

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

In the Matter of the Accusation Against:

ADOLFO R. MARTIN

Respondent.

Case No. 2011-32

OAH No. 2012010838

DECISION

The Proposed Decision of Joseph D. Montoya, Administrative Law Judge, dated October 24, 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, caption, "ALDOLFO" is stricken and replaced with "ADOLFO".

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:

ALDOLFO R. MARTIN,
Field Representative License No. FR 41018

Respondent.

Case No. 2011-32

OAH No. 2012010838

PROPOSED DECISION

The hearing in the above-captioned matter was held on July 31, 2012, by Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, at Los Angeles. Complainant was represented by Antonio Lopez, Jr., Deputy Attorney General. Respondent appeared and represented himself.

Evidence was received and argument was heard, but the record was held open so that Respondent could submit further documentation regarding his continuing education. Respondent submitted his documents to Complainant's counsel, rather than to the ALJ. However, Mr. Lopez forwarded copies of the documents on August 13, 2012, with a letter stating that he had no objection to receipt of the documents. The continuing education certificates and Mr. Lopez's letter will be received together as Exhibit 5.

The matter was deemed submitted for decision on August 13, 2012. The ALJ hereby makes his factual findings, legal conclusions, and orders.

FACTUAL FINDINGS

1. Complainant Kelli Okuma filed and maintained the Accusation in this matter while acting in her official capacity as Registrar/Executive Officer of the Structural Pest Control Board (Board), Department of Pesticide Regulation.

2. Respondent Adolfo R. Martin is licensed by the Board as a Field Representative, holding license number FR 41018. He has been so licensed since November 2006. The Field Representative's license was due to expire on June 30, 2012. Respondent also held an Applicator License, number RA 3045, in Branch 3, which was due to expire on February 2, 2011. The record does not disclose whether or not either license had been renewed as of the hearing date, although

Complainant's counsel indicated that Respondent had sought renewal shortly before the hearing.¹

3. Respondent was required to complete continuing education courses during each three-year licensing period, pursuant to Business and Professions Code section 8593, and California Code of Regulations (CCR), title 16, section 1950.²

4. On September 24, 2009, Respondent submitted an application to the Board to renew his field representative license. In that application, he stated that he had completed 16 hours of continuing education prior to the filing of the renewal application. The Board renewed his field representative's license.

5. Between December 3, 2009, and May 11, 2010, the Board mailed written requests to Respondent for copies of his continuing education certificates, so as to verify that he had completed 16 hours of continuing education, as he stated in his license renewal application. Respondent failed to provide that verification to the Board. The Board's records indicate that some of the mailings were returned as undeliverable to an address in Norwalk.

6. At the hearing, Respondent produced a document that showed he had completed 22 hours of continuing education in June 2012, nearly three years after he filed his renewal application, and a few weeks before the instant hearing. After the hearing, he submitted certificates showing that he had completed six hours of continuing education on May 10, 2011, again, after the renewal period. Thus, as noted by Complainant's attorney in his letter of August 13, 2012, Respondent has completed 28 hours of continuing education since 2006, all of it since 2011.

7. At the hearing, Respondent testified that his life was in serious disarray during the years before the 2009 renewal. He was drinking heavily, and his marriage failed. He mentioned being in jail, and stated he had moved four times in approximately two years. He began to put his life back together, and was rehired at Dewey Pest Control. Since then he has become employed by Gordon Pest Control.

8. Respondent supports himself and his son. He testified that he makes approximately \$2,600 per month from salary and commissions.

9. The Board has incurred costs of investigation and prosecution in this matter totaling \$3,225.

¹ In any event, the Board would retain jurisdiction in this matter under Business and Professions Code sections 118, subdivision (b), and 8625.

² All further statutory references shall be to the Business and Professions Code. Further references to the CCR shall be to title 16 thereof.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter under sections 118, subdivision (b), 8620, 8625, and 8641 was established by reason of Factual Findings 1 and 2.
2. Respondent failed to comply with CCR section 1950, subdivisions (a), (b), and (d), by failing to provide verification of his continuing education after seeking renewal of his Field Representative license in 2009, based on Factual Findings 2 through 6.
3. Respondent's license to act as a Field Representative is subject to discipline for his violation of CCR section 1950, and of section 8593, based on Legal Conclusion 2 and its factual predicates.
4. The Board is entitled to recover its costs of investigation and prosecution pursuant to section 125.3, based on Legal Conclusions 1 through 3. The reasonable costs of investigation and prosecution are \$3,325, based on Factual Finding 9.
5. The purpose of proceedings of this type are to protect the public, and not to punish an errant licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) The Board, in order to assist in carrying out its duties in protecting the public, has adopted disciplinary guidelines, hereafter "the Guidelines." They provide when determining the nature of the disciplinary order, the following should be considered:
 - Actual or potential harm to the public.
 - Whether there was actual or potential harm to any consumer.
 - The licensee's prior disciplinary record.
 - The number and/or variety of current violations.
 - Any mitigation evidence.
 - If a criminal conviction, compliance with terms of sentence.
 - The licensee's overall criminal record.
 - Whether the conduct was knowing, willful, reckless or inadvertent.
 - The financial benefit to the respondent.
 - Evidence that the unlawful act was part of a pattern of practice.
 - Whether the licensee is currently on probation.
6. (A) When applying the guidelines to Respondent's case, it can be seen that there was no actual harm to consumers, but the potential for harm existed in that a licensee who has not maintained his professional skills is more likely to act negligently. However, Respondent has no prior disciplinary record, and the current violation can be deemed singular, though ongoing. The criteria pertaining to criminal convictions does not apply. The misconduct has to be deemed as knowing and willful; Respondent failed to keep up his education, and failed to provide verification on demand. There was a financial benefit to the extent he did not have

to pay for classes, though it appears that his employers may provide the courses out of hand. There was a pattern to the misconduct, to the extent that Respondent allowed years to pass without taking his continuing education courses, and in his failure to cure the matter for a period of many months. Respondent's license is not currently on probation.

(B) There is minimal mitigation evidence. The disarray in Respondent's life was, to some extent, of his own doing, especially as to his alcohol use. He has taken steps to bring his continuing education current.

7. In all the circumstances, Respondent's license should be placed on probation, and he should be required to complete another four hours of continuing education in a short period of time. He should be obligated to pay costs, although he should be allowed to do so in installments given his low income. Such an order will reasonably protect the public, while giving Respondent a further opportunity, and motivation, to put his professional life in order.

ORDER

The Field Representative's license issued to Respondent Adolfo R. Martin, number FR 41018, is hereby revoked, provided, however, that this order of revocation is stayed, and Respondent's license placed on probation for a period of three years, on the following terms and conditions:

1. **Obey All Laws:** Respondent shall obey all laws and rules relating to the practice of structural pest control. This includes keeping the Board apprised of his address at all times.
2. **Quarterly Reports:** Respondent shall file quarterly reports with the Board during the period of probation.
3. **Tolling of Probation:** Should respondent leave California to reside outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.
4. **Notice to Employers:** Respondent shall notify all present and prospective employers of the decision in this case, No. 2011-32, OAH No. 2112010838, and the terms, conditions and restriction imposed on Respondent by said decision. Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his/her employer to report to the Board in writing acknowledging the employer has read the decision in case No. 2011-32, OAH No. 2012010838.

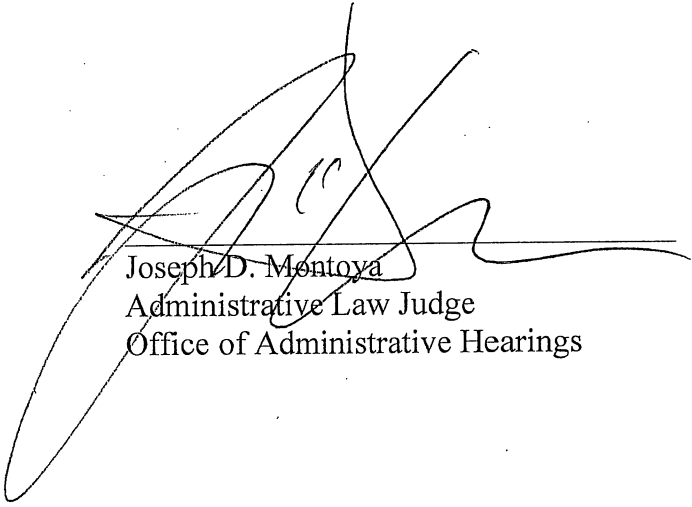
5. Respondent shall complete four hours of continuing education courses within 90 days of the effective date of this decision, and he shall provide verification of his completion of those four hours to the Board within that time period. If Respondent fails to do so, then his license shall be suspended until he provides such verification to the Board.

5. **Payment of Costs:** Respondent shall pay costs to the Board in the total sum of \$3,225 over the term of his probation, and prior to the end of the probation period. Respondent shall pay 35 monthly installments of \$92.15, beginning 30 days after the effective date of this order, except that the last installment shall be in the amount of \$91.90. Failure to make timely payment, or to complete the payment obligation by the end of the probation term, shall constitute a violation of probation.

6. **Violation of Probation:** Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. **Completion of Probation:** Upon successful completion of probation, Respondent's license will be fully restored.

October 24, 2012



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings