence.

4. Petitioner served his jail sentence under house arrest. After the first year, petitioner's probation was converted from formal to informal. At hearing, petitioner admitted that he had consumed alcohol on occasion after February 26, 2010, contrary to the terms of his criminal probation. Petitioner will remain on felony criminal probation until February 26, 2013.

5. According to petitioner, he began "hanging with the wrong people" and became addicted to drugs. He used cocaine for two years and finally stopped about two weeks prior to his arrest in 2010, after he "ran out of drugs." He stated that, in January of 2010, he was "high and miserable," and "didn't want to live anymore," which prompted him to run away from his job and his family, and led to his criminal conduct.

#### *Petitioner's Employment Subsequent to his Conviction*

6. In June of 2010, petitioner became employed as a field representative for Problem Solved Pest Control (Problem Solved) in Modesto. Stephen Adams is the licensed

operator for Problem Solved. Mr. Adams has known petitioner for at least 15 years. Mr. Adams agreed to hire petitioner after his criminal conviction because petitioner "said he was clean." During petitioner's employment, Mr. Adams has administered two random drug tests to petitioner, both of which were negative.

7. Petitioner ran the day-to-day operations of Problem Solved, while Mr. Adams was attempting to start a second business. Mr. Adams was not aware of the fact that petitioner's field representative license had been revoked in February of 2011. Petitioner and Mr. Adams both acknowledged that petitioner continued to perform work for which a field representative's license was required after February of 2011. Petitioner stated that he knew he was acting in the capacity of a field representative without a license, but he was "trying to help a friend (Mr. Adams) going through a tough time." Mr. Adams learned that petitioner had surrendered his license in November of 2011, when the situation was brought to his attention by another employee. Mr. Adams continues to employ petitioner, because "his knowledge and character are great," and Mr. Adams "value[s] him as an employee." Petitioner's job was restructured to include only administrative and clerical work.

8. During the period of time in 2011 when petitioner's license was revoked, he permitted a copy of his old Applicator license to be displayed on the premises of Problem Solved, along with a copy of his Field Representative pocket card, thereby representing that he was licensed by the board at a time when he was not.

#### *Petition for Reinstatement*

9. On March 2, 2012, petitioner filed his petition for reinstatement of revoked license (Petition), which he signed on February 12, 2012. Attached to the Petition was a Declaration, which petitioner signed under penalty of perjury on February 12, 2012, attesting that the information provided was true and correct.

One of the questions posed on the Declaration stated:

Since the effective date of the revocation, have you been involved in any of the following situations?

a. Currently on criminal parole or probation

Petitioner answered "No" to Question a., despite the fact that he remains on felony criminal probation for the conviction set forth in Finding 3 above. At hearing, petitioner stated that he interpreted the question to require disclosure of probation or parole entered into after the date of license revocation, whereas petitioner was already on criminal probation at the time he surrendered his license. Petitioner's explanation was deemed not credible by the board, given the plain language of the question, which required disclosure of "current" criminal parole or probation.

Similarly, the Petition stated, in part:

Petitioner Bryan Scobey petitions the Structural Pest Control Board as follows:

[¶] . . . [¶]

## II.

That since the date of said revocation of license, Petition [sic] has in no way operated or held himself/herself out to the public as a structural pest control operator or field representative, and has fully complied with all orders of the Structural Pest Control Board regarding the revocation of his/her license and has otherwise conducted himself/herself in a lawful and proper manner.

Petitioner signed the Petition knowing that, in fact, he had operated and held himself out to the public as a licensed structural pest control field representative in violation of law and of the order of the board regarding revocation of his license. Petitioner's testimony, that he believed the statement referred only to structural pest control operators, was wholly lacking in credibility.

### *Petitioner's Evidence*

10. Aside from the testimony of Mr. Adams, petitioner provided no corroborating evidence of rehabilitation. He has not paid any of the costs of investigation and prosecution of the disciplinary matter that led to the revocation of his license, which is a prerequisite to reinstatement. He provided no documentation to support his claims of sobriety or abstention from drug use. He conceded that he has not engaged in any rehabilitation other than a "change of location" and no longer associating with individuals who had previously encouraged his drug use. Petitioner claimed to have engaged in continuing education, but did not provide any certificates or other documentation of that fact.

### *Discussion*

11. . Under all of the facts and circumstances herein, it would be contrary to the public interest to restore petitioner's revoked license at the present time. Petitioner did not provide substantial evidence of rehabilitation (Finding 10). On the contrary, by admittedly engaging in work for which a field representative's license was required, at a time when his license was revoked (Finding 7), and by holding himself out as licensed, at a time when he

was not (Findings 7 and 8), petitioner violated Business and Professions Code section 8550,<sup>1</sup> which is punishable as a misdemeanor pursuant to Business and Professions Code section 8553.<sup>2</sup> Furthermore, by virtue of this misconduct, petitioner has violated his criminal probation, which requires him to “obey all laws” (Finding 3). Petitioner has also violated his criminal probation by consuming alcohol (Finding 4).

12. The board is also concerned about the fact that petitioner did not carefully and honestly fill out the Petition and attached Declaration, as set forth in Finding 9. Petitioner’s dishonest conduct demonstrates a lack of rehabilitation. As was stated in *Gee v. California State Personnel Board* (1970) 5 Cal.App.3d 713, 718-719:

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<sup>1</sup> Business and Professions Code 8550 states, in pertinent part:

(a) It is unlawful for any individual to engage or offer to engage in the business or practice of structural pest control, as defined in Section 8505, unless he or she is licensed under this chapter.

[¶] . . . [¶]

(c) It is unlawful for an unlicensed individual, soliciting pest control work on behalf of a registered structural pest control company pursuant to subdivision (b), to perform or offer to perform any act for which an operator, field representative, or applicator license is required, including, but not limited to, performing or offering pest control evaluations or inspections, pest identification, making any claims of pest control safety or pest control efficacy, or to offer price quotes other than what is provided and printed on the company advertising or literature, or both.

(d) It is also unlawful for any unlicensed individual to offer any opinion, or to make any recommendations, concerning the need for structural pest control work in general, or in connection with a particular structure.

[¶] . . . [¶]

<sup>2</sup> Business and Professions Code section 8553 provides that, “Any person who violates any provision of this chapter, or who conspires with another person to violate any provision of this chapter, is guilty of a misdemeanor, and is punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.”

“Dishonesty” connotes a disposition to deceive. (*Midway School Dist. v. Griffeth* (1946) 29 Cal.2d 13, 18.) It “denotes an absence of integrity; a disposition to cheat, deceive, or defraud; ...” (*Hogg v. Real Estate Comr.* (1942) 54 Cal.App.2d 712, 717.)

¶ ... ¶

Honesty is not considered an isolated or transient behavioral act; it is more of a continuing trait of character.

13. Petitioner remains on felony criminal probation as of the date of hearing. When a person is on criminal probation or parole, rehabilitation efforts are accorded less weight, “[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion...” (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Therefore, an insufficient period of time has passed for petitioner to demonstrate rehabilitation.

14. Petitioner failed to establish that his Field Representative’s license can be reinstated at this time without risk of harm to the public. His flagrant disregard of the laws governing the licensing of pest control field representatives makes him a poor candidate for reinstatement, with or without probationary conditions.

#### LEGAL CONCLUSIONS

1. In a proceeding to restore a revoked or surrendered license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) An individual seeking reinstatement must present strong proof of rehabilitation, which must be sufficient to overcome the former adverse determination. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.)

2. As set forth in Findings 11 through 14, good cause does not exist at the present time to reinstate petitioner’s license.

ORDER

The petition of Bryan W. Scobey for reinstatement of Field Representative's License No. FR 30367 in Branch 2 is DENIED.

This decision shall become effective on the 18th day of June, 2012.

DATED: May 18, 2012

STRUCTURAL PEST CONTROL BOARD



By: CURTIS GOOD  
President