

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

In the Matter of the Accusation Against:

JONATHON DUSTIN STONE

Respondent.

Case No. 2012-33

OAH No. 2012030206

DECISION

The Proposed Decision of Alan S. Meth, Administrative Law Judge, dated November 14, 2012, in San Diego, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c) (2) (c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 1, caption, "Registered Applicator's" is stricken and replaced with "Field Representative's".
2. On page 5, number 4, "registered applicator's" is stricken and replaced with "field representative's".
3. On page 5, number 5, paragraph 5, "registered applicator's" is stricken and replaced with "field representative's".
4. On page 5, under Order term number 1, "Registered Applicator's" is stricken and replaced with "Field Representative's".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Pesticide Regulation, State of California.

The Decision shall become effective on February 22, 2013.

IT IS SO ORDERED January 23, 2013.



For the Structural Pest Control Board

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

In the Matter of the Accusation Against:

JONATHON DUSTIN STONE

Registered Applicator's License
No. FR 34995

Respondent.

No. 2012 33

OAH No. 2012030206

PROPOSED DECISION

On October 23, 2012, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Blanca I. Lopez, Senior Legal Assistant, represented the complainant.

Respondent represented himself.

The matter was submitted on November 6, 2012.

FACTUAL FINDINGS

1. On February 1, 2012, William H. Doulas, Interim Registrar/Executive Officer, Structural Pest Control Board, Department of Pesticide Regulation, State of California (hereafter, "Board") filed Accusation No. 2012 33 in his official capacity. Respondent filed a timely Notice of Defense.

On November 6, 2012, respondent submitted a letter by FAX written by Joshua and Jacob Long. The letter was marked Exhibit A and was admitted as hearsay.

2. On August 2, 2012, the Board issued Field Representative's License No. FR 34995 in Branch 3 to respondent as an employee of Richard Lee Stone in Poway, California. On December 9, 2004, respondent's license reflected employment with Terminix International Co. On July 12, 2006, the license was upgraded to include Branches 2 and 3. Respondent left the employment of Terminix on March 15, 2011 and became employed by

Richard Lee Stone the next day. On October 25, 2011, respondent's license reflected employment with Antac Pest Control in Lakeside, California.

3. On June 30, 2011, in the Superior Court of San Diego County, respondent pleaded guilty and was convicted of violating Penal Code section 487, subdivision (b)(3), grand theft by an employee of \$950.00 or more, a felony. On April 19, 2012, the court placed respondent on summary probation for five years on condition, among others, that he serve 180 days in custody, stayed, perform twenty days of community service, and pay various fines and fees and restitution to the victim of the theft in the amount of \$15,268.00. The court noted that it would grant early termination of probation after three years if the victim restitution were paid in full.

4. The facts and circumstances of the offense are as follows:

Respondent was employed by Terminix as an Outside Sales Representative and in that capacity, coordinated work performed by Terminix for Krista Day at her home in Poway, California. On January 14, 2011, respondent requested payment for the work completed and told Ms. Day to write a check in the amount of \$13,966.00 made out to him instead of Terminix. Ms. Day did so. Respondent then deposited the check in his personal checking account. Several weeks later, Ms. Day received a past due bill from Terminix in the amount of \$13,966.00. She contacted Terminix and told them that she had paid respondent and he had cashed her check. Terminix then conducted an investigation. On March 14, 2011, a branch manager for Terminix met with respondent confronted respondent about the matter. Respondent said he told Ms. Day to write the check made payable to him, he cashed the check into his bank account, and he refused to return the money to Terminix. Respondent said he felt that Terminix owed him the money and he had his own reasons as to why he was not going to give back the money. The manager terminated respondent's employment and the next day filed a grand theft crime report with the San Diego Police Department.

Respondent's offense is substantially related to the qualifications, functions, and duties of a licensee of the Structural Pest Control Board. (Cal. Code. Regs., tit. 16, § 1937.1, subd. (b)).

5. Respondent testified that he began working for Terminix in December 2004, and was an outstanding employee who earned numerous awards and accolades, including the Award of Excellence and the President's Club. However, he began having problems with Terminix beginning in approximately 2006 when he discovered that Terminix was changing the amount of the contracts he brought in. While this did not directly affect the amount of his commissions, it did affect the amount upon which his yearly bonus was based, and after about five years of this, during which respondent testified he repeatedly complained to his managers, he felt that Terminix owed him \$65,000.00.

Respondent testified he handled this situation incorrectly and should have brought a civil case against Terminix. He pointed out that a number of other employees had entered

into a class action lawsuit against Terminix in part for the way it compensated its employees. Instead, he selected a large job and had the homeowner, Ms. Day, pay him rather than Terminix. He then kept the money as a way to force Terminix to settle his claim for additional compensation. Respondent believed this money was owed to him. After Terminix learned of his actions, demanded repayment, and refused to consider his claim for additional compensation, respondent moved the money from his bank account to his father's bank account to keep it safe, but the IRS then levied against his father and seized the funds. Respondent thus could not repay Terminix.

Respondent has not performed the community service. He has paid the fines, fees, and restitution at the rate of \$100.00 per month for five months.

Respondent began employment with Antac Pest Control about a year ago and testified his work there has been stellar. He believed the owners of the company were aware of his conduct at Terminix although he did not directly inform them of his conviction.

Respondent has a minor child and is fighting to obtain custody. He is voluntarily providing child support while the court hearings proceed.

Respondent was convicted of burglary in 1991 and forgery in 1992.

6. Richard Morgan has known respondent for more than seven years and worked with him first at Terminix and then at Antac. He testified he left Terminix because it was a toxic environment and amoral. He helped respondent obtain employment at Antac. He described respondent as an outstanding person, honest and forthright, and was happy that respondent was working with him at Antac. He was sympathetic to the situation Terminix placed respondent in, although he noted the other employees went about their claims legally. He was one of the employees involved in the class action lawsuit against Terminix and settled his claim.

7. Sherrie Walker is respondent's mother and testified that respondent worked very hard for Antac in the last year to make sure he met his financial obligations. She described respondent as honest and upstanding. She testified that if respondent had asked her how to handle his problems with Terminix, she would have told him not to do what he did, but he did not ask her for advice. She believed respondent has learned his lesson and would not do something like this again.

8. Joshua and Jacob Long are the owners of Antac Pest Control San Diego and submitted a letter dated November 6, 2012. They wrote that they have been in business for 10 years and have employed more than 100 persons during that time, and currently employ respondent. They described him as an honest passionate employee who has a strong work ethic. Respondent told them about his conduct while he was employed at Terminix. They recognize that what respondent did there was wrong but they believe that it is something that respondent would never do again. They expressed no concern about his future conduct should he remain at Antac.

9. The Board incurred costs for the investigation and enforcement of this matter in the amount of \$1,507.50 for the services of the Attorney General. The amount of is reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 8649 provides;

“Conviction of a crime substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is a ground for disciplinary action. The certified record of conviction shall be conclusive evidence thereof.”

2. Business and Professions Code section 490 provides in part:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere”

3. Title 16, California Code of Regulations section 1937.2 provides in part:

“(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.”

4. Cause to revoke or suspend respondent's registered applicator's license pursuant to Business and Professions Code sections 8649 and 490 was established by Findings 3 and 4 in that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a structural pest control operator.

5. The evidence in light of the criteria of rehabilitation shows that respondent was convicted of a felony offense a year ago, he remains on probation, and he has not completed several of the terms of probation. He is making small monthly payments on his restitution obligation and has paid only \$500.00 of the \$15,268.00 he owes. He has not completed the requirement of community service. Respondent committed the offense less than two years ago.

The nature of the offense shows that it is an extremely serious one. Respondent stole \$13,966.00 from his employer by convincing a customer to write a check for services performed by Terminix, his employer, to him. He kept the money, refused to return it when confronted by a manager, and put the customer at risk. He placed himself and his belief that Terminix owed him money for unpaid bonuses above the welfare of his customer or his employer.

Respondent explained that he no longer has the money because to keep it safe he deposited it in his father's bank account, but the IRS then levied against that account and took the money. Respondent produced no evidence to corroborate this, and this explanation is difficult to believe.

Respondent introduced no evidence of rehabilitation beyond his current employment. Respondent's current employer is satisfied with his work and is willing to keep him as an employee despite his conviction. A co-worker testified on respondent's behalf and praised his work.

On balance, the seriousness of the offense, his commission of it within the last two years, his failure to pay much of the restitution or perform the required community service, and his lack of concern for the welfare of his employer or his customer, outweigh the evidence of rehabilitation and point conclusively toward revocation of respondent's registered applicator's license as the most appropriate disciplinary order.

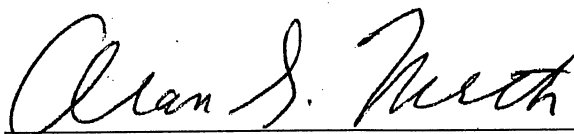
6. Cause to order respondent to reimburse the Board for its costs of investigation and enforcement of this matter in the amount of \$1,507.50 was established by reason of Finding 7.

ORDER

1. Registered Applicator's License number No. FR 34995 issued to respondent Jonathon Dustin Stone is revoked.

2. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,507.50.

DATED: November 14, 2012

A handwritten signature in cursive script that reads "Alan S. Meth". The signature is written in black ink and is positioned above a horizontal line.

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings