

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

In the Matter of the Accusation Against:

JOSEPH RUBEN WHITE  
aka JOSEPH REUBEN WHITE

Field Representative's License No. FR 38293,

Respondent.

Case No. 2012-23

OAH No. 2012021194

**DECISION**

The Proposed Decision of Richard J. Lopez, Administrative Law Judge, dated August 7, 2012, in Los Angeles, 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, Factual Findings 1, replace "William H. Douglas", with Susan Saylor, and replace "Interim Registrar/Executive Officer" with Assistant Executive Officer.

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 September 27, 2012.

IT IS SO ORDERED August 28, 2012.

  
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For the Structural Pest Control Board

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

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Case No.: 2012-23

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PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on July 9, 2012.

Christina Catapang, Certified Law Student, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted for decision.

The Administrative Law Judge now finds, determines and order as follows:

FACTUAL FINDINGS

*Parties*

1. William H. Douglas, Complainant herein, brought the Accusation in his official capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation.

2. On March 4, 2005, the Structural Pest Control Board (Board) issued Field Representative's License No. FR 38293 in Branch 2 to Joseph Ruben White aka Joseph Reuben White, Respondent herein, employee of Orkin Exterminating Company, Inc. The Field Representative's License is in full force and effect.

*Procedure*

3. Respondent timely requested a hearing on the Accusation. Complainant has met all prehearing jurisdictional requirements. Administrative proceedings before the Board are conducted in conformity with the provisions of the California Administrative Procedure Act, chapter 5, commencing with Government Code section 11500, *et seq.*

*Criminal Conviction*

4. Between December 2, 2009 and January 21, 2010 Respondent, while working in a position of trust for his employer, embezzled money and personal property of a value exceeding Four Hundred Dollars (\$400.00). Specifically, Respondent opened a bank account in the name of "Orkin Pest Services" in which he deposited two customer checks made payable to his employer. Respondent's employment with Orkin Exterminating Company, Inc. did not include depositing customer checks for his employer. The theft, requiring planning and sophistication and done with calculation and deliberation, resulted in the Complaint set forth in Finding 5.

5. As a result of Respondent's conduct set forth in Finding 4 a Misdemeanor Complaint issued in Los Angeles County Superior Court Case No. OCP08587 on September 13, 2010 which states:

Count 1

On or between December 2, 2009 and January 21, 2010, in the County of Los Angeles, the crime of Grand Theft By Embezzlement, in violation of Penal Code section 487, subdivision (a), a misdemeanor, was committed by Joseph Ruben White, who on and between December 2, 2009 and January 21, 2010, and while said defendant(s) was an agent, servant, and employee of Orkin Pest Control, did unlawfully take from said Orkin Pest Control money and personal property of a value exceeding Four Hundred Dollars (\$400.00).

6. On January 19, 2011, after pleading *nolo contendere* to Count 1 Respondent was convicted of one misdemeanor count of violating Penal Code section 487, subdivision (a) [grand theft], in the criminal proceeding entitled *The People of the State of California v. Joseph Ruben White* (Super. Ct. Los Angeles County, 2011, No. OCP08587). The Court sentenced Respondent to two days in county jail, placed Respondent on three years probation with certain terms and conditions, and ordered Respondent to pay Orkin \$1,142.99 in restitution.

*Substantial Relationship*

7. Penal Code section 487, subdivision (a) provides in pertinent part:

487. Grand Theft is theft committed in any of the following cases: (a) When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950.00). . .

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Penal Code section 486 provides:

486. Theft is divided into two degrees, the first of which is termed grand theft; the second, petty theft.

8. Embezzlement and theft, acts of dishonesty, are the antithesis of acts of security and safety – fundamental duties of a field representative. Accordingly, Respondent's conviction and conduct evidence to a substantial degree, a present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety and welfare and is, therefore, substantially related to the qualifications, functions and duties of a field representative.

*Rehabilitation*

9. As a result of the conviction, on January 19, 2011, Respondent was placed on 36 months of summary probation. During the course of probation Respondent completed all court ordered sanctions including the payment of all fines and the payment of restitution in the amount of \$1,142.99.

10. Respondent has suffered no other conviction. He is presently in compliance with probation and with society's norms and rules of civil behavior.

11. Respondent is presently employed by the Los Angeles Urban League as a job developer.

12. Notwithstanding Findings 9 through 11, the crime, *per se*, involves moral turpitude. Given a recent crime involving moral turpitude a record of clear and convincing rehabilitation is necessary for continued licensure. The time since the conviction is not sufficient to establish such rehabilitation as is demonstrated in the Findings which follow.

13. In his testimony Respondent understated the gravity of the theft and lacks present awareness of the harm to Orkin. He referred to the theft as "a mistake."<sup>1</sup>

14. There is no evidence of completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement. There is no evidence of significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. There is no evidence of new and different social and business relationships from those which existed at the time of the crime.

15. In that the crime is recent there is no evidence of a change in attitude from that which existed at the time of the conviction as demonstrated by evidence from anyone competent to testify as to Respondent's social adjustments.

16. There were no character witnesses, or character letters and no evidence from a present or prospective employer with knowledge of the conviction.

#### *Costs*

17. Pursuant to Business and Professions Code (Code) section 125.3 the Complainant certifies costs of investigation and enforcement of the case in the sum of \$2,257.50. Costs are reasonable.

18. At present Respondent's employment provides for the normal costs of daily living for his family and nothing more. Respondent, along with other Californians; is subject to the adverse impact of the present recession and is, therefore, under economic hardship. Respondent is now unable to pay all costs.

### LEGAL CONCLUSIONS

#### *Violations*

1. Cause exists for discipline of Respondent's license pursuant to Business and Professions Code (Code) section 8649 by reason of Finding 6 combined with Finding 8.

2. Separate cause exists for discipline of Respondent's license pursuant to Code section 8642 in that Respondent committed a fraudulent act as a field representative by reason of Findings 4 and 6.

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<sup>1</sup> The conviction stands as conclusive evidence of Respondent's guilt of the offense. Collateral attack of that conviction in this proceeding is prohibited. *Arneson v. Fox* (1980) 28 Cal. 3<sup>rd</sup> 440, 449; *Matanky v. Board of Medical Examiners* (1978) 70 Cal. App. 3<sup>rd</sup> 293, 302.

*Costs*

2. Business and Professions Code section 125.3 provides, in pertinent part, that a Board or other entity bringing a proceeding for discipline may request the Administrative Law Judge hearing the matter to direct a licentiate found to have committed a violation of the applicable licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the proceeding.

4. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. 4<sup>th</sup> 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to section 125.3. In so doing, however, the Court directed the Administrative Law Judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize the Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Board must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable challenge; the Board must consider a Respondent's ability to pay; the Board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a Respondent engaged in relatively innocuous misconduct.

5. By reason of Finding 18 Respondent did establish the present inability to pay all costs. In evaluating that factor and other factors set forth in *Zuckerman* full costs, although reasonable, are not recoverable. Recoverable Costs are here determined to be \$750.00.

*Disposition*

6. The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment. *Fahmy v. MBC* (1995) 38 Cal.App.4<sup>th</sup> 810, 817; *Ex Parte Brounsell* (1778) 2 Cowp. 829, 98 Eng.Rep. 1385.

7. As is demonstrated by Findings 13 through 16 Respondent has yet to establish a record of clear and convincing rehabilitation to allow continued licensure. His crime is recent; involved dishonesty and corruption and required planning and sophistication. Therefore, the Order which follows is consistent with the public interest. Respondent is urged to complete the process of rehabilitation and document same in the event of a petition for reinstatement.

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ORDER

1. Field Representative License No. FR 38293 previously issued by the Board to Joseph Ruben White aka Joseph Reuben White is hereby revoked.

2. Respondent shall pay to the Board, as Costs, the sum of \$750.00, at the Board's Sacramento address within sixty (60) days of the effective date of this Decision.

Dated: August 7, 2012



RICHARD J. LOPEZ  
Administrative Law Judge  
Office of Administrative Hearings

RJL:ref