

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

In the Matter of the Accusation Against:

JOSHUA DANIEL BAPTISTA

Respondent.

Case No. 2012-22

OAH No. 2012021193

**DECISION**

The Proposed Decision of Paul Slavit, Administrative Law Judge, dated November 16, 2012, in Oakland, 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, under Proposed Decision, paragraph 2, insert "former" in front of Interim
2. On page 1, under Factual Findings, paragraph 1, insert "former" in front of Interim.
3. On page 1, under Factual Finding, paragraph 1, "statement of issues" is stricken and replaced with "accusation".

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 21, 2013.

IT IS SO ORDERED January 22, 2013.

  
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For the Structural Pest Control Board

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**PROPOSED DECISION**

Administrative Law Judge Paul Slavitt, Office of Administrative Hearings, State of California heard this matter on October 30, 2012 in Oakland, California.

Deputy Attorney General Leslie E. Brast represented complainant William H. Douglas, Interim Executive Officer of the Structural Pest Control Board, Department Of Pesticide Regulation.

Respondent Joshua Daniel Baptista represented himself.

The matter was submitted on October 30, 2012.

**FACTUAL FINDINGS**

1: Complainant William H. Douglas, Interim Executive Officer of the Structural Pest Control Board (board) brought this statement of issues in his official capacity.

2. On June 20, 2005, the board issued Field Representative's License no. FR38822 in Branch 3 to respondent. The field representative's license will expire on June 30, 2013, unless renewed.

Respondent previously held an Applicator License (no. RA 23291), which was cancelled on June 5, 2006, due to the issuance of the Field Representative License.

3. On March 17, 2011, in the Santa Barbara County Superior Court, respondent was convicted on his plea of nolo contendere to a misdemeanor violation of Penal Code section 314.1 (indecent exposure).

Respondent was placed on supervised probation for three years, subject to terms and conditions including payment of fees and fines, psychological examination and counseling as

directed by the probation department, stay away from the named victim in the case, and registration as a sex offender in compliance with Penal Code section 290.

4. The facts underlying the conviction were that on November 30, 2009, a woman was waiting at a bus stop to meet her children. She saw a man standing between two nearby apartment buildings; and the man had his pants down, and was "playing with" his genitals. The woman had seen the man in the neighborhood previously, and noticed that he wore a work uniform and drove a Western Exterminator truck. She reported the incident to the Santa Barbara police. Subsequently, the woman saw the man in the area again, and notified the police. At that time, the police followed up, and located respondent through the Western Exterminator office. The woman identified respondent as the man who had exposed himself.

Respondent was taken into custody, and in the course of a police interview, acknowledged that he had exposed himself to the victim, and indicated that he "needed help." However, at the time of the hearing, respondent denied these statements, and alleged that the police report was inaccurate concerning his statements.

#### *Respondent's Evidence*

5. Respondent is 28 years old, and recently married. Although he previously lived near Santa Barbara, he now lives in the San Jose area. He and his wife live in a house owned by a friend from his church; he pays rent partially by performing construction on the owner's residence, which is in disrepair.

6. Respondent has worked in the pest control business since high school. He first received his applicator's license when he began working for Western Pest Control. To advance his career, he obtained his Branch 3 Field Representative's license in 2005. The Branch 3 license supercedes the applicator license, so that the applicator's license was cancelled after he obtained his Branch 3 license.

As a field representative for Western Pest Control, he performed inspections for wood destroying organisms, and performed necessary construction to remodel and/or repair the affected areas. The construction work was performed as an employee under Western Pest Control's contractor's license.

About a month after his arrest in Santa Barbara, respondent lost his job with Western Pest Control. He now works as an inspector for Clark Pest Control, where he has an assigned route. He performs monthly maintenance and inspections, sprays for pests, and carries out warranty services for Clark's customers.

6. Respondent must be licensed as part of his employment with Clark Pest Control, and will lose his job if his license is revoked.

7. With reference to his criminal conviction, respondent stated that when he worked in the field on the exterior of a building, he often did not have access to a bathroom on site. Although he could drive to another location to use a public restroom, this usually was at some distance, and time consuming. Therefore, he would urinate outside, next to the building. Respondent testified that this is what happened when he was spotted by the complainant. He denies exposing himself intentionally, denies the allegations made against him, and the statements attribute to him in the police report.

Respondent stated that he wanted to fight the criminal case, and only entered his plea on the recommendation of counsel.

8. Following entry of his plea, respondent was placed on three years supervised probation; as such, he remains on probation until March 2014. He is in compliance with all terms of probation, including registration in Santa Clara County where he now resides. He is making monthly payments to satisfy court costs and probation fees.

Under the terms of probation, respondent may petition to have his probation amended to unsupervised, court probation if he has no violations. In addition, he may apply for a certificate of rehabilitation after he successfully completes probation and the statutory period has passed.

9. In accordance with probation, respondent was examined by Dr. Oliver in San Luis Obispo. Dr. Oliver ordered respondent to attend group therapy sessions for sex offenders, which Dr. Oliver facilitates. Respondent attended weekly sessions until his move to Santa Clara County. Respondent's probation has been transferred to Santa Clara County, and the probation department there is in the process of arranging group counseling. However, respondent's ability to participate is hampered by his limited resources and ability to pay for the sessions.

10. Respondent feels that he has gotten some benefit from his group therapy work. He now acknowledges some responsibility for his behavior.

Respondent explained that he was raised by his father, and that during his childhood it was not unusual, when he needed to urinate, for his father to simply pull over by the side of the road, or the like, to allow respondent to go, rather than seek out a restroom. As such, respondent feels he may have become "desensitized" to concerns around urinating in public, and the effect this could have on anyone who might see him.

#### *Mitigating Evidence*

11. Respondent has become involved in a church that his mother long attended. There he participated in pre-marital counseling, and now attends personal counseling. He attends church services two or three times per week.

12. Respondent presented a letter of reference from Gordon E. Ashe, whom respondent describes as a “church friend.” It is Mr. Ashe with whom respondent and his wife currently reside. Mr. Ashe attests to respondent’s character and integrity, adding that respondent is responsible and shows maturity and good judgment in his endeavors.

13. John Mark Mills testified on respondent’s behalf. Mr. Mills is an elder in the Spring Valley Bible Church that respondent attends. He is aware of respondent’s criminal conviction. He attests to respondent’s general good character, and involvement in the church. He has not seen any evidence of bad or inappropriate behavior during the one-plus year respondent has been involved with the church.

### *Costs*

14. In connection with the prosecution of this accusation, the board submitted a certification of costs showing billable professional time for Department of Justice staff in the sum of \$4,222.50.

The case of *Zuckerman v. Board of Chiropractic Engineers* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the respondent has been successful at the hearing in getting charges reduced or dismissed; respondent’s subjective good faith belief in the merits of his position; whether the respondent has raised a colorable challenge to the proposed discipline; the financial ability to pay the cost award; and whether the scope of the investigation was appropriate to the alleged conduct of the respondent. In this case, the only factor potentially favorable to respondent is his financial ability to pay.

Although respondent did not submit a financial statement as such, he testified credibly that he is having difficulty paying for the counseling services required by his probation, and had to arrange to make installment payments of \$50 per month to satisfy court costs and probation fees. Further, he is paying at least part of his living expenses by working in lieu of rent. This, taken with the fact that the proposed discipline likely will result in termination of his employment, leads to the determination that costs should be reduced by one-half to \$2,100.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 8620 provides that the board may suspend or revoke a license if the respondent has committed any act constituting cause for disciplinary action. Further, pursuant to section 8649 conviction of a crime substantially related to the qualifications, functions, or duties of a pest control operator, pest control applicator, or field representative provides grounds for disciplinary action. Therefore, cause for discipline exists based on the matters set forth in Finding 3.

2. Although a misdemeanor, the crime respondent committed is very serious—serious enough to require registration as a sex offender. His explanation of the incident is at odds with the facts on which the criminal complaint, and respondent’s eventual plea to the

crime, are based. This suggests a failure to fully acknowledge his actions and his responsibility for them and their consequences.

4. Respondent and his witness offer positive signs concerning his character. However, respondent remains on active, supervised probation, and is registered as a sex offender. He is still in the process of completing his court-ordered counseling.

5. It is the obligation of the board to protect the public safety. Despite the positive evidence of character that respondent and his witness provided, the nature of the underlying offense, respondent's required Penal Code section 290 registration, and his ongoing probation status are of sufficient gravity that that his license must be revoked.

At such time as he has completed probation, obtained a certificate of rehabilitation, and otherwise demonstrated rehabilitation, he may seek reinstatement.

#### ORDER

1. Joshua Daniel Baptista's Branch 3 Field Representative's License no. FR38822 license is revoked.
2. Joshua Daniel Baptista is ordered to pay the Interim Executive Officer of the Structural Pest Control Board, Department Of Pesticide Regulation \$2,100 as reimbursement of the costs of prosecution.

DATED: November 16, 2012



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PAUL J. SLAVIT  
Administrative Law Judge  
Office of Administrative Hearings