

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

In the Matter of the Petition for Reinstatement of:

CARL GAY-LYLES,

Petitioner.

Case No. 2014-27

OAH No. 2017060708

DECISION

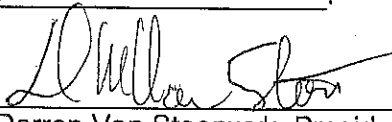
The Proposed Decision of Ji-Lan Zang, Administrative Law Judge, in Claremont, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 3, paragraph 7C, "applicator's" is stricken and replaced with "field representative's".
2. On page 3, paragraph 8B, "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 Consumer Affairs, State of California.

The Decision shall become effective on March 24, 2018.

IT IS SO ORDERED February 22, 2018.



Darren Van Steenwyk, President
Structural Pest Control Board
State of California

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In the Matter of the Petition for Reinstatement
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OAH No. 2017060708

CARL GAY-LYLES,

Petitioner.

DECISION ON RECONSIDERATION

A quorum of the Structural Pest Control Board (Board) heard this matter on January 9, 2018, in Claremont, California. Administrative Law Judge Ji-Lan Zang of the Office of Administrative Hearings presided.

Tim McDonough, Deputy Attorney General, represented the Attorney General under Government Code sections 11521 and 11522. Petitioner Carl Gay-Lyles appeared and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on January 9, 2018, following which the Board met in executive session and decided the matter on the day of hearing.

FACTUAL FINDINGS

1. The Board issued Field Representative's License number FR 39325, Branch 2 (general pest), to petitioner on October 21, 2005.¹
2. On April 23, 2014, the Board, by Decision and Order, effective May 23, 2014, revoked the petitioner's probationary license in case number 2014-27. The discipline arose from petitioner's March 20, 2013 conviction for violating Penal Code sections 487, subdivision

¹ The Board issued Applicator's License number RA 44547, Branches 2 and 3, to petitioner on September 27, 2005. The license was downgraded to include Branch 3 only on October 21, 2005, due to the issuance of petitioner's Field Representative's license. Petitioner's Applicator's License was cancelled on September 27, 2008.

(a) (grand theft of personal property), a felony. (Superior Court of California, County of Los Angeles, case number LA073040). Specifically, on January 4, 2013, petitioner entered a Nordstrom in Canoga Park, took several Gucci belts, rolled them up and concealed them in a jacket pocket, and left the store without paying for them.

3. On June 5, 2017, petitioner filed a Petition for Reinstatement. On August 23, 2017, the Board, by Decision and Order, effective September 22, 2017, granted the petition and ordered that a Field Representative's License be issued to petitioner. However, the license was immediately revoked, and the revocation stayed. Petitioner's license was placed on probation for a period of three years, subject to terms and conditions.

4. On September 21, 2017, pursuant to Government Code sections 11519 and 11521, the Board filed an Order Granting a Stay of Execution of Decision, which stayed the date of the execution of the decision for 30 days in order to allow the Board time to prepare a Petition for Reconsideration based on new evidence it received.

5. On October 19, 2017, the Board filed a Petition for Reconsideration. The Petition for Reconsideration alleged that petitioner had been performing structural pest control work during the time in which his license was in revoked status, in violation of Business and Professions Code section 8550, subdivisions (a) and (e). On October 20, 2017, the Board issued an Order Granting a 10-Day Stay to permit it to decide whether to order reconsideration of the matter. On October 27, 2017, on its own motion, the Board vacated its August 23, 2017 Decision and Order, and ordered reconsideration of the reinstatement of petitioner's license.²

6. At the hearing, the Board introduced the following reports as evidence to establish petitioner's conduct which forms the grounds for reconsideration of the reinstatement of his license: an undated initial Pesticide Episode Investigation Report from the Los Angeles County Agricultural Commissioner (LACAC), a report dated October 18, 2017, by Board Investigator Gregory K. Adams, and a Final Pesticide Report, dated November 14, 2017, from LACAC. All three investigative reports were admitted pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.³

² The Order Granting Reconsideration also provided for the submission of any written arguments on or before November 26, 2017. However, no written arguments were filed.

³ In *Lake v. Reed* (1997) 16 Cal.4th 448, 461-462, the California Supreme Court held that certain information contained in a police report is admissible as direct evidence in an administrative proceeding; specifically, the personal observations of the investigating officer and respondent's admissions are admissible for all purposes. However, statements in a investigative report that are attributable to others, such as witnesses, are "administrative hearsay." The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), which states that hearsay evidence that is objected to, and is not otherwise admissible, may be used only to supplement or explain other evidence. Here, the statements of the alleged victim and any other third parties are "administrative hearsay," and without other direct evidence, cannot support a factual finding.

7. A. According to Board Investigator Adams's report, on August 30, 2017, the Board received a complaint from LACAC alleging an incident involving the misapplication of a pesticide on a property located in Long Beach, California (Long Beach property). This complaint also included information that the company at issue, C&G Pest Control, was advertising on various websites.

B. On August 31, 2017, Board Investigator Adams conducted a web search for C&G Pest Control and found several advertisements for C&G Pest Control on websites including Facebook, Buzzfile, and Manta. The addresses and phone numbers for C&G Pest Control matched that of petitioner's as listed in the Board's records.

C. On September 12, 2017, Board Investigator Adams interviewed petitioner. During this interview, petitioner admitted that he attempted to start a business, C&G Pest Control, in 2011, and he set up a Facebook page and other accounts on several websites in anticipation of starting a pest control business. Later on, he abandoned his efforts to start the business because he had failed the exam for an operator's license. At the hearing, petitioner testified that once he failed the operator's exam and his applicator's license was revoked, he ceased all business activities but neglected to taken down the website accounts.

8. A. With respect to the allegation of misapplication of a pesticide, petitioner told Investigator Adams during his September 21, 2017 interview that he was a friend of the owner of the Long Beach property. A tenant on the property complained of bug bites and bed bugs. Petitioner admitted to conducting an inspection of Unit #9 on July 31, 2017 at the request of the owner, but did not find any bed bugs. He informed the owner of his findings and did not apply any pesticide.

B. Petitioner inspected the Long Beach property unit when he was unlicensed. His inspection occurred prior to the effective date of the Board's reinstatement of his license and while his Applicator's License was still on revoked status.

C. Nevertheless, at the hearing, petitioner denied that the inspection he performed at the Long Beach property constituted structural pest control work for a variety of reasons, including: he did not apply any pesticide on the property; he only suggested to the owner that she could obtain foggers from Home Depot for her pest control needs; he was not paid for this work; and he is friends with property owner, who had previously obtained quotes from two other pest control companies and he was simply helping her to obtain an additional quote.

D. During cross-examination, petitioner was asked if he was aware that under Business and Professions Code section 8505, the definition of the practice of "structural pest control" or "pest control" includes identification of infestations, the making of an inspection for the purpose of identifying or attempting to identify infestations, and the making of inspection reports, recommendations, estimates, and bids, whether oral or written, with respect to those infestations. Petitioner responded that he was unaware of any laws that prohibited him from conducting an inspection to identify pest infestations.

9. The Board considered all documentary evidence contained in the petition. The Board also considered petitioner's testimony at hearing.

LEGAL CONCLUSIONS

1. Government Code section 11522 provides that a person whose license has been revoked may petition the Board for reinstatement after a period of not less than one year has elapsed from the effective date of the decision. Petitioner has the burden of demonstrating that he has the necessary and current qualifications and skills to safely engage in the practice of structural pest control within the scope of current law and accepted standards of practice. (Evid. Code, § 500.)

2. Business and Professions Code section 8550 provides, 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 [the Structural Pest Control Act].

[¶] . . . [¶]

(e) It is unlawful for any firm, sole proprietorship, partnership, corporation, association, or other organization or combination thereof to engage or offer to engage in the practice of structural pest control, unless registered in accordance with Article 6.

3. Business and Professions Code section 8505 provides, in pertinent part:

(a) "Structural pest control" and "pest control" as used in this chapter are synonymous. Except as provided in Section 8555 elsewhere in this chapter, it is, with respect to household pests and wood destroying pests or organisms, or other pests that may invade households or other structures, including railroad cars, ships, docks, trucks, airplanes, or the contents thereof, the engaging in, offering to engage in, advertising for, soliciting, or the performance of, any of the following:

- (1) Identification of infestations or infections.
- (2) The making of an inspection or inspections for the purpose of identifying or attempting to identify infestations or infections of household or other structures by those pests or organisms.
- (3) The making of inspection reports, recommendations, estimates, and bids, whether oral or written, with respect to those infestations or infections. . . .

4. Petitioner admitted that he advertised for pest control services on various websites. He also admitted that on July 31, 2017, prior to the reinstatement of his license and while the license was still on revoked status, he made an inspection, identified infestations, and recommended pest control treatments at the Long Beach property. All of these activities fall within the meaning of the business or practice of "structural pest control" or "pest control," as defined by Business Professions Code section 8505, subdivision (a), and are prohibited under Business and Professions Code section 8550, subdivisions (a) and (e), unless the individual or the business entity engaging in such activity is licensed by, or registered with, the Board. Although petitioner contended that he was not paid for his work on the Long Beach property, performance of work for financial gain is not a requirement under either Business and Professions Code section 8505 or section 8550. Petitioner testified that he was unaware of the laws which prohibited him from performing an inspection and identifying an infestation as an unlicensed individual. However, as a previous licensee who is seeking reinstatement of his license, petitioner is charged with the knowledge of the Board's laws and regulations and is expected to comply with them. Given the forgoing, the Order that follows is necessary for the protection of the public.

ORDER

The Petition for Reinstatement of Revoked License of Carl Gay-Lyles is denied.

This Decision shall be effective March 24, 2018.

DATED: February 22, 2018



Darren Van Steenwyk, President
Structural Pest Control Board
State of California